



MAS Proposes a New Corporate Structure for Investment Funds

Singapore, 23 March 2017... The Monetary Authority of Singapore (MAS) today commenced a public consultation on a new corporate structure for investment funds – the Singapore Variable Capital Company (S-VACC). Mr Lawrence Wong, Minister for National Development and Second Minister for Finance, said at the Investment Management Association of Singapore (IMAS) 20th Anniversary Conference held today that the S-VACC structure would offer asset managers greater flexibility and lower costs.

2 Currently, there are three types of structures used by investment funds in Singapore, namely unit trusts, companies formed under the Companies Act and limited partnerships. The S-VACC seeks to complement these existing structures with one that is tailored for investment funds. With the S-VACC framework, MAS seeks to offer a flexible and efficient platform for fund managers to co-locate fund domiciliation with their substantive fund management activities in Singapore and further deepen the asset servicing ecosystem.

3 The proposed S-VACC framework is intended to cater to both open-ended and closed-end¹ investment funds, and allow for segregation of assets and liabilities of sub-funds within an umbrella structure. This will allow asset managers to achieve cost efficiencies by consolidating administrative functions at the umbrella fund level. In addition, S-VACCs would be allowed to maintain their respective registers of shareholders, but would be required to disclose the registers to supervisory and law enforcement agencies where necessary.

4 The S-VACC is proposed to be limited to investment fund purposes only, and would be required to have a fund manager which is regulated by MAS. Shares of the S-VACC would generally be issued and redeemed at net asset value to ensure accountability and transparency for creditors.

5 MAS further proposes that the incorporation of S-VACCs be governed by a new Act, under which the Accounting and Corporate Regulatory Authority (ACRA) would act as the registrar of S-VACCs, while MAS would oversee the anti-money laundering obligations of S-VACCs².

6 The public consultation will end on 24 April 2017. More details can be found on the [MAS website](#).

¹ An open-ended fund allows investors to redeem their investments at their discretion, while a closed-end fund does not permit investors to do so. Closed-end funds also have a fixed number of shares and do not allow new subscriptions after the offer period closes, while open-ended funds accept new subscriptions by new investors anytime.

² The S-VACC framework would not affect investors as existing fund authorisation and disclosure requirements under the Securities and Futures Act apply regardless of the fund's legal structure.

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Consultation Paper on the Proposed Framework for Singapore Variable Capital Companies

MAS

Monetary Authority of Singapore

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1 Preface

1.1 To further develop Singapore as a centre for both fund management activities and investment fund domiciliation, the Monetary Authority of Singapore (“MAS”) proposes to set up a legislative framework for a new corporate structure that is tailored for collective investment schemes (“CIS”). The framework seeks to provide CIS with an additional option to the common unit trust structure today. In view of the possible economies of scale that can be reaped by umbrella funds, MAS also intends to allow the segregation of assets and liabilities of sub-funds established under a single legal entity.

1.2 MAS invites comments from interested parties on the proposed framework and its accompanying draft legislation.

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like (i) their whole submission or part of it, or (ii) their identity, or both, to be kept confidential, please expressly state so in the submission to MAS. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

1.3 Please submit written comments by 24 April 2017 via email to svacc@mas.gov.sg. We would appreciate that you use this [template](#) for your submission to ease our collation efforts.

Defined Terms

ACRA	Accounting and Corporate Regulatory Authority
AGM	Annual general meeting
AML/CFT	Anti-money laundering and countering the financing of terrorism
Approved Trustee	A trustee approved under section 289 of the SFA
ASC Standard	An accounting standard set by the Accounting Standards Council
Authorised Scheme	A CIS that is constituted in Singapore and authorised by MAS under section 286(1) of the SFA
CA	Companies Act (Cap. 50) of Singapore
CIS	Collective investment scheme(s) as defined under section 2(1) of the SFA
CIS Code	Code on Collective Investment Schemes
Exempted Entity	A financial institution exempted under sections 99(1)(a), (b), (c) or (d) of the SFA from the requirement to hold a capital markets services licence to carry on business in fund management i.e., a bank licensed under the Banking Act (Cap. 19), a merchant bank approved under the MAS Act (Cap. 186), a finance company licensed under the Finance Companies Act (Cap. 108) or a company or co-operative society licensed under the Insurance Act (Cap. 142)
IFRS	International Financial Reporting Standards
IOSCO	International Organisation of Securities Commissions
LFMC	A licensed fund management company, i.e., a holder of a capital markets services licence for fund management under section 86 of the SFA
MAS	Monetary Authority of Singapore
NAV	Net asset value, i.e., total assets less total liabilities
Permissible Fund Manager	A LFMC, RFMC or an Exempted Entity

RAP 7	Statement of Recommended Accounting Practice 7
Restricted Scheme	A CIS that is offered only to accredited investors and certain other persons, or offered on terms that the units may only be acquired for consideration of at least S\$200,000 (or equivalent in foreign currency) per transaction; and is exempted from authorisation or recognition and prospectus requirements, subject to the conditions under section 305(3) of the SFA
RFMC	A registered fund management company i.e., a corporation which is exempted from holding a capital markets services licence under paragraph 5(1)(i) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations
SFA	Securities and Futures Act (Cap. 289) of Singapore
SFR	Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005
SFRS	Singapore Financial Reporting Standards
S-VACC	Singapore Variable Capital Company

2 Introduction

Current investment fund structures

2.1 Internationally, the most commonly used CIS structures are unit trusts (constituted by way of trust deeds) and investment companies. In Singapore, CIS constituted as investment companies are relatively uncommon because of the restrictions under the CA on the return of capital to shareholders. These requirements impede the normal operations of CIS which need the flexibility to vary their capital and redeem shares whenever investors exercise their redemption rights. The CA also does not cater for the creation of sub-funds with segregated assets and liabilities. Therefore, fund managers will not be able to reap economies of scale by consolidating certain administrative functions within an umbrella fund. To address these issues, most international fund jurisdictions have established specialised corporate structures for CIS.

Proposed new framework

2.2 MAS proposes to establish a new corporate structure in Singapore that is designed for CIS. The proposed framework takes into consideration the laws and practices in other leading fund jurisdictions including Luxembourg, the Republic of Ireland and the United Kingdom. In developing the framework, MAS also considered international standards, as well as the interests of investors, fund managers and other fund service providers.

2.3 The new structure will be known as the Singapore Variable Capital Company or S-VACC. The legislative framework for S-VACCs seeks to provide an alternative to incorporating a company under the CA for the constitution of CIS in Singapore.

2.4 A summary of the features of the proposed framework for S-VACCs is as follows:

- (a) Incorporation of S-VACCs will be governed by a new S-VACC Act to be administered by ACRA.
- (b) The S-VACC structure can only be used as a vehicle for CIS.
- (c) Sub-funds with segregated assets and liabilities can be created by registration with ACRA.
- (d) Redemption of shares and capital reduction will be allowed, provided shares are issued and redeemed at their NAV¹.
- (e) AGMs may be dispensed with at the discretion of directors, subject to certain safeguards.
- (f) A S-VACC will not be required to disclose its register of shareholders to the public, but must make the register available to supervisory and law enforcement agencies where necessary.
- (g) Directors will be required to be fit and proper persons. At least one director must be a director of the S-VACC's fund manager.
- (h) A S-VACC's assets must be managed by a Permissible Fund Manager.
- (i) Requirements in relation to AML/CFT will be imposed on a S-VACC. The S-VACC will be required to outsource the performance of AML/CFT duties to its fund manager.
- (j) A S-VACC consisting of an Authorised or Restricted Scheme must appoint an approved custodian that will take custody of the scheme's assets and act in the best interests of its shareholders.

¹ Except for shares of closed-end funds listed on a securities exchange which will be issued and redeemed in accordance with applicable listing requirements.

2.5 The S-VACC structure will complement the existing CIS structures available in Singapore, namely unit trusts, companies incorporated under the CA, and limited partnerships governed under the Limited Partnerships Act. The new framework will provide investment managers greater operational flexibility in Singapore, and allow CIS to consolidate the fund domicile with the respective fund management activities.

2.6 The S-VACC structure will also act as a platform for fund managers to anchor their substantive operations in Singapore, where control and management will be executed from Singapore. MAS recognises that tax treatment is one of the considerations for deciding on the domiciliation and management of funds. In this regard, MAS is studying the tax regime for S-VACCs, including exploring the feasibility of extending the current fund vehicle tax schemes to S-VACCs, and welcomes feedback on the S-VACC tax regime.

3 Structure Governing S-VACCs

Legislative structure

3.1 MAS proposes to introduce a new S-VACC Act to govern S-VACCs in a manner similar to the way the CA currently governs companies. The proposed draft S-VACC Act is set out in Annex B².

3.2 The Registrar of Companies, ACRA, will also be the Registrar for S-VACCs. ACRA will administer the S-VACC Act and subsidiary legislation while AML/CFT obligations of S-VACCs under S-VACC legislation will come under the purview of MAS.

Question 1. MAS seeks comments on the proposed legislative structure for S-VACCs.

Question 2. MAS seeks views on the proposed draft S-VACC Act at Annex B.

Permitted use of the S-VACC structure and name

3.3 MAS proposes that the S-VACC structure be used as a vehicle for CIS only, and not for operating any other business. While there is potential for S-VACCs to be used for other specialised purposes in the future, the current objective of the S-VACC framework

² All foreign companies, including foreign companies with similar business models as S-VACCs, will continue to be governed under the CA. The regulatory framework for CIS under the SFA, which applies regardless of the legal structure of a fund, will apply to S-VACCs. In this regard, proposed requirements in relation to an Authorised or Restricted Scheme will be imposed through consequential amendments to the SFA, SFR and CIS Code.

is to create an alternative corporate structure to facilitate the incorporation of funds in Singapore.

3.4 MAS further proposes that only S-VACCs incorporated under the S-VACC Act can use the term, “S-VACC”, in their names and hold themselves out as S-VACCs.

Question 3. MAS seeks comments on the proposal that the S-VACC structure be used as a vehicle for CIS only, and on the proposed restriction on the use of the term, “S-VACC”.

Open-ended and closed-end funds

3.5 Generally, CIS can be categorised as either open-ended or closed-end depending on whether investors have discretion to exit their investments in the CIS. An open-ended fund is one where investors have the right to redeem their investments if they so wish; investors of a closed-end fund are not able to do so. In addition, closed-end funds have fixed number of shares and do not allow subscriptions from new investors once the offering period is over. Open-ended funds, however, are open to subscriptions by new investors at any time.

3.6 Other than the above differences, the nature of the two types of CIS is largely the same, which is a vehicle for collective investments in accordance with an investment policy. MAS therefore proposes to allow both open-ended and closed-end funds to adopt the S-VACC structure. To ensure that investors of a S-VACC are clear on their rights of redemption, MAS proposes to require the rights of and limits to redemption to be clearly set out in the constitution of the S-VACC.

Question 4. MAS seeks comments on the proposal to allow S-VACCs to be structured as open-ended or closed-end funds, and to require the rights of and limits to redemption to be set out in the constitution of a S-VACC.

4 Segregation of Assets and Liabilities of Sub-Funds

Cellular structure for sub-funds

4.1 To reap economies of scale, it is common for fund managers to group CIS under umbrella funds, each containing multiple sub-funds that share a board of directors and the same service providers. Administrative functions such as the holding of general meetings and preparation of prospectuses may also be conducted for the entire umbrella fund instead of individually for each sub-fund.

4.2 In order to facilitate the economies of scale associated with umbrella funds, MAS proposes to allow S-VACCs to use a cellular structure. In this structure, a S-VACC is a single legal entity, with its sub-funds operating as separate cells (each without legal personality). Incorporation will be done only once for the S-VACC. A sub-fund will be constituted by registration with ACRA which will in turn provide the sub-fund with a unique sub-fund identification number.

4.3 Sub-funds within the same S-VACC can have different investment objectives and investors, and hence different risks and exposures. To prevent cross-cell contagion, the S-VACC framework will provide for the segregation of assets and liabilities of sub-funds, where –

- (a) the assets of a sub-fund cannot be used to discharge the liabilities of or claims against the S-VACC or any other sub-fund of the S-VACC; and
- (b) any liability incurred on behalf of or attributable to any sub-fund of a S-VACC must be discharged solely out of the assets of that sub-fund.

This means that creditors of a particular sub-fund can only fulfil their claims out of the assets of that sub-fund, and not from the other assets of the S-VACC (including assets of other sub-funds).

4.4 To address the key risk of cross-cell contagion within a S-VACC, MAS proposes to void any provisions (e.g. in the constitution or in agreements entered into by S-VACCs) which are inconsistent with the segregation of assets and liabilities of sub-funds; and to require a S-VACC to ensure proper segregation of assets and liabilities of sub-funds. Such duty is also implied in each S-VACC's constitution, so as to provide shareholders with an avenue to recover damages where there is a breach.

4.5 To ensure that third parties dealing with S-VACCs are aware of segregated assets and liabilities of sub-funds, a S-VACC will be required to disclose, in documents in which its sub-fund is referred to, and in dealings with third parties prior to entering into oral agreements on behalf of its sub-fund, the name, unique sub-fund identification number, and that the sub-fund has segregated assets and liabilities.

4.6 To accord further protection to retail investors, MAS proposes to allow the fund manager of a S-VACC consisting of an Authorised Scheme to invest in assets located in a jurisdiction that does not have a cellular company structure, only if any risk of cross-contagion between the S-VACC's sub-funds has been reasonably mitigated. Where reasonable grounds come to exist for the fund manager to believe otherwise, the fund manager must promptly investigate the validity of these grounds, and if the grounds appear to be valid, take appropriate steps to mitigate the risk.

4.7 The above measures will not entirely eliminate the risk of cross-cell contagion. MAS therefore proposes to require risks of cross-cell contagion to be clearly disclosed to shareholders of S-VACCs consisting of Authorised and Restricted Schemes. An example of such risks could be where a S-VACC with both solvent and insolvent sub-funds owns assets attributable to the solvent sub-fund in a foreign jurisdiction in which segregation of assets and liabilities of sub-funds may not be recognised. In such a situation, the creditors of the insolvent sub-fund could be allowed to claim against the assets of the solvent sub-fund.

Question 5. MAS seeks comments on the proposed cellular structure for S-VACCs.

Question 6. MAS seeks comments on the proposed safeguards against the risk of cross-cell contagion within a S-VACC.

Insolvent liquidation of sub-funds in a S-VACC

4.8 MAS proposes for segregation of assets and liabilities of sub-funds to apply during insolvency. Therefore, in the event of a sub-fund's insolvency, each sub-fund may be wound up as if it were a separate legal person. Similarly, claims of creditors of a sub-fund being wound up may only be paid out of the assets of that sub-fund, and not from the other assets of the S-VACC (including the assets of other sub-funds).

Question 7. MAS seeks comments on the proposal to allow a sub-fund to be wound up as if it were a separate legal person in the event of the sub-fund's insolvency, and on the ring-fencing of each sub-fund's assets and liabilities during insolvent liquidation.

5 Shares and Share Capital

Capital reduction

5.1 Restrictions on capital reduction in the CA can be operationally cumbersome for CIS, where redemption of shares may be made at the option of investors (for open-ended funds) or by the CIS (for closed-end funds). Payment of dividends out of capital is also not allowed under the CA. To meet these practical needs of CIS, a S-VACC will be allowed to freely redeem shares and pay dividends using its capital.

5.2 To safeguard the interests of creditors of a S-VACC, MAS proposes to imply in the constitution of a S-VACC that valuation and redemption of shares must be carried out at NAV. As NAV valuation is based on the assets of the fund less its liabilities, liabilities will always be accounted for in the price of redemption.

5.3 An exception to this requirement will be made for closed-end funds that are listed for quotation on a securities exchange. Such listed CIS may need or wish to conduct share buy-backs on the exchange, and in line with market practice, the price of such share purchases should be in accordance with the applicable listing requirements and does not need to be at the NAV.

Question 8. MAS seeks comments on the proposal for the valuation and redemption of shares in a S-VACC to be carried out at NAV, except where the S-VACC is listed on a securities exchange.

6 Meetings, Accounts and Shareholder Register

Meetings

6.1 In a CIS, investors generally do not have control over their capital, which is managed as a whole by the fund manager according to an agreed investment policy³. Certain specialised funds with a limited number of investors (e.g. private equity funds and venture capital funds) may provide their participants a degree of control in the running of the fund. In light of this, MAS proposes to not require a S-VACC to hold an AGM where, amongst others, directors elect to dispense with the AGM by giving at least 60 days' written notice to the shareholders of the S-VACC. However shareholder(s) with 10% or more of the total voting rights may require an AGM by giving 14 days' notice to the S-VACC before the date by which an AGM would have been required to be held.

Question 9. MAS seeks comments on the proposal to allow directors of S-VACCs to dispense with AGMs.

Audit and accounting

6.2 To provide assurance that the financial statements of S-VACCs are properly prepared, MAS proposes to require all S-VACCs to appoint an accounting entity to audit their accounts on an annual basis. However in line with the fund industry norms, MAS proposes to not require S-VACCs to have an audit committee.

³ A necessary condition of the definition of CIS is that the investors do not have day-to-day control over their investments.

6.3 Financial information of each sub-fund in a S-VACC must be kept separate, but must be prepared in accordance with a single accounting standard across all sub-funds of the S-VACC⁴. This is to ensure proper segregation of assets and liabilities of sub-funds, and in recognition that sub-funds can serve different investors and are thus operationally distinct from one another.

6.4 With regard to accounting standards, international fund jurisdictions have differing practices, with some allowing the use of local financial reporting standards, the IFRS or the Generally Accepted Accounting Practices in the United States. In practice, funds commonly use the accounting standards that are prevalent in the jurisdiction where their fund manager, assets or investors are based.

6.5 MAS proposes to allow S-VACCs to prepare their financial statements using an applicable ASC Standard (i.e., the SFRS or the forthcoming IFRS-identical Financial Reporting Standards⁵) or the IFRS. S-VACCs consisting of Authorised Schemes will be required to use the RAP 7, as is currently required for unit trusts under the CIS Code⁶.

6.6 For transparency to investors, MAS proposes to require that all audited financial statements of a S-VACC be made available to shareholders. However as the audited financial statements of funds contain proprietary information relating to investment strategy, MAS does not intend to require that the statements be made publicly available.

Question 10. MAS seeks comments on the proposals for the appointment of auditors, not requiring audit committees, as well as the preparation and disclosure of financial statements of S-VACCs.

Question 11. MAS seeks comments on whether S-VACCs should be allowed to prepare their financial statements using an applicable ASC Standard, the IFRS or RAP 7 (for S-VACCs consisting of Authorised Schemes). What are the considerations that may influence the accounting standards which a S-VACC uses (e.g. fund manager's operations, investors' preference or location of assets)?

⁴ The financial information of all sub-funds in the same S-VACC can in practice be presented side-by-side in one table in a single financial statement.

⁵ The Accounting Standards Council will be introducing a new Singapore financial reporting framework that is identical to the IFRS on 1 January 2018. More information can be found at <http://www.asc.gov.sg/IFRS-identical-Financial-Reporting-Standards>.

⁶ Consequential amendments will be made to the RAP 7 to apply to S-VACCs.

Register of shareholders, beneficial owners and nominee directors

6.7 In other fund jurisdictions, the shareholder register of a S-VACC is not commonly made public due to legitimate privacy needs of investors. At the same time, MAS recognises the need for some transparency to prevent S-VACCs from being used for illicit purposes such as money laundering and terrorism financing. To balance the two competing interests, MAS proposes that a S-VACC need not disclose the S-VACC's register of shareholders to the public, but must make the register available to ACRA, MAS and other public authorities for regulatory, supervisory and law enforcement purposes. The shareholder register must also be maintained within Singapore at the S-VACC's registered office.

6.8 Amendments to the CA have recently been passed to enhance the transparency of companies. These include the requirements for companies incorporated under the CA to maintain information on their beneficial owners, and for nominee directors to disclose their nominee status and nominators to their companies. MAS proposes to adopt these same requirements for S-VACCs.

Question 12. MAS seeks comments on the proposal regarding the disclosure of a S-VACC's shareholder register.

Question 13. MAS seeks comments on the proposal to adopt the same requirements on beneficial ownership information and nominee directors as those under the CA amendments.

7 Corporate Governance

Board of directors

7.1 In a corporate structure, accountability to shareholders lies primarily with the board of directors. For a S-VACC, MAS proposes to require at least one director of the S-VACC to be a director of the S-VACC's fund manager, and for its directors to be subject to disqualification and duties broadly similar to those under the CA⁷. In addition, MAS proposes to require the directors to be fit and proper persons.

⁷ See Division 2 of Part V, CA which contains restrictions pertaining to, among others, undischarged bankrupts and individuals who have been convicted of certain offences. Duties of directors include, for example, duties relating to financial statements and audits, and duties to act in good faith in what the director considers to be in the best interest of the company and to avoid conflicts of interest.

7.2 To accord additional protection to retail investors, MAS proposes to require S-VACCs consisting of Authorised Schemes to have at least three directors, of which at least one director has to be independent of: (i) business relationships with the S-VACC; (ii) the fund manager of the S-VACC (and its related entities); and (iii) all substantial shareholders of the S-VACC.

Residency requirements

7.3 MAS proposes to require all S-VACCs to have both form and substance in Singapore, and be accessible to their stakeholders including investors and regulators. To this end, MAS proposes the following residency requirements which mirror those in the CA:

- (a) the registered office of a S-VACC must be in Singapore;
- (b) at least one of the S-VACC's directors must be resident in Singapore; and
- (c) a S-VACC must appoint a Singapore-based company secretary.

Naming requirements

7.4 In line with the CA, MAS proposes that a S-VACC cannot be registered with a name that is undesirable, identical or misleadingly similar to any name of any other company, business, or a restricted name.

Question 14. MAS seeks comments on the proposed requirements on a S-VACC's directors, residency and name of a S-VACC.

Permissible Fund Manager

7.5 MAS proposes that all S-VACCs must appoint a Permissible Fund Manager to manage their property. This will help to mitigate the risk of S-VACCs being abused for unlawful purposes. The fund manager of a S-VACC will carry out the day-to-day management and investment activities of the S-VACC. The fund manager will be subject to the oversight of the S-VACC's board of directors.

Question 15. MAS seeks comments on the proposal to allow only Permissible Fund Managers to manage S-VACCs.

AML/CFT requirements

- 7.6 To prevent the abuse of S-VACCs for unlawful purposes, MAS proposes to:
- (a) impose AML/CFT requirements on S-VACCs, which will be supervised by MAS for AML/CFT compliance;
 - (b) require a S-VACC to outsource the performance of AML/CFT duties to its fund manager, and to hold the S-VACC ultimately responsible for compliance with its AML/CFT requirements; and
 - (c) subject a S-VACC's directors to fit and proper checks, and require a S-VACC to have at least one director who is also a director of its fund manager.

These requirements are in line with international standards and the practices in other major fund jurisdictions.

Question 16. MAS seeks comments on the proposed AML/CFT requirements on S-VACCs.

8 Approved Custodian

8.1 Currently, Authorised and Restricted Schemes structured as unit trusts are required under the SFA to have an Approved Trustee. The Approved Trustee is required to safeguard the rights and interests of unitholders. It is also required to take custody of the property of a unit trust, for which it may engage custodians and sub-custodians. Further, an Approved Trustee of an Authorised Scheme must be independent⁸ from the fund manager and have independent oversight over the fund manager's compliance with the CIS Code.

8.2 To ensure that investors of funds are similarly protected regardless of the legal structure adopted by the fund, MAS proposes to require S-VACCs consisting of Authorised or Restricted Schemes to have an approved custodian that is an Approved Trustee. The approved custodian's duties will mirror those of an Approved Trustee under the SFA. Therefore, the approved custodian will be required to take custody of the property of a S-VACC, and be accountable to MAS for safeguarding the rights and interests of shareholders of the S-VACC. For S-VACCs consisting of Authorised Schemes, MAS further

⁸ The trustee may not be considered independent of the manager if any person that has an interest in 20% or more of the shares issued by the trustee also has an interest in 20% or more of the shares issued by the manager or its related corporations. Such interest would include deemed interest in the shares of the trustee or manager as the case may be under sections 4(4) and (5) of the SFA.

proposes to require the approved custodian to be independent of the S-VACC's fund manager and to monitor the fund manager's compliance with the CIS Code.

8.3 Other operational obligations relating to accounts and registers that are currently imposed on Approved Trustees for unit trusts will not be imposed on the approved custodian where they are already imposed on a S-VACC or its directors under S-VACC legislation.

Question 17. MAS seeks comments on the proposal for S-VACCs consisting of Authorised or Restricted Schemes to have an approved custodian that is an Approved Trustee, and to align the duties of the approved custodian with those of an Approved Trustee under the SFA, except where such duties are already imposed on the S-VACC or its directors as covered under the S-VACC legislation.

9 Re-domiciliation

9.1 Amendments to the CA have recently been passed to introduce an inward re-domiciliation regime in Singapore. This will allow foreign corporate entities to transfer their registration to Singapore. MAS proposes to adopt the same requirements under the inward re-domiciliation regime under the CA for foreign structures that are equivalent⁹ to a S-VACC to re-domicile as a S-VACC in Singapore.

Question 18. MAS seeks comments on the proposal to adopt the same requirements on re-domiciliation as those introduced by ACRA under the CA for S-VACCs. In particular, what aspects of the CA re-domiciliation provisions should be modified for S-VACCs?

Question 19. MAS seeks comments on the type of foreign structures (including their original jurisdiction of domicile) which would seek to re-domicile as an S-VACC in Singapore and the issues envisaged.

10 Winding-up of S-VACCs and Sub-Funds

10.1 The proposed winding-up regime for S-VACCs and sub-funds will be based on the winding-up regime for companies incorporated under the CA. Each sub-fund may be wound up as if it were a separate legal person. In line with the safeguards to govern the

⁹ For example, the Irish Collective Asset-management Vehicles of the Republic of Ireland and the Open-Ended Investment Companies of the UK.

unique nature of S-VACC as an investment fund, MAS proposes to provide the following additional grounds for winding up:

- (a) the S-VACC is being used to conduct business outside its permitted use as a vehicle for CIS only;
- (b) the S-VACC does not have a Permissible Fund Manager to manage its property for such period as may be prescribed; or
- (c) the S-VACC breaches its AML/CFT obligations.

Question 20. MAS seeks comments on the proposal to adopt a winding-up regime similar to that under the CA for S-VACCs and sub-funds, as well as the proposed modifications.

11 Debentures and Receivership

11.1 In line with global industry practice, MAS proposes to allow S-VACCs to issue debentures, including to allow S-VACCs to issue debentures relating to specific sub-funds. Receivers or receivers and managers may therefore be appointed in respect of the property of the S-VACC as a whole, or in respect of the property of specific sub-funds. The S-VACC Bill will thus govern receivers and managers, adapted from the receivership regime under the CA.

Question 21. MAS seeks comments on the proposal to allow S-VACCs to issue debentures, including to allow S-VACCs to issue debentures relating to specific sub-funds.

Question 22. MAS seeks comments on the proposal to adopt a receivership regime similar to that under the CA for S-VACCs and their sub-funds.

12 Arrangements, Reconstructions and Amalgamations

12.1 Consistent with the global industry practice, we propose to not adopt the mechanisms for arrangements, reconstructions and amalgamations under the CA for S-VACCs. These mechanisms will be generally governed by the provisions set out in the constitution. For transparency to investors, MAS proposes to require the constitution of a S-VACC to clearly set out shareholders' rights in respect of a scheme of arrangement, merger, reconstruction or amalgamation involving the S-VACC (including any of its sub-funds).

Question 23. MAS seeks comments on the proposal to not adopt the mechanisms for arrangements, reconstructions and amalgamations under the CA.

Question 24. MAS seeks comments on the proposal to require the constitution of a S-VACC to clearly set out shareholders' rights in respect of a scheme of arrangement, merger, reconstruction or amalgamation involving the S-VACC (including any of its sub-funds).

Annex A

List of Questions

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Draft Singapore Variable Capital Companies Act

[DISCLAIMER: THIS VERSION OF THE DRAFT S-VACC ACT IS IN DRAFT FORM AND SUBJECT TO CHANGE. IT IS ALSO SUBJECT TO REVIEW BY THE ATTORNEY-GENERAL'S CHAMBERS.]

[\[Link to draft S-VACC Act\]](#)



Monetary Authority of Singapore

DRAFT SINGAPORE VARIABLE CAPITAL COMPANIES ACT

DISCLAIMER: This version of the Singapore Variable Capital Companies Act is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

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Singapore Variable Capital Companies Act

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FIRST SCHEDULE
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PART 1 PRELIMINARY

Short title and commencement

1. This Act may be cited as the Singapore Variable Capital Companies Act and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

2. (1) In this Act, unless the contrary intention appears —

“accounting corporation” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“accounting entity” has the same meaning as in section 4(1) of the Companies Act;

“accounting firm” has the same meaning as in section 4(1) of the Companies Act;

“accounting limited liability partnership” has the same meaning as in section 4(1) of the Companies Act;

“accounting records”, in relation to a S-VACC, includes such working papers and other documents as are necessary to explain the methods and calculations by which the accounts of the S-VACC are made up;

“Accounting Standards” means —

(a) the accounting standards made or formulated by the Accounting Standards Council under Part III of the Accounting Standards Act 2007¹ and applicable to S-VACCs for the purposes of this Act; and

(b) such other accounting standards or practices as may be prescribed;

“accounts” has the same meaning as in section 4(1) of the Companies Act;

“Act” includes any regulations;

“alternate address” means the alternate address that is recorded in place of the residential address of a director or secretary in the S-VACC’s register of directors or secretaries, as the case may be, referred to in section 143;

¹ MAS proposes to consequentially amend the Accounting Standards Act to provide for accounting standards for S-VACCs.

“approved custodian” refers to an approved custodian under the Securities and Futures Act (Cap. 289)²;

“annual general meeting” means a meeting of the S-VACC that is required to be held by section 151;

“annual return” means the return required to be lodged under section 197;

“approved liquidator” means —

- (a) a person who falls within a class of persons declared as approved liquidators under section 13(1); or
- (b) a person who has been approved under section 13(2) as a liquidator and whose approval has not been revoked;

“audit requirements” means the requirements of sections 200(5) and (6) and 215;

“Authority” means the Accounting and Corporate Regulatory Authority established under the Accounting and Corporate Regulatory Authority Act (Cap. 2A);

“Authority’s website” means the Authority’s Internet website;

“AML/CFT Authority”, or Anti-Money Laundering/Countering the Financing of Terrorism authority, refers to the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186);

“banking corporation” means a licensed bank under any written law relating to banking;

“book-entry securities” has the same meaning as in section 81SF of the Securities and Futures Act;

“books” has the same meaning as in section 4(1) of the Companies Act;

“borrowing S-VACC” means a S-VACC that is or will be under a liability (whether or not such liability is present or future) to repay any money received or to be received by it in response to an invitation to the public to subscribe for or purchase debentures of the S-VACC;

“business day” has the same meaning as in section 4(1) of the Companies Act;

“certified”, in relation to a copy of a document, means certified in the prescribed manner to be a true copy of the document and, in relation to a translation of a document, means

² MAS proposes to consequentially amend the Securities and Futures act to provide for the approved custodian regime.

certified in the prescribed manner to be a correct translation of the document into the English language;

“charge” has the same meaning as in section 4(1) of the Companies Act;

“collective investment scheme” has the same meaning as in section 2(1) of the Securities and Futures Act;

“closed-end fund” has the same meaning as in section 2(1) of the Securities and Futures Act;

“company” means —

- (a) a company incorporated pursuant to the Companies Act or pursuant to any corresponding previous written law as defined under section 4(1) of the Companies Act; or
- (b) a S-VACC.

“constitution”, in relation to a S-VACC, means the constitution of the S-VACC which is registered with the Registrar under section 29, as may be amended from time to time;

“contributory”, in relation to a S-VACC, means a person liable to contribute to the assets of the S-VACC in the event of its being wound up, and includes the holder of fully paid shares in the S-VACC and, prior to the final determination of the persons who are contributories, includes any person alleged to be a contributory;

“corporation” has the same meaning as in section 4(1) of the Companies Act;

“Court” means the High Court or a judge thereof;

“creditors’ voluntary winding up” means a winding up under Division 3 of Part 12, other than a members’ voluntary winding up;

“debenture” includes debenture stock, bonds, notes and any other securities of a S-VACC whether constituting a charge on the assets of the S-VACC or not, but does not include —

- (a) a cheque, letter of credit, order for the payment of money or bill of exchange;
- (b) subject to the regulations, a promissory note having a face value of not less than \$100,000 and having a maturity period of not more than 12 months;
- (c) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made thereunder provide that the word “debenture” does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be;

“default penalty” means a default penalty within the meaning of section 387;

“Depository” has the same meaning as in section 81SF of the Securities and Futures Act;

“director” has the same meaning as in section 4(1) of the Companies Act;

“document” has the same meaning as in section 4(1) of the Companies Act;

“electronic communication” has the same meaning as in section 4(1) of the Companies Act;

“emoluments”, in relation to a director or auditor of a S-VACC, includes any fees, percentages and other payments made (including the money value of any allowances or perquisites) or consideration given, directly or indirectly, to the director or auditor by that S-VACC or by a holding company or a subsidiary of that S-VACC, whether made or given to him in his capacity as a director or auditor or otherwise in connection with the affairs of that S-VACC or of the holding company or the subsidiary;

“expert” has the same meaning as in section 4(1) of the Companies Act ;

“filed” means filed under this Act;

“financial year” in relation to a S-VACC, means

- (a) the period in respect of which the financial statements of the S-VACC is made up, whether that period is a year or not; and
- (b) which is to be determined in accordance with section 198;

“fund manager” means a fund manager under section 106;

“holding company” has the same meaning as in section 5 of the Companies Act save that a reference to the Companies Act shall be read as a reference to this Act;

“identification” has the same meaning as in section 4(1) of the Companies Act;

“limited liability partnership” has the same meaning as in section 2(1) of the Limited Liability Partnerships Act 2005 (Act 5 of 2005);

“limited partnership” means a partnership registered under the Limited Partnerships Act (Cap. 163B) consisting of a minimum of two partners, with at least one general partner and at least one limited partner;

“liquidator” includes the Official Receiver when acting as the liquidator of a S-VACC;

“listed”, in relation to a S-VACC, means a S-VACC that has been admitted to the official list of a securities exchange in Singapore and has not been removed from that official list;

“lodged” means lodged under this Act;

“marketable securities” has the same meaning as in section 4(1) of the Companies Act;

“members’ voluntary winding up” means a winding up under Division 3 of Part 12, where a declaration has been made and lodged in pursuance of section 295;

“Net Asset Value”, in relation to a S-VACC, means the total assets less total liabilities of the S-VACC, determined in accordance with the Accounting Standards;

“office copy” has the same meaning as in section 4(1) of the Companies Act;

“officer”, in relation to a corporation, includes —

- (a) any director or secretary of the corporation or a person employed in an executive capacity by the corporation;
- (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and
- (c) any liquidator of a company appointed in a voluntary winding up,

but does not include —

- (d) any receiver who is not also a manager;
- (e) any receiver and manager appointed by the Court;
- (f) any liquidator appointed by the Court or by the creditors; or
- (g) a judicial manager appointed by the Court under Part VIIIA of the Companies Act;

“Official Receiver” means the Official Assignee appointed under the Bankruptcy Act (Cap. 20) and includes the deputy of any such Official Assignee and any person appointed as Assistant Official Assignee;

“prescribed” means prescribed under this Act or by the rules;

“printed” has the same meaning as in section 4(1) of the Companies Act;

“public accountant” means a person who is registered or deemed to be registered under the Accountants Act (Cap. 2) as a public accountant;

“registered” means registered under this Act;

“registered qualified individual” means a qualified individual registered under section 28G of the Accounting and Corporate Regulatory Authority Act;

“register of members” means the register of members required to be kept by a S-VACC under section 85;

“Registrar” means the Registrar of S-VACCs appointed under this Act and includes any Deputy or Assistant Registrar of S-VACCs;

“regulations” means regulations made under this Act;

“related corporation” has the same meaning as in section 4(1) of the Companies Act;

“residential address” has the same meaning as in section 4(1) of the Companies Act;

“resolution for voluntary winding up” means the resolution referred to in section 292;

“Rules” means Rules of Court;

“securities exchange in Singapore” has the same meaning as in section 4(1) of the Companies Act;

“share” means share in the share capital of a S-VACC;

“solicitor” has the same meaning as under section 4(1) of the Companies Act;

“Sub-Fund” means any collective investment scheme within a S-VACC which consists of more than one collective investment scheme, which is formed by registration under section 53 of this Act;

“subsidiary” has the same meaning as in section 5 of the Companies Act save that references to the Companies Act shall refer to this Act;

“summary financial statement” means a summary financial statement referred to in section 205;

“S-VACC” means one or more collective investment schemes constituted as a Singapore Variable Capital Company incorporated under this Act —

- (a) under which shares of the S-VACC are units in the collective investment scheme(s); and
- (b) which is formed on the principle of having the liability of its members limited by the constitution to the amount, if any, unpaid on the shares respectively held by them;

“telecommunication system” has the same meaning as in the Telecommunications Act (Cap. 323);

“unit”, in relation to a collective investment scheme, means a right or interest (however described) in a collective investment scheme, and includes an option to acquire any such right or interest in the collective investment scheme;

“voting share” has the same meaning as in section 4(1) of the Companies Act;

“wholly owned subsidiary” shall have the same meaning as in section 5B of the Companies Act save that a reference to the Companies Act shall be read as a reference to this Act.

Directors

(2) For the purposes of this Act, a person (A) shall not be regarded as a person in accordance with whose directions or instructions the directors or the majority of the directors of a corporation are accustomed to act by reason only that the directors or the majority of the directors act on advice given by A in a professional capacity.

Invitation to lend money deemed invitation to purchase debentures

(3) For the purposes of this Act, any invitation to the public to deposit money with or lend money to a S-VACC shall be deemed to be an invitation to subscribe for or purchase debentures of the S-VACC.

(4) For the purposes of this Act, any document that is issued or intended or required to be issued by a S-VACC acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the S-VACC in respect of any money that is or may be deposited with or lent to the S-VACC in response to such an invitation shall be deemed to be a debenture.

(5) Unless the contrary intention appears, any reference in this Act to a person being or becoming bankrupt or to a person assigning his estate for the benefit of his creditors or making an arrangement with his creditors under any written law relating to bankruptcy or to a person being an undischarged bankrupt or to any status, condition, act, matter or thing under or in relation to the law of bankruptcy shall be construed as including a reference to a person being or becoming bankrupt or insolvent or to a person making any such assignment or arrangement or to a person being an undischarged bankrupt or insolvent or to the corresponding status, condition, act, matter or thing (as the case requires) under any written law relating to bankruptcy or insolvency.

As to what constitutes affairs of a S-VACC

(6) A reference in section 6, 8, 9, 91, Part 10, section 256(1)(e), 288, 289 or 384 to the affairs of a S-VACC shall, unless the contrary intention appears, be construed as including a reference to —

- (a) the promotion, formation, membership, control, business, transactions and dealings (whether alone or jointly with another person or other persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person or other persons and including property held as agent, bailee or trustee), liabilities (including liabilities owed jointly with another person or other persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the S-VACC;
- (b) in the case of a S-VACC (not being a trustee corporation) that is a trustee (but without limiting the generality of paragraph (a)), matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;
- (c) the internal management and proceeding of the S-VACC;
- (d) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the S-VACC, or to or in relation to the S-VACC or its business or property, at a time when —
 - (i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the S-VACC;
 - (ii) a compromise or an arrangement made between the S-VACC and another person or other persons is being administered; or
 - (iii) the S-VACC or any of its Sub-Funds is being wound up,
 and, without limiting the generality of the foregoing, any conduct of such a receiver or such a receiver and manager, of any person administering such a compromise or arrangement or of any liquidator or provisional liquidator of the S-VACC or any of its Sub-Funds;
- (e) the ownership of shares in, debentures of, and interests issued by, the S-VACC;
- (f) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the S-VACC or to dispose of, or to exercise control over the disposal of, such shares;
- (g) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the S-VACC or are or have been able to control or materially to influence the policy of the S-VACC;
- (h) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of, or interests issued by, the S-VACC;

- (i) any matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the S-VACC's shares relate; and
- (j) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in any of the preceding paragraphs.

(7) A reference in this Act to the directors of a S-VACC shall, in the case of a S-VACC which has only one director, be construed as a reference to that director.

(8) A reference in this Act to the doing of any act by 2 or more directors of a S-VACC shall, in the case of a S-VACC which has only one director, be construed as the doing of that act by that director.

(9) For the purposes of section 13(6), 30(3), 42(4), (7), (8), (9), (17), 43(3), (7), (8), (9) or 121(8), any reference to the Minister includes a reference to such Minister of State for his Ministry who is authorised by the Minister for the purposes of hearing an appeal under that section.

Interests in shares

3. (1) The following subsections have effect for the purposes of sections 131, 134, 136 and subsection (10) shall, in addition, also have effect for the purposes of section 234.

(2) Subject to this section, a person has an interest in shares if he has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, those shares.

(3) For the purposes of subsection (2), it is immaterial that the authority of a person to dispose of, or to exercise control over the disposal of, particular shares is, or is capable of being made, subject to restraint or restriction.

(4) Where any property held in trust consists of or includes shares and a person knows, or has reasonable grounds for believing, that he has an interest under the trust, he shall be deemed to have an interest in those shares.

(5) In respect of in a share of a corporation other than a S-VACC, a unit in a collective investment scheme —

- (a) that is issued or offered to the public for subscription or purchase, or for which the public is invited to subscribe for or purchase, and that has been so subscribed or purchased; or
- (b) that is issued for the purpose of an offer to the public by and is held by the manager concerned within the meaning of section 283 of the Securities and Futures Act,

does not constitute an interest in that share.

(6) Where a body corporate has, or is by the provisions of this section deemed to have, an interest in a share and —

- (a) the body corporate is, or its directors are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of a person; or
- (b) a person has a controlling interest in the body corporate,

that person shall be deemed to have an interest in that share.

(7) Where a body corporate has, or is by the provisions of this section (apart from this subsection) deemed to have, an interest in a share and —

- (a) a person is;
- (b) the associates of a person are; or
- (c) a person and his associates are,

entitled to exercise or control the exercise of not less than 20% of the voting power in the body corporate, that person shall be deemed to have an interest in that share.

(8) For the purposes of subsection (7), a person is an associate of another person if the first-mentioned person is —

- (a) a subsidiary of that other person;
- (b) a person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to the share referred to in subsection (7); or
- (c) a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to the share referred to in subsection (7).

(9) Where a person —

- (a) has entered into a contract to purchase a share;
- (b) has a right, otherwise than by reason of having an interest under a trust, to have a share transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
- (c) has the right to acquire a share, or an interest in a share, under an option, whether

the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

- (d) is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members) to exercise or control the exercise of a right attached to a share, not being a share of which he is the registered holder,

that person shall be deemed to have an interest in that share.

(10) For the purposes of sections 131, 134, 136 and 234, a book-entry security shall be treated as if it were an interest in a share.

(11) A person shall not be deemed not to have an interest in a share by reason only that he has the interest in the share jointly with another person.

(12) It is immaterial, for the purposes of determining whether a person has an interest in a share, that the interest cannot be related to a particular share.

(13) There shall be disregarded —

- (a) an interest in a share if the interest is that of a person who holds the share as bare trustee;
- (b) an interest in a share if the interest is that of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
- (c) an interest of a person in a share, if that interest is an interest held by him by reason of his holding a prescribed office; and
- (d) a prescribed interest in a share, being an interest of such person, or of the persons included in such class of persons, as is prescribed.

(14) An interest in a share shall not be disregarded by reason only of —

- (a) its remoteness;
- (b) the manner in which it arose; or
- (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

PART 2
ADMINISTRATION OF THIS ACT

Division 1 – Preliminary

Administration of Act

4. (1) The Authority shall be responsible for the administration of this Act (except Part 8), subject to the general or special directions of the Minister.
- (2) The AML/CFT Authority shall be responsible for the administration of Part 8 of this Act.

Division 2 – Administration of this Act (except Part 8)

Appointment of Registrar of S-VACCs, etc.

5. (1) The Minister may, after consultation with the Authority —
- (a) appoint an officer of the Authority to be the Registrar of S-VACCs; and
 - (b) from among the officers of the Authority, public officers and the officers of any other statutory board, appoint such number of Deputy Registrars and Assistant Registrars of S-VACCs as he considers necessary,

for the proper administration of this Act.

- (2) The Authority may give to the Registrar such directions, not inconsistent with the provisions of this Act, as to the exercise of his powers, functions or duties under this Act, and the Registrar shall give effect to such directions.
- (3) Subject to the general direction and control of the Registrar and to such restrictions and limitations as may be prescribed, anything by this Act appointed or authorised or required to be done or signed by the Registrar may be done or signed by any such Deputy or Assistant Registrar and shall be as valid and effectual as if done or signed by the Registrar.
- (4) No person dealing with any Deputy or Assistant Registrar shall be concerned to see or inquire whether any restrictions or limitations have been prescribed, and every act or omission of a Deputy or Assistant Registrar so far as it affects any such person shall be as valid and effectual as if done or omitted by the Registrar.

Certain signatures to be judicially noticed

- (5) All courts, judges and persons acting judicially shall take judicial notice of the seal and signature of the Registrar and of any Deputy or Assistant Registrar.
- (6) The Minister may, by notification in the Gazette, add to, vary or amend the First

Schedule in relation to the contents of the directors' statement which is required to accompany the financial statements under section 200(13).

Inspection of books of S-VACC

6. (1) Where the Minister is satisfied that there is good reason for so doing, he may at any time —

- (a) give directions to a S-VACC requiring that S-VACC at such place and time as may be specified in the directions to produce such books relating to the affairs of a S-VACC as may be so specified; or
- (b) authorise any person (referred to in this section and section 7 as an authorised person), on producing (if required to do so) evidence of his authority to require that S-VACC to produce to him any books relating to the affairs of a S-VACC which the authorised person may specify.

(2) Where by virtue of subsection (1) the Minister or an authorised person has power to require the production of any books from a S-VACC relating to the affairs of a S-VACC, the Minister or that authorised person shall have the like power to require production of those books from any person who appears to the Minister or authorised person to be in possession of them; but where any such person claims a lien on any books produced by him, the production shall be without prejudice to the lien.

(3) Any power conferred by this section to require a S-VACC or other person to produce books relating to the affairs of a S-VACC shall include power —

- (a) if the books are produced —
 - (i) to make copies of, or take extracts from, them; and
 - (ii) to require that person who is a present or past officer of, or who is or was at any time employed by the S-VACC to provide an explanation of any of them; and
- (b) if the books are not produced, to require the person required to produce them to state to the best of his knowledge and belief, where they are.

(4) A statement made by a person in compliance with a requirement imposed by this section may be used in evidence against him.

(5) A power conferred by this section to make a requirement of a person extends, if the person is a body corporate, including a body corporate that is in the course of being wound up, or was a body corporate, being a body corporate that has been dissolved, to making that requirement of any person who is or has been an officer of the body corporate.

(6) In this section, a reference to —

- (a) an officer of a S-VACC includes the fund manager and approved custodian of the S-VACC; and
- (b) a person employed by the S-VACC includes a person employed by the S-VACC under a contract for services.

(7) If a requirement to produce books relating to the affairs of a S-VACC or provide an explanation or make a statement which is imposed by virtue of this section is not complied with, the S-VACC or other person on whom the requirement was imposed shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or to both.

(8) Where a person is charged with an offence under subsection (7) in respect of a requirement to produce any books relating to the affairs of a S-VACC, it shall be a defence to prove that they were not in his possession or under his control or that it was not reasonably practicable for him to comply with the requirement.

(9) A person, who in purported compliance with a requirement imposed by the section to provide an explanation or a statement which he knows to be false or misleading in a material particular or recklessly provides or makes an explanation or a statement which is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

Power of Magistrate to issue warrant to seize books

7. (1) If a Magistrate is satisfied, on information on oath or affirmation laid by an authorised person, that there are reasonable grounds for suspecting that there are on any premises any books of which production has been required by virtue of section 6 and which have not been produced in compliance with that requirement, the Magistrate may issue a warrant authorising any police officer, together with any other persons named in the warrant, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises and take possession of any books appearing to be such books or papers as are referred to in this subsection, or to take, in relation to any books so appearing, any other steps which may appear necessary for preserving them and preventing interference with them and to deliver any books, possession of which is so taken, to an authorised person.

(2) Every warrant issued under this section shall continue in force until the end of the period of one month after the date on which it was issued.

(3) Where under this section a person takes possession of, or secures against interference, any books, and a person has a lien on the books, the taking of possession of the books or the securing of the books against interference does not prejudice the lien.

(4) Where, under this section, a person takes possession of, or secures against

interference, any books, that person or any authorised person to whose possession the books were delivered —

- (a) may make copies of, or take extracts from, the books;
 - (b) may require any person who was party to the compilation of the books to make a statement providing any explanation that that person is able to provide as to any matter relating to the compilation of the books or as to any matter to which the books relate;
 - (c) may retain possession of the books for such period as is necessary to enable the books to be inspected, and copies of, or extracts from, the books to be made or taken, by or on behalf of the Minister; and
 - (d) during that period shall permit a person who would be entitled to inspect any one or more of those books if they were not in the possession of the first-mentioned person to inspect at all reasonable times such of those books as that person would be so entitled to inspect.
- (5) A person who obstructs the exercise of a right of entry or search conferred by virtue of a warrant issued under this section, or who obstructs the exercise of a right so conferred to take possession of any books, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or to both.
- (6) The powers conferred by this section are in addition to, and not in derogation of, any other power conferred by law.

Copies of or extracts from books to be admitted in evidence

8. (1) Subject to this section, in any legal proceedings, whether proceedings under this Act or otherwise, a copy of or extract from a book relating to the affairs of a S-VACC is admissible in evidence as if it were the original book or the relevant part of the original book.

(2) A copy of or extract from a book is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the book or of the relevant part of the book.

(3) For the purposes of subsection (2), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given either orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

Destruction, mutilation, etc., of S-VACC documents

9. (1) An officer of a S-VACC to which section 6(1) applies, who destroys,

mutilates or falsifies, or is privy to the destruction, mutilation or falsification of a document affecting or relating to the property or affairs of the S-VACC, or makes or is privy to the making of a false entry in such a document, shall, unless he proves that he had no intention to conceal the affairs of the S-VACC or to defeat the law, be guilty of an offence.

(2) A person to whom subsection (1) applies who fraudulently either parts with, alters or makes an omission in any such document, or who is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such document, shall be guilty of an offence.

(3) A person guilty of an offence under this section shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) In this section, “officer of a S-VACC” includes a person who —

(a) was at any time an officer of the S-VACC; or

(b) has, or had, a financial or other interest in the affairs of the S-VACC.

Saving for advocates and solicitors

10. Nothing in sections 6 and 7 shall compel the production by an advocate and solicitor of a document containing a privileged communication made by or to him in that capacity or authorise the taking of possession of any such document which is in his possession but if the advocate and solicitor refuses to produce the document he shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom or by or on behalf of whom the communication was made.

Investigation of certain matters

11. Without prejudice to the powers conferred upon the Minister under section 6, where the Minister has reason to suspect that a person has committed an offence under this Act, he may make such investigation as he thinks expedient for the due administration of this Act.

Security of information

12. (1) No information or document relating to the affairs of a S-VACC which has been obtained under section 6 or 7 shall, without the previous consent in writing of that S-VACC, be published or disclosed, except to the Minister, the Registrar of S-VACCs and their officers or to an inspector appointed under Part 10, unless the publication or disclosure is required —

(a) with a view to the institution of or otherwise for the purposes of, any criminal proceedings pursuant to, or arising out of this Act or any criminal proceedings for an offence entailing misconduct in connection with the management of the

S-VACC's affairs or misapplication or wrongful retention of its property;

- (b) for the purpose of complying with any requirement or exercising any power imposed or conferred by this Act in connection with reports made by inspectors appointed under Part 10;
- (c) with a view to the institution by the Minister of proceedings for the winding up of S-VACCs and Sub-Funds of the S-VACC under this Act;
- (d) for the purpose of proceedings under section 6 or 7 of this Act; or
- (e) for the purpose of section 381 of this Act.

(2) A person who publishes or discloses any information or document in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Approved liquidators

13. (1) The Minister may, by order published in the Gazette, declare that persons within a specified class of persons shall be approved liquidators for the purposes of this Act.

(2) Any person who does not fall within a class of persons declared under subsection (1) may apply to the Minister to be approved as a liquidator for the purposes of this Act, and the Minister, if satisfied as to the experience and capacity of the applicant, may, on payment of the prescribed fee, approve such person as a liquidator for the purposes of this Act.

(3) Any approval granted by the Minister under subsection (2) may be made subject to such limitations or conditions as he thinks fit and may be revoked at any time by him by the service of a written notice of revocation on the approved person.

(4) Every approval under subsection (2) including a renewal of approval of a liquidator shall remain in force until 31st March in the third year following the year in which the approval was granted unless sooner revoked by the Minister.

(5) The Minister may delegate his power under subsections (2) and (3) to any person charged with the responsibility for the registration or control of public accountants.

(6) Any person who is dissatisfied with the decision of any person to whom the Minister has delegated his power under subsection (2) may appeal to the Minister who may in his discretion confirm, reverse or vary such decision.

S-VACC auditors

14. (1) No person other than an accounting entity shall —

- (a) knowingly consent to be appointed as auditor for a S-VACC; or
 - (b) knowingly act as an auditor for a S-VACC.
- (2) Without prejudice to the generality of subsection (1)(b), a person acts as an auditor for a S-VACC if the person prepares any report required by this Act to be prepared by an auditor of the S-VACC.
- (3) No S-VACC or person shall appoint an accounting entity as an auditor of a S-VACC without obtaining the accounting entity's prior consent.
- (4) For the purposes of subsection (3), the consent —
- (a) of a public accountant shall be in writing signed by the public accountant;
 - (b) of an accounting firm, or an accounting limited liability partnership, shall be in writing signed by at least one partner of the firm or limited liability partnership; and
 - (c) of an accounting corporation shall be in writing signed by at least one director of the corporation.
- (5) Where an accounting firm is appointed as auditor of the S-VACC in the name of the accounting firm, the appointment shall take effect and operate as if the partners of the firm at the time of the appointment, who are public accountants at that time, are appointed as auditors of the S-VACC.
- (6) Where an accounting corporation is appointed as auditor of the S-VACC in the name of the corporation, the appointment shall take effect and operate as if —
- (a) the directors of the corporation who are practising as public accountants in the corporation (whether directors at the time the accounting corporation was appointed as auditor or later); and
 - (b) the employees of the corporation who are practising as public accountants in the corporation (whether employed at the time the accounting corporation was appointed as auditor or later),
- are appointed as auditors of the S-VACC.

Disqualification of liquidators

15. (1) Subject to this section, a person shall not, except with the leave of the Court, consent to be appointed, and shall not act as liquidator of a S-VACC —

- (a) if he is not an approved liquidator;
- (b) if he is indebted to the S-VACC or to a related corporation of the S-VACC in an

amount exceeding \$2,500;

- (c) if he is —
 - (i) an officer of the S-VACC;
 - (ii) a partner, employer or employee of an officer of the S-VACC;
 - (iii) a partner or employee of an employee of an officer of the S-VACC;
 - (iv) the fund manager or approved custodian of the S-VACC; or
 - (v) an officer or employee of the fund manager or approved custodian of the S-VACC.
 - (d) if he is an undischarged bankrupt;
 - (e) if he has assigned his estate for the benefit of his creditors or has made an arrangement with his creditors pursuant to any law relating to bankruptcy; or
 - (f) if he has been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more.
- (2) Subsection (1)(a) and (c) shall not apply —
- (a) to a members' voluntary winding up; or
 - (b) to a creditors' voluntary winding up, if by a resolution carried by a majority of the creditors in number and value present in person or by proxy and voting at a meeting of which 7 days' notice has been given to every creditor stating the object of the meeting, it is determined that that paragraph shall not so apply.
- (3) For the purposes of subsection (1) –
- (a) a person shall be deemed to be an officer of a S-VACC if he is an officer of a related corporation of the S-VACC or has, at any time within the preceding period of 24 months, been an officer or promoter of the S-VACC or of such a corporation; and
 - (b) a person shall be deemed to be a fund manager or approved custodian of the S-VACC if it has, at any time within the preceding period of 24 months, been a fund manager or approved custodian of the S-VACC.
- (4) A person shall not be appointed as liquidator of a S-VACC unless he has prior to such appointment consented in writing to act as such liquidator.
- (5) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

Registers

16. (1) The Registrar shall, subject to this Act, keep such registers as he considers necessary in such form as he thinks fit.

(2) Any person may, on payment of the prescribed fee —

- (a) save for any return, inspect any document, or if there is a microfilm of any such document, that microfilm, filed or lodged with the Registrar;
- (b) subject to subsection (3), require a copy of the notice of incorporation of a S-VACC, any certificate issued under this Act, any document or extract from any document kept by the Registrar to be given or certified by the Registrar; or
- (c) inspect any register of directors, fund managers, secretaries or auditors kept by the Registrar under section 143(1) or require a copy of or an extract from any such register.

(3) A certificate of confirmation of incorporation referred to in section 28(2) or 29(8) may only be issued to the S-VACC upon an application made in accordance with those provisions.

(4) Notwithstanding subsection (2), a director, fund manager, approved custodian, secretary, auditor or member of a S-VACC may, without charge —

- (a) inspect the register of directors, register of fund managers, register of secretaries and register of auditors of that S-VACC kept by the Registrar under section 143(1); or
- (b) obtain from the Registrar a copy of or an extract from the register of directors, register of fund managers, register of secretaries and register of auditors of that S-VACC kept by the Registrar under section 143(1).

Evidentiary value of copies certified by Registrar

(5) A copy of or an extract from any document (including a copy produced by way of microfilm) filed or lodged with the Registrar using a non-electronic medium that is certified to be a true copy or extract by the Registrar shall in any proceedings be admissible in evidence as of equal validity with the original document.

Evidence of statutory requirements

(6) In any legal proceedings, a certificate issued by the Registrar that a requirement of this Act specified in the certificate —

- (a) had or had not been complied with at a date or within a period specified in the certificate; or
- (b) had been complied with upon a date specified in the certificate but not before

that date,

shall be received as prima facie evidence of the matters specified in the certificate.

Registrar may refuse to register or receive document

- (7) If the Registrar is of the opinion that any document submitted to him —
- (a) contains any matter contrary to law;
 - (b) by reason of any omission or misdescription has not been duly completed;
 - (c) does not comply with the requirements of this Act; or
 - (d) contains any error, alteration or erasure,

he may refuse to register or receive the document and request that the document be appropriately amended or completed and resubmitted or that a fresh document be submitted in its place.

Destruction or transfer of old records

(8) If the Registrar is of the opinion that it is no longer necessary or desirable to retain any document lodged, filed or registered with the Registrar and which has been microfilmed or converted to electronic form, the Registrar may —

- (a) destroy the document with the authorisation of the National Library Board under section 14D of the National Library Board Act (Cap. 197); or
- (b) transfer the document to the National Archives of Singapore under section 14C of that Act.

(9) In subsection (5), “non-electronic medium” means a medium other than the electronic transaction system established under Part VIA of the Accounting and Corporate Regulatory Authority Act.

Electronic transaction system

17. (1) The Registrar may —

- (a) require or permit any person to carry out any transaction with the Registrar under this Act; and
- (b) issue any approval, certificate, notice, determination or other document pursuant or connected to a transaction referred to in paragraph (a),

using the electronic transaction system established under Part VIA of the Accounting and Corporate Regulatory Authority Act (Cap. 2A).

(2) If the Registrar is satisfied that a transaction should be treated as having been

carried out at some earlier date and time, than the date and time which is reflected in the electronic transaction system, the Registrar may cause the electronic transaction system and the registers kept by the Registrar to reflect such earlier date and time.

(3) The Registrar shall keep a record whenever the electronic transaction system or the registers are altered under subsection (2).

(4) In this section —

“document” includes any application, form, report, certification, notice, confirmation, declaration, return or other document (whether in electronic form or otherwise) filed or lodged with, or submitted to the Registrar;

“transaction”, in relation to the Registrar, means —

- (a) the filing or lodging of any document with the Registrar, or the submission, production, delivery, furnishing or sending of any document to the Registrar;
- (b) any making of any application, submission or request to the Registrar;
- (c) any provision of any undertaking or declaration to the Registrar; and
- (d) any extraction, retrieval or accessing of any document, record or information maintained by the Registrar.

Rectification by High Court

18. (1) Where it appears to the Court, as a result of evidence adduced before it by an applicant S-VACC, that any particular recorded in a register is erroneous or defective, the Court may, by order, direct the Registrar to rectify the register on such terms and conditions as seem to the Court just and expedient, as are specified in the order and the Registrar shall, upon receipt of the order, rectify the register accordingly.

(2) An order of the Court made under subsection (1) may require that a fresh document, showing the rectification, shall be filed by the applicant S-VACC with the Registrar together with a copy of the Court order, and a copy of the Court application.

Rectification by Registrar on application

19. (1) Despite section 18, an officer of a S-VACC may notify the Registrar in the prescribed form of —

- (a) any error contained in any document relating to the S-VACC filed or lodged with the Registrar; or
- (b) any error in the filing or lodgment of any document relating to the S-VACC with the Registrar.

(2) The Registrar may, upon receipt of any notification referred to in subsection (1)

and if satisfied that —

- (a) the error referred to in subsection (1)(a) is typographical or clerical in nature; or
- (b) the error referred to in subsection (1)(b) is, in the Registrar's opinion, unintended and does not prejudice any person,

rectify the register accordingly.

(3) In rectifying the register under subsection (2), the Registrar must not expunge any document from the register.

(4) The decision made by the Registrar on whether to rectify the register under subsection (2) is final.

Rectification or updating on Registrar's initiative

20. (1) The Registrar may rectify or update any particulars or document in a register kept by him, if the Registrar is satisfied that —

- (a) there is a defect or error in the particulars or document arising from any grammatical, typographical or similar mistake; or
- (b) there is evidence of a conflict between the particulars of a S-VACC or person and —
 - (i) other information in the register relating to that S-VACC or person; or
 - (ii) other information relating to that S-VACC or person obtained from such department or Ministry of the Government, or statutory body or other body corporate as may be prescribed.

(2) Before the Registrar rectifies or updates the register under subsection (1), the Registrar must, except under prescribed circumstances, give written notice to the S-VACC or person whose documents or particulars are to be rectified or updated of the Registrar's intention to do so, and state in the notice —

- (a) the reasons for and details of the proposed rectification or updating to be made to the register; and
- (b) the date by which any written objection to the proposed rectification or updating must be delivered to the Registrar, being a date at least 30 days after the date of the notice.

(3) The S-VACC or person notified under subsection (2) may deliver to the Registrar, not later than the date specified under subsection (2)(b), a written objection to the proposed rectification or updating of the register.

(4) The Registrar shall not rectify or update the register if the Registrar receives a written objection under subsection (3) to the proposed rectification or updating by the date specified under subsection (2)(b), unless the Registrar is satisfied that the objection is frivolous or vexatious or has been withdrawn.

(5) The Registrar may rectify or update the register if the Registrar does not receive a written objection under subsection (3) by the date specified under subsection (2)(b).

(6) The Registrar may include such notation as the Registrar thinks fit on the register for the purposes of providing information relating to any error or defect in any particulars or document in the register, and may remove such notation if the Registrar is satisfied that it no longer serves any useful purpose.

(7) Despite anything in this section, the Registrar may, if the Registrar is satisfied that there is any error or defect in any particulars or document in a register, by notice in writing, request that the S-VACC to which the particulars or document relate, or its officers take such steps within such time as the Registrar may specify to ensure that the error or defect is rectified.

Enforcement of duty to make returns

21. (1) If a S-VACC or person, having made default in complying with —

- (a) any provision of this Act or of any other law which requires the filing or lodging in any manner with the Registrar or the Official Receiver of any return, account or other document or the giving of notice to him of any matter;
- (b) any request of the Registrar or the Official Receiver to amend or complete and resubmit any document or to submit a fresh document; or
- (c) any request of the Registrar under section 20(7) to rectify any error or defect in any particulars or document in the register,

fails to make good the default within 14 days after the service on the S-VACC or person of a notice requiring it to be done, the Court may, on an application by any member or creditor of the S-VACC or by the Registrar or the Official Receiver, make an order directing the S-VACC and any officer thereof or such person to make good the default within such time as is specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the S-VACC or by any officer of the S-VACC responsible for the default or by such person.

(3) Nothing in this section shall limit the operation of any written law imposing penalties on a S-VACC or its officers or such person in respect of any such default.

Relodging of lost registered documents

22. (1) If in the case of any S-VACC incorporated or registered under this Act the constitution or any other document relating to the S-VACC filed or lodged with the Registrar has been lost or destroyed, the S-VACC may apply to the Registrar for leave to lodge a copy of the document as originally filed or lodged.

(2) On such application being made the Registrar may direct notice thereof to be given to such persons and in such manner as he thinks fit.

(3) The Registrar upon being satisfied —

(a) that the original document has been lost or destroyed;

(b) of the date of the filing or lodging thereof with the Registrar; and

(c) that a copy of such document produced to the Registrar is a correct copy,

may certify upon that copy that he is so satisfied and direct that that copy be lodged in the manner required by law in respect of the original.

(4) Upon the lodgment, that copy for all purposes shall, from such date as is mentioned in the certificate as the date of the filing or lodging of the original with the Registrar, have the same force and effect as the original.

(5) The Court may, by order upon application by any person aggrieved and after notice to any other person whom the Court directs, confirm, vary or rescind the certificate and the order may be lodged with the Registrar and shall be registered by him, but no payments, contracts, dealings, acts and things made, had or done in good faith before the registration of such order and upon the faith of and in reliance upon the certificate shall be invalidated or affected by such variation or rescission.

(6) No fee shall be payable upon the lodging of a document under this section.

Size, durability and legibility of documents delivered to Registrar

23. (1) For the purposes of securing that the documents delivered to the Registrar under the provisions of this Act are of a standard size, durable and easily legible, the Minister may by regulations prescribe such requirements (whether as to size, weight, quality or colour of paper, size, type or colour of lettering, or otherwise) as he may consider appropriate; and different requirements may be so prescribed for different documents or classes of documents.

(2) If under any such provision there is delivered to the Registrar a document (whether an original document or a copy) which in the opinion of the Registrar does not comply with such requirements prescribed under this section as are applicable to it, the Registrar may serve on any person by whom under that provision the document was required to be delivered (or, if there are 2 or more such persons, may serve on any of them) a notice stating his opinion to that effect and indicating the requirements so prescribed with which in his opinion the document does not comply.

(3) Where the Registrar serves a notice under subsection (2) with respect to a document delivered under any such provision, then, for the purposes of any written law which enables a penalty to be imposed in respect of any omission to deliver to the Registrar a document required to be delivered under that provision (and, in particular, for the purposes of any such law whereby such a penalty may be imposed by reference to each day during which the omission continues) —

- (a) any duty imposed by that provision to deliver such a document to the Registrar shall be treated as not having been discharged by the delivery of that document; but
- (b) no account shall be taken of any days falling within the period mentioned in subsection (4).

(4) The period referred to in subsection (3)(b) is the period beginning on the day on which the document was delivered to the Registrar as mentioned in subsection (2) and ending on the fourteenth day after the date of service of the notice under subsection (2) by virtue of which subsection (3) applies.

(5) In this section, any reference to delivering a document shall be construed as including a reference to sending, forwarding, producing or (in the case of a notice) giving it.

Appeal

24. (1) Any party aggrieved by an act or a decision of the Registrar under this Act may, within 28 days after the date of the act or decision, appeal to the Court against the act or decision.

(2) The Court may confirm the act or decision or give such directions in the matter as seem proper or otherwise determine the matter.

(3) This section shall not apply to any act or decision of the Registrar —

- (a) in respect of which any provision in the nature of an appeal or a review is expressly provided in this Act; or
- (b) which is declared by this Act to be conclusive or final or is embodied in any document declared by this Act to be conclusive evidence of any act, matter or thing.

Rules

25. The Rules Committee constituted under section 80 of the Supreme Court of Judicature Act (Cap. 322) may, subject to and in accordance with the provisions of that law relating to the making of rules, make rules —

- (a) with respect to proceedings and the practice and procedure of the Court under

this Act;

- (b) with respect to any matter or thing which is by this Act required or permitted to be prescribed by rules;
- (c) without limiting the generality of this section, with respect to Court fees and costs and with respect to rules as to meetings ordered by the Court; and
- (d) generally with respect to the winding up of S-VACCs or Sub-Funds.

Regulations

26. (1) The Minister may make regulations for or with respect to —

- (a) the duties and functions of the Registrar, Deputy Registrars, Assistant Registrars and other persons appointed to assist with the administration of this Act;
- (b) the lodging or registration of documents and the time and manner of submission of documents for lodging or registration;
- (c) prescribing forms for the purposes of this Act;
- (d) prescribing the fees payable for the purposes of this Act, including but not limited to fees for —
 - (i) the lodgment or registration of any document required to be lodged or registered with the Registrar;
 - (ii) the issue of any document by the Registrar;
 - (iii) any act required to be performed by the Registrar; or
 - (iv) the inspection of any document referred to in sub-paragraphs (i) and (ii);
- (e) prescribing the fees payable in respect of any of the following required or permitted under any other Act:
 - (i) the lodgment or registration of any document with the Registrar;
 - (ii) the issue of any document by the Registrar;
 - (iii) the performance of any act by the Registrar; and
 - (iv) the inspection of any document referred to in sub-paragraphs (i) and (ii);
- (f) prescribing the penalties payable for the late lodgment of any document;
- (g) prescribing the manner in which prescribed fees and penalties are to be paid;

- (h) the waiver, refund or remission, whether wholly or in part, of any fee or penalty chargeable under this Act;
 - (i) prescribing all matters connected with or arising from the restrictions under this Act as to the reservation or registration of names of S-VACCS (including rules for determining when a name falls within those restrictions);
 - (j) prescribing times for the lodging of any documents with the Registrar; and
 - (k) all matters or things which by this Act are required or permitted to be prescribed otherwise than by rules or which are necessary or expedient to be prescribed for giving effect to this Act.
- (2) The regulations may provide that a contravention of a specified provision of the regulations shall be an offence.

PART 3 SOLE OBJECT OF S-VACCS

Sole object of S-VACC

- 27.** (1) The sole object of a S-VACC is to be established and operated as one or more collective investment schemes.
- (2) No S-VACC shall carry on, or enter into any partnership, joint venture, or any other arrangement with any person to carry on, whether in Singapore or elsewhere, any business outside the scope of its sole object under subsection (1).
- (3) If default is made in complying with this section, the S-VACC and every officer of the S-VACC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both, and in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

PART 4 CONSTITUTION OF S-VACCS

Division 1—Incorporation

Formation of S-VACC

- 28.** (1) Subject to the provisions of this Act, any person may, whether alone or together with another person, by subscribing his name or their names to a constitution and complying with the requirements as to registration, form an incorporated S-VACC.

(2) Upon the application of a S-VACC and payment of the prescribed fee, the Registrar shall issue to the S-VACC a certificate of confirmation of incorporation.

Registration and incorporation

29. (1) A person desiring the incorporation of a S-VACC shall —

- (a) submit to the Registrar the constitution of the proposed S-VACC and such other documents as may be prescribed;
- (b) submit to the Registrar the name of the fund manager of the proposed S-VACC and any changes thereto;
- (c) submit to the Registrar the name of the directors and any changes thereto;
- (d) furnish the Registrar with the last day of the proposed S-VACC's first financial year and such other information as may be prescribed; and
- (e) pay the Registrar the prescribed fee.

(2) Either —

- (a) a registered qualified individual engaged in the formation of the proposed S-VACC; or
- (b) a person named in the constitution as a director or the secretary of the proposed S-VACC,

shall make a declaration to the Registrar that —

- (i) all of the requirements of this Act relating to the formation of the S-VACC have been complied with; and
- (ii) he has verified the identities of the subscribers to the constitution, and of the persons named in the constitution as officers of the proposed S-VACC,

and the Registrar may accept such declaration as sufficient evidence of those matters.

(3) Upon receipt of the documents, information and payment referred to in subsection (1) and declaration referred to in subsection (2), the Registrar shall, subject to this Act, register the S-VACC by registering its constitution.

Notice of incorporation

(4) On the registration of the constitution, the Registrar shall issue in the prescribed manner a notice of incorporation in the prescribed form stating that the S-VACC is, on and from the date specified in the notice, incorporated as a S-VACC.

Effect of incorporation

(5) On and from the date of incorporation specified in the notice issued under subsection (4) but subject to this Act, the subscribers to the constitution together with such other persons as may from time to time become members of the S-VACC shall be a body corporate by the name contained in the constitution capable immediately of exercising all the functions of an incorporated S-VACC and of suing and being sued and having perpetual succession with power to hold land but with such liability on the part of the members to contribute to the assets of the S-VACC in the event of it, or any of its Sub-Funds, being wound up as is provided by this Act.

Members of S-VACC

(6) The subscribers to the constitution shall be deemed to have agreed to become members of the S-VACC and on the incorporation of the S-VACC shall be entered as members in the register of members kept by the S-VACC under section 85.

(7) Apart from the subscribers referred to in subsection (6), every other person who agrees to become a member of a S-VACC and whose name is entered in the register of members kept by the S-VACC under section 85 is a member of the S-VACC.

(8) Upon the application of a S-VACC and payment of the prescribed fee, the Registrar shall issue to the S-VACC a certificate of confirmation of incorporation.

Power to refuse registration

30. (1) Without prejudice to the powers of the Registrar under section 16(7), where a constitution is delivered for registration under section 29, the Registrar shall not register the constitution unless he is satisfied that all the requirements of this Act in respect of the registration and of all matters precedent and incidental thereto have been complied with.

(2) Notwithstanding anything in this Act or any rule of law, the Registrar shall refuse to register the constitution of a proposed S-VACC where he is satisfied that —

- (a) the person named as a fund manager of the proposed S-VACC is not a fund manager under section 106(2);
- (b) none of the directors of the proposed S-VACC is a director of the fund manager;

- (c) the proposed S-VACC is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or
- (d) it would be contrary to the national security or interest for the proposed S-VACC to be registered.

(3) Any person aggrieved by the decision of the Registrar under subsection (2) may, within 30 days of the date of the decision, appeal to the Minister whose decision shall be final.

Minimum number of members

31. A S-VACC shall have sufficient members to constitute at least one collective investment scheme, and at all times not less than two members.

Constitution

32. (1) The following provisions are implied in the constitution of every S-VACC
—

- (a) the liability of members is limited to the amount, if any, unpaid on the shares respectively held by them;
- (b) the sole object of the S-VACC shall be in accordance with section 27(1) of this Act;
- (c) the performance of the S-VACC's investments shall be measured and evaluated on a fair value basis;
- (d) the actual value of the paid-up share capital of the S-VACC shall at all times be equal to the Net Asset Value of the S-VACC;
- (e) in respect of the issuance, redemption or repurchase of the shares of a S-VACC—
 - (i) subject to sub-paragraphs (ii) and (iii), the shares shall be issued, redeemed or repurchased at a price equal to the proportion of the Net Asset Value represented by each share, although the price may be adjusted by adding or subtracting, as the case may be, fees and charges, in compliance with the constitution;
 - (ii) where shares of a S-VACC relate to a closed-end fund and where such shares are listed for quotation on a securities exchange, the shares shall

be issued, redeemed or repurchased in accordance with the applicable listing requirements of the securities exchange; and

(iii) during the initial offer period of the shares, the requirements at subparagraphs (i) and (ii) do not apply.

(2) In addition to subsection (1), in respect of a S-VACC with Sub-Funds, the following provisions are implied in the constitution of every such S-VACC –

(a) the S-VACC's assets and liabilities must be properly attributed to each of its Sub-Funds; and

(b) the S-VACC shall comply with section 55(1), 105(3) and 105(5) of this Act.

(3) Any provision in the S-VACC's constitution shall, to the extent that it is inconsistent with the provisions implied under subsections (1) and (2), be void.

(4) The constitution of every S-VACC shall comply with such requirements as may be prescribed, shall be dated and shall state, in addition to the requirements at subsection (1) and (2)—

(a) the name of the S-VACC and that it is incorporated under this Act;

(b) the name of the proposed fund manager or fund manager of the S-VACC;

(c) the full names, addresses and occupations of the subscriber or subscribers to the constitution of the S-VACC;

(d) that such subscriber or subscribers are desirous of being formed into a S-VACC in pursuance of the constitution and respectively agree to take the number of shares in the capital of the S-VACC set out opposite his or their respective names;

(e) the rights attaching to shares of the S-VACC, including:

(i) the right to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management or disposal of, the exercise of, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property of the S-VACC, or to receive sums paid out of such profits, income, or other payments or returns;

(ii) the right to vote at any general meeting or at any meeting of shareholders of that class of shares;

(iii) the right to redeem or repurchase shares, and any limits to redemption or repurchase;

(iv) the right in respect of a scheme of arrangement, merger, reconstruction or amalgamation involving the S-VACC; and

(f) in respect of a S-VACC with Sub-Funds, the policy under section 55(3) of this Act for allocating any assets and liabilities between Sub-Funds.

(5) Each subscriber to the constitution shall make a declaration to the Registrar, either by himself or through a registered qualified individual authorised by him, as to the number of shares (not being less than one) that he agrees to take.

(6) A copy of the constitution, duly signed by the subscriber or subscribers and stating the number of shares that each subscriber has agreed to take, shall be kept at the registered office of the S-VACC.

Membership of holding company

33. (1) A corporation cannot be a member of a S-VACC which is its holding company, and any allotment or transfer of shares in a S-VACC to its subsidiary shall be void.

(2) Subsection (1), insofar as it provides that any transfer of shares in contravention of it is void, shall not apply to a disposition of book-entry securities, but a Court, on being satisfied that a disposition of book-entry securities would in the absence of this subsection be void may, on the application of the Registrar or any other person, order the transfer of the shares acquired in contravention of subsection (1).

(3) Subsection (1) shall not apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(4) This section shall not prevent a subsidiary from continuing to be a member of its holding company if, at the time when it becomes a subsidiary thereof, it already holds shares in that holding company, but —

(a) subject to subsection (3), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof; and

(b) subject to subsections (5) and (6), the subsidiary shall, within the period of 12 months or such longer period as the Court may allow after becoming the subsidiary of its holding company, dispose of all of its shares in the holding company.

(5) For the avoidance of doubt, subsection (4)(b) ceases to apply if, during the period

referred to in that subsection, the subsidiary ceases to be a subsidiary of the holding company.

(6) Any shares in the holding company that are not disposed of in accordance with subsection (4)(b) may, subject to subsections (7) and (14), be held or continued to be held by the subsidiary.

(7) With respect to the shares referred to in subsection (6) —

(a) subject to this subsection and subsection (14), sections 76J(1), (2), (3), (5) and (6) and 76K of the Companies Act shall apply with the necessary modifications, including the following modifications:

(i) a reference to treasury shares shall be read as a reference to shares referred to in subsection (6);

(ii) a reference to a company holding treasury shares shall be read as a reference to a subsidiary holding shares referred to in subsection (6); and

(iii) the reference in section 76J(6) to “as if they were purchased by the company at the time they were allotted, in circumstances in which section 76H applied” shall be read as a reference to “as if they were already held by the subsidiary at the time they were allotted, in circumstances in which section 33(4) applied”; and

(b) the holding company shall, within 14 days after any change in the number of shares in the holding company which are held by any of its subsidiaries under subsection (6), lodge with the Registrar a notice in the prescribed form.

(8) Subject to subsection (3), subsections (1), (4), (6), (10) and (12) shall apply in relation to a nominee for a corporation which is a subsidiary as if references in those subsections to such a corporation included references to a nominee for it.

(9) This section shall not operate to prevent the allotment of shares in a holding company to a subsidiary which already lawfully holds shares in the holding company if the allotment is made by way of capitalisation of reserves of the holding company and is made to all members of the holding company on a basis which is in direct proportion to the number of shares held by each member in the holding company.

(10) This section shall not operate to prevent the transfer of shares in a holding company to a subsidiary by way of a distribution in specie, amalgamation or scheme of arrangement but —

(a) subject to subsection (3), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof; and

- (b) subject to subsections (11) and (12), the subsidiary shall, within the period of 12 months or such longer period as the Court may allow after the transfer to the subsidiary of the shares in the holding company, dispose of all of the shares in the holding company.
- (11) For the avoidance of doubt, subsection (10)(b) ceases to apply if, during the period referred to in that subsection, the subsidiary ceases to be a subsidiary of the holding company.
- (12) Any shares in the holding company that are not disposed of in accordance with subsection (10)(b) may, subject to subsections (13) and (14), be held or continued to be held by the subsidiary.
- (13) With respect to the shares referred to in subsection (12) —
- (a) subject to this subsection and subsection (14), sections 76J(1), (2), (3), (5) and (6) and 76K of the Companies Act shall apply with the necessary modifications, including the following modifications:
 - (i) a reference to treasury shares shall be read as a reference to shares referred to in subsection (12);
 - (ii) a reference to a company holding treasury shares shall be read as a reference to a subsidiary holding shares referred to in subsection (12); and
 - (iii) the reference in section 76J(6) to “as if they were purchased by the company at the time they were allotted, in circumstances in which section 76H applied” shall be read as a reference to “as if they were transferred to the subsidiary at the time they were allotted, in circumstances in which section 33(10) applied”; and
 - (b) the holding company shall, within 14 days after any change in the number of shares in the holding company which are held by any of its subsidiaries under subsection (12), lodge with the Registrar a notice in the prescribed form.
- (14) With respect to any share referred to in subsection (6) or (12) —
- (a) where the holding company has shares of only one class, the aggregate number of shares held by all the subsidiaries of the holding company under subsection (6) or (12) shall not at any time exceed 10% of the total number of shares of the holding company at that time;
 - (b) where the share capital of the holding company is divided into shares of different classes, the aggregate number of the shares of any class held by all the

subsidiaries of the holding company under subsection (6) or (12) shall not at any time exceed 10% of the total number of the shares in that class of the holding company at that time;

- (c) where paragraph (a) or (b) is contravened, the holding company shall dispose of or cancel the excess shares, or procure the disposal of the excess shares by its subsidiary, in accordance with section 76K of the Companies Act, which shall apply to this subsection, before the end of the period of 6 months beginning with the day on which that contravention occurs, or such further period as the Registrar may allow;
- (d) where the subsidiary is a wholly-owned subsidiary of the holding company, no dividend may be paid, and no other distribution (whether in cash or otherwise) of the holding company's or any of its Sub-Funds' assets (including any distribution of assets to members on a winding up) may be made, to the subsidiary in respect of the shares referred to in subsection (6) or (12); and
- (e) where the subsidiary is not a wholly-owned subsidiary of the holding company, a dividend may be paid and other distribution (whether in cash or otherwise) of the holding company's assets or any of its Sub-Funds' assets (including any distribution of assets to members on a winding up) may be made, to the subsidiary in respect of the shares referred to in subsection (6) or (12).

(15) In subsection (14)(c), "excess shares" means such number of the shares, held by any subsidiary under subsection (6) or (12) as resulted in the limit referred to in subsection (14)(a) or (b) being exceeded.

(16) In sections 135(1)(a), 223(1)(a)(i) and 270(4), a reference to a S-VACC being registered as a member of itself or being a member of itself shall be read as including a reference to a subsidiary being registered as a member of its holding company.

(17) Where but for this section a subsidiary would have been entitled to subscribe for shares in the holding company, the holding company may, on behalf of the subsidiary, sell the shares for which the subsidiary would otherwise have been entitled to subscribe.

(18) For the purposes of this section, a S-VACC shall inform the Registrar of the occurrence of any of the following events by lodging a notice in the prescribed form within 14 days after the date of occurrence:

- (a) where a shareholder of a S-VACC that is a corporation becomes a subsidiary of the S-VACC;
- (b) where shares of the S-VACC are held by a subsidiary of the S-VACC and there is a change in the number of shares held by the subsidiary.

Capacity and powers of S-VACC

34. Subject to the provisions of this Act and any other written law and its constitution, a S-VACC has—

- (a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and
- (b) for the purposes of paragraph (a), full rights, powers and privileges.

Power of S-VACC to provide for employees on cessation of business

35. (1) The powers of a S-VACC shall, if they would not otherwise do so, be deemed to include power to make provision, in connection with any cessation of the whole or any part of the business carried on by the S-VACC or any subsidiary of the S-VACC, for the benefit of persons employed or formerly employed by the S-VACC or its subsidiary.

(2) Subsection (1) relates only to the capacity of a S-VACC as a body corporate and is without prejudice to any provision in a S-VACC's constitution requiring any exercise of the power mentioned in that subsection to be approved by the S-VACC in general meeting or otherwise prescribing the manner in which that power is to be exercised.

Ultra vires transactions

36. (1) No act or purported act of a S-VACC (including the entering into of an agreement by the S-VACC and including any act done on behalf of a S-VACC by an officer or agent of the S-VACC under any purported authority, whether express or implied, of the S-VACC) and no conveyance or transfer of property, whether real or personal, to or by a S-VACC shall be invalid by reason only of the fact that the S-VACC was without capacity or power to do such act or to execute or take such conveyance or transfer.

- (2) Any such lack of capacity or power may be asserted or relied upon only in—
 - (a) proceedings against the S-VACC by any member of the S-VACC or, where the S-VACC has issued debentures secured by a floating charge over all or any of the S-VACC's property, by the holder of any of those debentures or the trustee for the holders of those debentures to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the S-VACC; or
 - (b) any proceedings by the S-VACC or by any member of the S-VACC against the present or former officers of the S-VACC.
- (3) If the unauthorised act, conveyance or transfer sought to be restrained in any

proceedings under subsection (2)(a) is being or is to be performed or made pursuant to any contract to which the S-VACC is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court considers it to be just and equitable, set aside and restrain the performance of the contract and may allow to the S-VACC or to the other parties to the contract, as the case requires, compensation for the loss or damage sustained by either of them which may result from the action of the Court in setting aside and restraining the performance of the contract but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained.

No constructive notice

37. Notwithstanding anything in the constitution of a S-VACC, a person is not affected by, or deemed to have notice or knowledge of the contents of, the constitution of, or any other document relating to, the S-VACC merely because—

- (a) the constitution or document is registered by the Registrar; or
- (b) the constitution or document is available for inspection at the registered office of the S-VACC.

Power of directors to bind S-VACC

38. (1) In favour of a person dealing with a S-VACC in good faith, the power of the directors to bind the S-VACC, or authorise others to do so, shall be deemed to be free of any limitation under the S-VACC's constitution.

(2) For the purposes of subsection (1), a person dealing with a S-VACC—

- (a) is not bound to enquire as to any limitation on the powers of the directors to bind the S-VACC or authorise others to do so; and
- (b) is presumed to have acted in good faith unless the contrary is proved.

(3) The references in subsection (1) or (2) to limitations on the directors' powers under the S-VACC's constitution include limitations deriving —

- (a) from a resolution of the S-VACC or of any class of shareholders; or
- (b) from any agreement between the members of the S-VACC or of any class of shareholders.

(4) This section shall not affect any right of a member of the S-VACC to bring proceedings to restrain the doing of an action that is beyond the powers of the directors; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the S-VACC.

(5) This section shall not affect any liability incurred by the directors, or any other

person, by reason of the directors exceeding their powers.

(6) This section shall have effect subject to section 39 and 55(2).

Constitutional limitations: transactions with directors or their associates

39. (1) This section shall apply to a transaction if or to the extent that its validity depends on section 38.

(2) Nothing in this section shall be construed as excluding the operation of any other written law or rule of law by virtue of which the transaction may be called in question or any liability to the S-VACC may arise.

(3) Where—

(a) a S-VACC enters into such a transaction; and

(b) the parties to the transaction include —

(i) a director of the S-VACC or of its holding company; or

(ii) a person connected with any such director,

the transaction is voidable at the instance of the S-VACC.

(4) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (3)(b)(i) or (ii), and any director of the S-VACC who authorised the transaction, is liable—

(a) to account to the S-VACC for any gain he has made directly or indirectly by the transaction; and

(b) to indemnify the S-VACC for any loss or damage resulting from the transaction.

(5) The transaction ceases to be voidable if —

(a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible;

(b) the S-VACC is indemnified for any loss or damage resulting from the transaction;

(c) rights acquired bona fide for value and without actual notice of the directors exceeding their powers by a person who is not party to the transaction would be affected by the avoidance; or

(d) the transaction is affirmed by the S-VACC.

(6) A person other than a director of the S-VACC is not liable under subsection (4)

if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.

(7) Nothing in subsections (1) to (6) shall affect the rights of any party to the transaction not within subsection (3)(b)(i) or (ii); but the Court may, on the application of the S-VACC or any such party, make an order affirming, severing or setting aside the transaction on such terms as appear to the Court to be just.

(8) In this section, “transaction” includes any act.

Persons connected with director in section 39

40. (1) For the purposes of section 39, a reference to a person connected with a director means —

- (a) a member of the director’s family;
- (b) a body corporate with which the director is connected within the meaning of subsection (2)(b);
- (c) a person acting in his capacity as trustee of a trust —
 - (i) the beneficiaries of which include the director or a person who by virtue of paragraph (a) or (b) is connected with him; or
 - (ii) the terms of which confer a power on the trustees that may be exercised for the benefit of the director or any such person,

other than a trust for the purposes of an employees’ share scheme or on a pension scheme;

- (d) a person acting in his capacity as partner—
 - (i) of the director; or
 - (ii) of a person who, by virtue of paragraph (a), (b) or (c), is connected with that director;
- (e) a firm that is a legal person under the law by which it is governed and in which —
 - (i) the director is a partner;
 - (ii) a partner is a person who, by virtue of paragraph (a), (b) or (c), is connected with the director; or

- (iii) a partner is a firm in which the director is a partner or in which there is a partner who, by virtue of paragraph (a), (b) or (c), is connected with the director; and
 - (f) a reference to a person connected with a director of a S-VACC does not include a person who is himself a director of the S-VACC.
- (2) For the purposes of this section —
- (a) a member of a director’s family shall include his spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter;
 - (b) a director is connected with a body corporate if, and only if, he and the persons connected with him together —
 - (i) are interested in at least 20% of the share capital of that body corporate; or
 - (ii) are entitled to exercise or control, directly or indirectly, the exercise of more than 20% of the voting power at any general meeting of that body corporate;
 - (c) a reference in paragraph (b)(ii) to voting power the exercise of which is controlled by a director includes voting power whose exercise is controlled by a body corporate controlled by him;
 - (d) for the avoidance of circularity in the application of subsection (1) —
 - (i) a body corporate with which a director is connected is not treated for the purposes of this subsection as connected with him unless it is also connected with him by virtue of subsection (1)(c) or (d); and
 - (ii) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is connected is not treated for the purposes of this subsection as connected with a director by reason only of that fact; and
 - (e) “body corporate” includes a body incorporated outside Singapore, but does not include —
 - (i) a corporation sole; or
 - (ii) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed.

General provisions as to alteration of constitution

41. (1) Unless otherwise provided in this Act, no alteration in the constitution of a S-VACC shall be made unless the alteration has been approved —

- (a) by ordinary resolution, or by a resolution passed by such majority as may be prescribed; or
- (b) if the constitution so requires, by a resolution passed by such majority as is specified in the constitution of the votes cast by the members of the S-VACC who, being entitled to do so, vote in person or by proxy at a general meeting of the S-VACC.

(2) Subsection (1) shall not apply to alterations in the constitution of a S-VACC as a result of the S-VACC –

- (a) establishing or varying its Sub-Funds; or
- (b) appointing or changing its fund manager,

where the constitution of the S-VACC provides that the directors of the S-VACC may do so without the approval of its members.

(3) Any alteration or addition made to the constitution under subsection (1) shall, subject to this Act, be deemed to form part of the original constitution on and from the date of the resolution approving the alteration or such later date as is specified in the resolution.

(4) In addition to observing and subject to any other provision of this Act requiring the lodging with the Registrar of any resolution of a S-VACC or order of the Court or other document affecting the constitution of a S-VACC, the S-VACC shall within 14 days after the passing of any such resolution or the making of any such order lodge with the Registrar a copy of such resolution or other document or a copy of such order together with (unless the Registrar dispenses therewith) a copy of the constitution as adopted or altered, as the case may be.

(5) If default is made in complying with subsection (4), the S-VACC and every officer of the S-VACC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(6) The Registrar shall register every resolution, order or other document lodged with him under this Act that affects the constitution of a S-VACC and, where an order is so registered, shall issue to the S-VACC a notice of the registration of that order.

(7) Notice of the registration shall be published in such manner, if any, as the Court or the Registrar directs.

(8) The Registrar shall, where appropriate, issue a notice of incorporation in

accordance with the alteration made to the constitution.

(9) Upon the application of a S-VACC and payment of the prescribed fee, the Registrar shall issue to the S-VACC a certificate confirming the incorporation in accordance with the alteration made to the constitution.

Name of S-VACC

42. (1) Except with the consent of the Minister or as provided in subsection (3), the Registrar must refuse to register a S-VACC under this Act under a name which, in the opinion of the Registrar —

- (a) is undesirable;
- (b) is identical to the name of any other company, limited liability partnership, limited partnership or corporation or to any registered business name;
- (c) is identical to a name reserved under subsection (16), section 27(12B) or 378(15) of the Companies Act, section 16 of the Business Names Registration Act 2014, section 19(4) of the Limited Liability Partnerships Act (Cap. 163A) or section 17(4) of the Limited Partnerships Act (Cap. 163B); or
- (d) is a name of a kind that the Minister has directed the Registrar not to accept for registration.

(2) In addition to subsection (1), the Registrar must except with the consent of the Minister, refuse to register a S-VACC under a name, if—

- (a) it is identical to the name of a company that was dissolved —
 - (i) unless, in a case where the company was dissolved following its winding up under Part 12 of this Act or Part X of the Companies Act, as the case may be, a period of at least 2 years has passed after the date of dissolution; or
 - (ii) unless, in a case where the company was dissolved following its name being struck off the register under section 348 or 349 of this Act or section 344 or 344A of the Companies Act, as the case may be, a period of at least 6 years has passed after the date of dissolution;
- (b) it is identical to the business name of a person whose registration and registration of that business name has been cancelled under the Business Names Registration Act 2014 or had ceased under section 22 of that Act, unless a period of at least one year has passed after the date of cancellation or cessation;
- (c) it is identical to the name of a foreign company notice of the dissolution of which has been given to the Registrar under section 377(2) of the Companies Act,

unless a period of at least 2 years has passed after the date of dissolution;

- (d) it is identical to the name of a limited liability partnership that was dissolved —
 - (i) unless, in a case where the limited liability partnership was dissolved following its winding up under section 30 of, and the Fifth Schedule to, the Limited Liability Partnerships Act (Cap. 163A), a period of at least 2 years has passed after the date of dissolution; or
 - (ii) unless, in a case where the limited liability partnership was dissolved following its name being struck off the register under section 38 of the Limited Liability Partnerships Act, a period of at least 6 years has passed after the date of dissolution; or
 - (e) it is identical to the name of a limited partnership that was cancelled or dissolved —
 - (i) unless, in a case where the registration of the limited partnership was cancelled under section 14(1) or 19(4) of the Limited Partnerships Act (Cap. 163B), a period of at least one year has passed after the date of cancellation; or
 - (ii) unless, in a case where notice was lodged with the Registrar of Limited Partnerships that the limited partnership was dissolved under section 19(2) of the Limited Partnerships Act, a period of at least one year has passed after the date of dissolution.
- (3) Despite subsection (1), the Registrar may register a S-VACC under —
- (a) a name that is identical to the name of a foreign company registered under Division 2 of Part XI of the Companies Act—
 - (i) in respect of which notice was lodged under section 377(1) of that Act that the foreign company has ceased to have a place of business in Singapore or ceased to carry on business in Singapore, if a period of at least 3 months has passed after the date of cessation; and
 - (ii) the name of which was struck off the register under section 377(8), (9) or (10) of that Act, if a period of at least 6 years has passed after the date the name was so struck off; or
 - (b) a name that is identical to the name of a limited partnership in respect of which notice was lodged under section 19(1) of the Limited Partnerships Act that the limited partnership ceased to carry on business in Singapore, if a period of at least one year has passed after the date of cessation.
- (4) Notwithstanding anything in this section and section 43, where the Registrar is

satisfied that the S-VACC has been registered (whether through inadvertence or otherwise) by a name —

- (a) which is one that is not permitted to be registered under subsection (1)(a), (b) or (d);
- (b) which is one that is not permitted to be registered under subsection (2) until the expiry of the relevant period referred to in that subsection;
- (c) which is one that is permitted to be registered under subsection (3) only after the expiry of the relevant period referred to in that subsection;
- (d) which so nearly resembles the name of any other company, or any corporation, limited liability partnership, limited partnership or registered business name, as to be likely to be mistaken for it; or
- (e) the use of which has been restrained by an injunction granted under the Trade Marks Act (Cap. 332),

the Registrar may direct the first-mentioned S-VACC to change its name, and the S-VACC shall comply with the direction within 6 weeks after the date of the direction or such longer period as the Registrar may allow, unless the direction is annulled by the Minister.

(5) Any person may apply, in writing, to the Registrar to give a direction to a S-VACC under subsection (4) on a ground referred to in that subsection; but the Registrar shall not consider any application to give a direction to a S-VACC on the ground referred to in subsection (4)(d) unless the Registrar receives the application within 12 months from the date of incorporation of the S-VACC.

(6) If the S-VACC fails to comply with subsection (4), the S-VACC and its officers shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

(7) An appeal to the Minister against the following decisions of the Registrar may be made by the following persons within the following times:

- (a) in the case of the Registrar's decision under subsection (4), by the S-VACC aggrieved by the decision within 30 days after the decision; and
 - (b) in the case of the Registrar's refusal to give a direction to a S-VACC under subsection (4) pursuant to an application under subsection (5), by the applicant aggrieved by the refusal within 30 days after being informed of the refusal.
- (8) The decision of the Minister on an appeal made under subsection (7) is final.
- (9) For the avoidance of doubt, where the Registrar makes a decision under

subsection (4) or the Minister makes a decision under subsection (7), he shall accept as correct any decision of the Court to grant an injunction referred to in subsection (4)(e).

(10) The Minister shall cause a direction given by him under subsection (1) to be published in the *Gazette*.

(11) A S-VACC shall have “S-VACC” as part of and at the end of its name.

(12) A person may apply in the prescribed form to the Registrar for the reservation of a name set out in the application as —

- (a) the name of an intended S-VACC; or
- (b) the name to which a S-VACC proposes to change its name.

(13) A S-VACC shall not be registered under section 29(3) and the Registrar shall not approve the change of name of a S-VACC under section 43(2) unless the name which it is proposed to be registered or the proposed new name, as the case may be, has been reserved under subsection (14).

(14) The Registrar may approve an application made under subsection (12) only if the Registrar is satisfied that —

- (a) the application is made in good faith; and
- (b) the name to be reserved is one in respect of which a S-VACC may be registered having regard to subsections (1), (2), and (3).

(15) The Registrar must refuse to approve an application to reserve a name under subsection (12) as the name of an intended S-VACC if the Registrar is satisfied that —

- (a) the name is for a S-VACC that is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or
- (b) it would be contrary to the national security or interest for the S-VACC to be registered.

(16) Where an application for a reservation of a name is made under subsection (12), the Registrar must reserve the proposed name for a period starting at the time the Registrar receives the application and ending —

- (a) if the Registrar approves the application, 60 days after the date on which the Registrar notifies the applicant that the application has been approved, or such further period of 60 days as the Registrar may, on application made in good faith, extend; or
- (b) if the Registrar refuses to approve the application, on the date on which the Registrar notifies the applicant of the refusal.

(17) A person aggrieved by a decision of the Registrar —

(a) refusing to approve an application under subsection (12); or

(b) refusing an application under subsection (16)(a) to extend the reservation period,

may, within 30 days after being informed of the Registrar's decision, appeal to the Minister whose decision is final.

(18) If, at any time during a period for which a name is reserved, application is made to the Registrar for an extension of that period and the Registrar is satisfied as to the bona fides of the application, he may extend that period for a further period of 60 days.

(19) The reservation of a name under this section in respect of an intended S-VACC or S-VACC does not in itself entitle the intended S-VACC or S-VACC to be registered by that name, either originally or upon change of name.

(20) In this section and section 43, "registered business name" has the same meaning as in section 2(1) of the Business Names Registration Act 2014.

Change of name

43. (1) A S-VACC may by special resolution resolve that its name should be changed to a name by which the S-VACC could be registered under section 42(1), (2) or (3).

(2) If the Registrar approves the name which the S-VACC has resolved should be its new name, he shall register the S-VACC under the new name and issue to the S-VACC a notice of incorporation of the S-VACC under the new name and, upon the issue of such notice, the change of name shall become effective.

(3) Notwithstanding anything in this section and section 42, if the name of a S-VACC is, whether through inadvertence or otherwise or whether originally or by a change of name —

(a) a name that is not permitted to be registered under section 42(1)(a), (b) or (d);

(b) a name that is not permitted to be registered under section 42(2) until the expiry of the relevant period referred to in that section;

(c) a name that is permitted to be registered under section 42(3) only after the expiry of the relevant period referred to in that section;

(d) a name that so nearly resembles the name of another company, or a corporation, limited liability partnership, limited partnership or a registered business name of any person as to be likely to be mistaken for it; or

(e) a name the use of which has been restrained by an injunction granted under the Trade Marks Act (Cap. 332),

the S-VACC may by special resolution change its name to a name that is not referred to in paragraph (a), (b), (c), (d) or (e) and, if the Registrar so directs, shall so change it within 6 weeks after the date of the direction or such longer period as the Registrar may allow, unless the direction is annulled by the Minister.

(4) The Registrar shall not direct a change of name under subsection (3) on the ground that the name of the S-VACC could not be registered without contravention of section 42(1)(c).

(5) Any person may apply in writing to the Registrar to give a direction to a S-VACC under subsection (3) on a ground referred to in that subsection; but the Registrar shall not consider any application to give a direction to a S-VACC on the ground referred to in subsection (3)(d) unless the Registrar receives the application within 12 months from the date of change of name of the S-VACC.

(6) If the S-VACC fails to comply with subsection (3), the S-VACC and its officers shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

(7) An appeal to the Minister against the following decisions of the Registrar may be made by the following persons within the following times:

(a) in the case of the Registrar's decision under subsection (3), by the S-VACC aggrieved by the decision within 30 days after the decision; and

(b) in the case of the Registrar's refusal to give a direction to a S-VACC under subsection (3) pursuant to an application under subsection (5), by the applicant aggrieved by the refusal within 30 days after being informed of the refusal.

(8) The decision of the Minister on an appeal made under subsection (7) is final.

(9) For the avoidance of doubt, where the Registrar makes a decision under subsection (3) or the Minister makes a decision under subsection (8), the Registrar or the Minister, as the case may be, shall accept as correct any decision of the Court to grant an injunction referred to in subsection (3)(e).

(10) Upon the application of a S-VACC and payment of the prescribed fee, the Registrar shall issue to the S-VACC a certificate confirming the incorporation of the S-VACC under the new name.

(11) A change of name pursuant to this Act shall not affect the identity of the S-VACC or any rights or obligations of the S-VACC or render defective any legal proceedings by or against the S-VACC, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

Regulations for S-VACC

44. A S-VACC's constitution shall contain the regulations for the S-VACC.

Holding out as S-VACC

45. If any person –

- (a) other than a S-VACC, uses any name or title or trades or carries on business under any name or title which includes “Singapore Variable Capital Company”, “S-VACC” or any abbreviation, imitation or translation of those words; or
- (b) in any way holds out that the business is incorporated under this Act,

that person shall, unless at the time the business was duly incorporated under this Act, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Effect of constitution

46. (1) Subject to this Act, the constitution of a S-VACC shall when registered bind the S-VACC and the members thereof to the same extent as if it respectively had been signed and sealed by each member and contained covenants on the part of each S-VACC to observe all the provisions of the constitution.

(2) All money payable by any member to the S-VACC under the constitution shall be a debt due from him to the S-VACC.

As to effect of alterations on S-VACC who do not consent

(3) Notwithstanding anything in the constitution of a S-VACC, no member of the S-VACC, unless either before or after the alteration is made he agrees in writing to be bound thereby, shall be bound by an alteration made in the constitution after the date on which he became a member so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made or in any way increases his liability as at that date to contribute to the share capital of or otherwise to pay money to the S-VACC.

Copies of constitution

47. (1) A S-VACC shall, on being so required by any member, send to him a copy of the constitution, if any, subject to payment of \$5 or such lesser sum as is fixed by the directors.

(2) Where an alteration is made in the constitution of a S-VACC, a copy of the constitution shall not be issued by the S-VACC after the date of alteration unless —

- (a) the copy is in accordance with the alteration; or
- (b) a printed copy of the order or resolution making the alteration is annexed to the

copy of the constitution and the particular clauses affected are indicated in ink.

(3) If default is made in complying with this section the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence.

Ratification by S-VACC of contracts made before incorporation

48. (1) Any contract or other transaction purporting to be entered into by a S-VACC prior to its formation or by any person on behalf of a S-VACC prior to its formation may be ratified by the S-VACC after its formation and thereupon the S-VACC shall become bound by and entitled to the benefit thereof as if it had been in existence at the date of the contract or other transaction and had been a party thereto.

(2) Prior to ratification by the S-VACC the person or persons who purported to act in the name or on behalf of the S-VACC shall in the absence of express agreement to the contrary be personally bound by the contract or other transaction and entitled to the benefit thereof.

Form of contract

49. (1) Contracts on behalf of a S-VACC may be made as follows:

- (a) a contract which if made between private persons would by law be required to be in writing under seal may be made on behalf of the S-VACC in writing under the common seal of the S-VACC;
- (b) a contract which if made between private persons would by law be required to be in writing signed by the parties to be charged therewith may be made on behalf of the S-VACC in writing signed by any person acting under its authority, express or implied;
- (c) a contract which if made between private persons would by law be valid although made by parol only (and not reduced into writing) may be made by parol on behalf of the S-VACC by any person acting under its authority, express or implied,

and any contract so made shall be effectual in law and shall bind the S-VACC and its successors and all other parties thereto and may be varied or discharged in the manner in which it is authorised to be made.

Authentication of documents

(2) A document or proceeding requiring authentication by a S-VACC may be signed by an authorised officer of the S-VACC and need not be under its common seal.

Execution of deeds

(3) A S-VACC may by writing under its common seal empower any person, either

generally or in respect of any specified matters, as its agent or attorney to execute deeds on its behalf and a deed signed by such an agent or attorney on behalf of the S-VACC and under his seal, or, subject to subsection (5), under the appropriate official seal of the S-VACC shall bind the S-VACC and have the same effect as if it were under its common seal.

(4) The authority of any such agent or attorney shall as between the S-VACC and any person dealing with him continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is therein mentioned then until notice of the revocation or determination of his authority has been given to the person dealing with him.

Official seal for use abroad

(5) A S-VACC whose objects require or comprise the transaction of business outside Singapore may, if authorised by its constitution, have for use in any place outside Singapore an official seal, which shall be a facsimile of the common seal of the S-VACC with the addition on its face of the name of the place where it is to be used and the person affixing any such official seal shall, in writing under his hand, certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

Authority of agent of a S-VACC need not be under seal, unless seal required by law of foreign state

(6) The fact that a power of attorney or document of authorisation given to or in favour of the donee of the power or agent of a S-VACC is not under seal shall not, if such power of attorney or document of authorisation is valid as a power of attorney or document of authorisation in accordance with the laws of the country under which such S-VACC is incorporated, affect for any purpose intended to be effected in Singapore the validity or effect of any instrument under seal executed on behalf of that S-VACC by such donee of the power or agent, which shall for all such purposes whatsoever be as valid as if such authority had been under seal.

Common seal

50. (1) A S-VACC may have a common seal but need not have one.

(2) Sections 51 and 52 apply whether a S-VACC has a common seal or not.

Execution of deeds by S-VACC

51. (1) A S-VACC may execute a document described or expressed as a deed without affixing a common seal onto the document by signature —

(a) on behalf of the S-VACC by a director of the S-VACC and a secretary of the S-

VACC;

- (b) on behalf of the S-VACC by at least 2 directors of the S-VACC; or
- (c) on behalf of the S-VACC by a director of the S-VACC in the presence of a witness who attest the signature.

(2) A document mentioned in subsection (1) that is signed on behalf of the S-VACC in accordance with that subsection has the same effect as if the document were executed under the common seal of the S-VACC.

(3) Where a document is to be signed by a person on behalf of –

- (a) more than one S-VACC; or
- (b) a S-VACC and at least one company incorporated under the Companies Act,

the document is not considered to be signed by that person for the purposes of subsection (1) or (2) unless the person signs the document separately in each capacity.

(4) This section applies in the case of a document mentioned in subsection (1) that is executed by the S-VACC in the name or on behalf of another person, whether or not that person is also a S-VACC.

Alternative to sealing

52. Where any written law or rule of law requires any document to be under or executed under the common seal of a S-VACC, or provides for certain consequences if it is not, a document satisfies that written law or rule of law if the document is signed in the manner set out in section 51(1)(a), (b) or (c) and (3).

PART 5 SUB-FUNDS

Registration of Sub-Funds

53. (1) No S-VACC shall form a Sub-Fund unless it has applied for registration of that Sub-Fund in accordance with this section.

(2) Any S-VACC desiring registration of any Sub-Fund shall –

- (a) submit to the Registrar the prescribed forms; and
- (b) furnish the Registrar with such other information as may be prescribed; and
- (c) pay the Registrar the prescribed fee.

(3) Upon receipt of the documents, information and payment referred in subsection (2), the Registrar shall, subject to this Act, register such Sub-Fund.

(4) On the registration of the Sub-Fund, the Registrar shall in the prescribed manner issue a notice of registration of such Sub-Fund in the prescribed form stating that such Sub-Fund is, on and from the date specified in the notice, registered as a Sub-Fund of the relevant S-VACC.

Duty of S-VACC to provide information on Sub-Funds

54. (1) A S-VACC must by notice furnish to the Registrar the prescribed particulars relating to any change in the name of, or termination of any Sub-Fund, within 1 business day after such change in name or termination, as the case may be.

(2) The information to be furnished to the Registrar under subsection (1) shall be given in such form as may be prescribed or, if not prescribed, in such form as the Registrar may determine.

(3) If a S-VACC fails to comply with subsection (1), the S-VACC and any officer of it who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Segregated liability of Sub-Funds

55. (1) In the case of a S-VACC with Sub-Funds, and notwithstanding that a Sub-Fund is not a separate legal person –

- (a) the assets of a Sub-Fund must not be used to discharge the liabilities of or claims against the S-VACC or any other Sub-Fund of the S-VACC; and
- (b) any liability incurred on behalf of or attributable to any Sub-Fund of a S-VACC must be discharged solely out of the assets of that Sub-Fund.

(2) Any provision, whether contained in a constitution, agreement, contract or otherwise, shall be void to the extent that it is inconsistent with subsection (1) and any application of, or agreement to apply, assets in contravention of either of these provisions shall be void.

(3) A S-VACC may allocate any assets or liabilities which –

- (a) it receives or incurs –
 - (i) on behalf of its Sub-Funds; or
 - (ii) in order to enable the operation of the Sub-Funds; and
- (b) are not attributable to any particular Sub-Fund,

between its Sub-Funds in a manner that it considers fair to shareholders.

(4) The property of a Sub-Fund is subject to orders of the Court as it would have been had the Sub-Fund been a separate legal person.

(5) A S-VACC may sue and be sued in respect of a particular Sub-Fund and may exercise the same rights of set-off in relation to that Sub-Fund as apply at law in respect of a company incorporated under the Companies Act.

Penalty for failure to ensure segregated liability of Sub-Funds

56. (1) If default is made by a S-VACC in complying with section 55, the S-VACC and every officer of the S-VACC who, without reasonable excuse, is in default shall each be guilty of an offence and liable on conviction –

- (a) where the offence was found to have been committed with intent to defraud, to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction; or
- (b) in any other case, to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Cross Sub-Fund investment

57. A S-VACC may, for the account of any of its Sub-Funds, and subject to such regulations as the Minister may prescribe, acquire by subscription or transfer for consideration, shares of any class or classes, however described, representing other Sub-Funds of the same S-VACC.

PART 6 SHARES, DEBENTURES AND CHARGES

Division 1 – Shares

Rights and powers attaching to shares

58. (1) The assets of a S-VACC belong exclusively to the S-VACC and no shareholder has any interest in the assets of the S-VACC.

(2) The rights which attach to each share of any given class are –

- (a) the rights, in accordance with the constitution of the S-VACC, to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management or disposal of, the exercise of, the redemption

of, or the expiry of, any right, interest, title or benefit in the property or any part of the property of the S-VACC, or to receive sums paid out of such profits, income, or other payments or returns;

- (b) the right, in accordance with the constitution of the S-VACC, to vote at any general meeting of the S-VACC or at any meeting of shareholders of that class of shares; and
- (c) such other rights as may be provided for in the constitution of the S-VACC in relation to shares of that class.

Differences in calls and payments, etc.

59. (1) A S-VACC if so authorised by its constitution may —

- (a) make arrangements on the issue of shares for varying the amounts and times of payment of calls as between shareholders;
- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares although no part of that amount has been called up; and
- (c) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Reserve liability

(2) A S-VACC may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the S-VACC being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes of the S-VACC being wound up, but no such resolution shall prejudice the rights of any person acquired before the passing of the resolution.

Share warrants

60. A S-VACC shall not issue any share warrant stating that the bearer of the warrant is entitled to the shares therein specified and which enables the shares to be transferred by delivery of the warrant.

Validation of shares improperly issued

61. Where a S-VACC has purported to issue or allot shares and the creation, issue or allotment of those shares was invalid by reason of any provision of this or any other written law or of the constitution of the S-VACC or otherwise or the terms of issue or allotment were inconsistent with or unauthorised by any such provision the Court may, upon application made by the S-VACC or by a holder or mortgagee of any of those

shares or by a creditor of the S-VACC and upon being satisfied that in all the circumstances it is just and equitable to do so, make an order validating the issue or allotment of those shares or confirming the terms of issue or allotment thereof or both and upon a copy of the order being lodged with the Registrar those shares shall be deemed to have been validly issued or allotted upon the terms of the issue or allotment thereof.

Redenomination of shares

62. (1) A S-VACC may by ordinary resolution convert its share capital or any class of shares from one currency to another currency.

(2) A resolution under this section may authorise a S-VACC to redenominate its share capital—

- (a) on more than one occasion; and
- (b) at a specified time or under specified circumstances.

(3) The redenomination must be made at a spot rate of exchange specified in the resolution.

(4) The rate referred to in subsection (3) must be either—

- (a) a rate prevailing on a day specified in the resolution; or
- (b) a rate determined by taking the average of rates prevailing on each consecutive day of a period specified in the resolution.

(5) The day or period specified for the purposes of subsection (4) must be within the period of 28 days ending on the day before the resolution is passed.

(6) A resolution under this section may specify conditions which must be met before the redenomination takes effect.

(7) Redenomination in accordance with a resolution under this section takes effect—

- (a) on the day on which the resolution is passed; or
- (b) on such later day as may be determined in accordance with the resolution.

(8) A resolution under this section lapses if the redenomination for which it provides has not taken effect at the end of the period of 28 days beginning on the date on which it is passed.

(9) A S-VACC's constitution may exclude or restrict the exercise of a power conferred by this section.

(10) In this section and section 63 and section 64, “redenomination” means the conversion of share capital or any class of shares from one currency to another.

Effect of redenomination

63. (1) A redenomination of shares shall not affect—

- (a) any rights or obligations of members under the S-VACC’s constitution or any restrictions affecting members under the S-VACC’s constitution; or
- (b) any entitlement to dividends (including any entitlement to dividends in a particular currency), voting rights and liability in respect of amounts remaining unpaid on shares (including liability in a particular currency).

(2) For the purposes of subsection (1), the reference to a S-VACC’s constitution includes the terms on which any shares of the S-VACC are allotted or held.

Rights of holders of classes of shares

64. (1) If, in the case of a S-VACC the share capital of which is divided into different classes of shares, provision is made by the constitution for authorising the variation or abrogation of the rights attached to any class of shares in the S-VACC, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of that provision, the rights attached to any such class of shares are at any time varied or abrogated, the holders of not less in the aggregate than 5% of the total number of issued shares of that class may apply to the Court to have the variation or abrogation cancelled, and, if any such application is made, the variation or abrogation shall not have effect until confirmed by the Court.

(2) An application shall not be invalid by reason of the applicants or any of them having consented to or voted in favour of the resolution for the variation or abrogation if the Court is satisfied that any material fact was not disclosed by the S-VACC to those applicants before they so consented or voted.

(3) The application shall be made within one month after the date on which the consent was given or the resolution was passed or such further time as the Court allows, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they appoint in writing for the purpose.

(4) On the application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, may, if satisfied having regard to all the circumstances of the case that the variation or abrogation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation or abrogation, as the case may be, and shall, if not so satisfied, confirm it and the decision of the Court shall be final.

(5) The S-VACC shall, within 14 days after the making of an order by the Court on any such application, lodge a copy of the order with the Registrar and if default is made in complying with this provision the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

(6) This section shall not operate so as to limit or derogate from the rights of any person to obtain relief under section 91.

Conversion of shares

65. (1) A S-VACC which is divided into different classes of shares may make provision in its constitution to authorise the conversion of one class of shares into another class of shares.

(2) Section 64 shall apply where a conversion of shares undertaken by a S-VACC involves a variation or an abrogation of the rights attached to any class of shares in the S-VACC.

Power to repurchase or redeem own shares

66. (1) Subject to subsection (2), the repurchase or redemption by a S-VACC of its own shares shall be on such terms and in such manner as may be provided by its constitution and in accordance with this section and section 67 of this Act.

(2) A S-VACC shall not repurchase or redeem its own shares unless they are fully paid, but nothing in this subsection shall prevent a repurchase or redemption being made under section 57.

Treatment of repurchased or redeemed shares

67. Shares of a S-VACC which have been repurchased or redeemed by or otherwise transferred to the S-VACC shall be cancelled and the amount of the issued share capital of the S-VACC shall be reduced by the amount of the repurchase, redemption or transfer consideration paid by the S-VACC for the repurchase, redemption or transfer of the shares.

Division 2 – Debentures

Register of debenture holders and copies of trust deed

68. (1) Every S-VACC which issues debentures (not being debentures transferable by delivery) shall keep a register of holders of the debentures at the registered office of the S-VACC or at some other place in Singapore.

(2) Every S-VACC shall within 7 days after the register is first kept at a place other than the registered office lodge with the Registrar notice of the place where the register

is kept and shall, within 7 days after any change in the place at which the register is kept, lodge with the Registrar notice of the change.

(3) The register shall except when duly closed be open to the inspection of the registered holder of any debentures and of any holder of shares in the S-VACC and shall contain particulars of the names and addresses of the debenture holders, the amount of debentures held by them, and where the debenture issued relates to any liability incurred on behalf of or attributable to any Sub-Fund, the name and registration number of that Sub-Fund.

(4) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with the provisions contained in the constitution or in the debentures or debenture stock certificates, or in the trust deed or other document relating to or securing the debentures, during such periods (not exceeding in the aggregate 30 days in any calendar year) as is therein specified.

(5) Every registered holder of debentures and every holder of shares in a S-VACC shall at his request be supplied by the S-VACC with a copy of the register of the holders of debentures of the S-VACC or any part thereof on payment of \$1 for every page or part thereof required to be copied, but the copy need not include any particulars as to any debenture holder other than his name and address and the debentures held by him.

(6) A copy of any trust deed relating to or securing any issue of debentures shall be forwarded by the S-VACC to a holder of those debentures at his request on payment of the sum of \$3 or such less sum as is fixed by the S-VACC, or where the copy has to be specially made to meet the request on payment of \$1 for every page or part thereof required to be copied.

(7) If inspection is refused, or a copy is refused or not forwarded within a reasonable time (but not more than one month) after a request has been made pursuant to this section, the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence.

(8) If a S-VACC fails to comply with this section, the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Specific performance of contracts to subscribe for debentures

69. A contract with a S-VACC to take up and pay for any debentures of the S-VACC may be enforced by an order for specific performance.

Perpetual debentures

70. A condition contained in any debenture or in any deed for securing any debentures shall not be invalid by reason only that the debentures are thereby made

irredeemable or redeemable only on the happening of a contingency however remote or on the expiration of a period however long, any rule of law or equity to the contrary notwithstanding.

Reissue of redeemed debentures

71. (1) Where a S-VACC has redeemed any debentures—
- (a) unless any provision to the contrary, whether express or implied, is contained in the constitution or in any contract entered into by the S-VACC; or
 - (b) unless the S-VACC has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the S-VACC shall have and shall be deemed always to have had power to reissue the debentures, either by reissuing the same debentures or by issuing other debentures in their place but the reissue of a debenture or the issue of one debenture in place of another under this subsection shall not be regarded as the issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the S-VACC.

(2) After the reissue the person entitled to the debentures shall have and shall be deemed always to have had the same priorities as if the debentures had never been redeemed.

(3) Where a S-VACC has deposited any of its debentures to secure advances on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the S-VACC having ceased to be in debit while the debentures remain so deposited.

Power of Court in relation to certain irredeemable debentures

72. (1) Notwithstanding anything in any debenture or trust deed, the security for any debentures which are irredeemable or redeemable only on the happening of a contingency shall, if the Court so orders, be enforceable, immediately or at such other time as the Court directs if on the application of the trustee for the holders of the debentures or (where there is no trustee) on the application of the holder of any of the debentures the Court is satisfied that —

- (a) at the time of the issue of the debentures the assets of the S-VACC which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;
- (b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60% of the principal sum of moneys outstanding (regard being had to all prior charges and charges ranking

pari passu if any); and

- (c) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation are worth less than the principal sum and the borrowing S-VACC is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the Court considers would be a fair rate to expect from a similar investment.

(2) Subsection (1) shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or the relevant trust deed or under a compromise or arrangement between the borrowing S-VACC and creditors.

(3) Subsection (1) shall not apply in relation to any debenture that is offered to the public for subscription or purchase.

Division 3 – Title and Transfers

Nature of shares

73. The shares or other interest of any member in a S-VACC shall be movable property, transferable in a manner provided by the constitution of the S-VACC and shall not be of the nature of immovable property.

Numbering of shares

74. (1) Each share in a S-VACC shall be distinguished by an appropriate number.

(2) Notwithstanding subsection (1) —

- (a) if at any time all the issued shares in a S-VACC or all the issued shares therein of a particular class are fully paid up and rank equally for all purposes, none of those shares need thereafter have a distinguishing number so long as each of those shares remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up; or
- (b) if all the issued shares in a S-VACC are evidenced by certificates in accordance with section 76 and each certificate is distinguished by an appropriate number and that number is recorded in the register of members, none of those shares need have a distinguishing number.

Share certificates

75. (1) Subject to subsection (2), every S-VACC shall within 60 days after the allotment of any of its shares or debentures, and within 30 days after the date on which a transfer (other than such a transfer as the S-VACC is for any reason entitled to refuse

to register and does not register) of any of its shares or debentures is lodged with the S-VACC, complete and have ready for delivery all the appropriate certificates and debentures in connection with the allotment or transfer.

(2) Subsection (1) does not require a S-VACC to complete and have ready for delivery share certificates in the following circumstances :-

(a) where the S-VACC's constitution states that share certificates will not be issued and contains provision for the issue of written confirmations of entry in the register of members; or

(b) where the shareholder has indicated to the S-VACC in writing that the shareholder does not wish to receive a certificate.

(3) If default is made in complying with subsection (1), the S-VACC and every officer of the S-VACC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(4) If any S-VACC on which a notice has been served requiring the S-VACC to make good any default in complying with subsection (1) fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the S-VACC and any officer of the S-VACC to make good the default within such time as is specified in the order, and the order may provide that all costs of and incidental to the application shall be borne by the S-VACC or by any officer of the S-VACC in default in such proportions as the Court thinks fit.

Certificate to be evidence of title

76. (1) A certificate under the common or official seal of a S-VACC specifying any shares held by any member of the S-VACC shall be prima facie evidence of the title of the member to the shares.

(2) Every share certificate shall be under the common seal of the S-VACC and shall state as at the date of the issue of the certificate –

(a) the name of the S-VACC and the authority under which the S-VACC is constituted;

(b) the address of the registered office of the S-VACC in Singapore, or, where the certificate is issued by a branch office, the address of that branch office; and

(c) the class of the shares, the Sub-Fund to which the shares relate (where applicable), whether the shares are fully or partly paid up and the amount (if any) unpaid on the shares.

(3) Failure to comply with this section shall not affect the rights of any holder of shares.

(4) If default is made in complying with this section, the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence.

S-VACC may have duplicate common seal

77. A S-VACC may, if authorised by its constitution, have a duplicate common seal which shall be a facsimile of the common seal of the S-VACC with the addition on its face of the words “Share Seal” and a certificate under such duplicate seal shall be deemed to be sealed with the common seal of the S-VACC for the purposes of this Act.

Loss or destruction of certificates

78. (1) Subject to subsection (2), where a certificate or other document of title to shares or debentures is lost or destroyed, the S-VACC shall on payment of a fee not exceeding \$2 issue a duplicate certificate or document in lieu thereof to the owner on his application accompanied by —

- (a) a statutory declaration that the certificate or document has been lost or destroyed, and has not been pledged, sold or otherwise disposed of, and, if lost, that proper searches have been made; and
- (b) an undertaking in writing that if it is found or received by the owner it will be returned to the S-VACC.

(2) Where the value of the shares or debentures represented by the certificate or document is greater than \$500 the directors of the S-VACC may, before accepting an application for the issue of a duplicate certificate or document, require the applicant —

- (a) to cause an advertisement to be inserted in a newspaper circulating in a place specified by the directors stating that the certificate or document has been lost or destroyed and that the owner intends after the expiration of 14 days after the publication of the advertisement to apply to the S-VACC for a duplicate; or
- (b) to furnish a bond for an amount equal to at least the current market value of the shares or debentures indemnifying the S-VACC against loss following on the production of the original certificate or document,

or may require the applicant to do both of those things.

(3) For the purposes of this section in relation to a book-entry security, a reference to an owner therein shall be construed as a reference to the Depository.

(4) Subsection (2) shall not apply to documents evidencing title in relation to listed securities which have been deposited with the Depository and registered in its name or its nominee’s name.

Transfer of shares or debentures

79. Notwithstanding anything in its constitution, a S-VACC shall not register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the S-VACC, but this section shall not prejudice any power to register as shareholder or debenture holder any person to whom the right to any shares or debentures of the S-VACC has been transmitted by operation of law.

Registration of transfer at request of transferor by S-VACCs

80. (1) On the request in writing of the transferor of any share, debenture or other interest in a S-VACC, the S-VACC shall enter in the appropriate register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(2) On the request in writing of the transferor of a share or debenture, the S-VACC shall by notice in writing require the person having the possession, custody or control of the share certificate or debenture and the instrument of transfer thereof or either of them to deliver or produce it or them to the office of the S-VACC within a stated period, being not less than 7 and not more than 28 days after the date of the notice, to have the share certificate or debenture cancelled or rectified and the transfer registered or otherwise dealt with.

(3) If any person refuses or neglects to comply with a notice given under subsection (2), the transferor may apply to a judge to issue a summons for that person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered or produced as required by the notice.

(4) Upon appearance of a person so summoned the Court may examine him upon oath and receive other evidence, or if he does not appear after being duly served with such summons, the Court may receive evidence in his absence and in either case the Court may order him to deliver such documents to the S-VACC upon such terms or conditions as to the Court seems fit, and the costs of the summons and proceedings thereon shall be in the discretion of the Court.

(5) Lists of share certificates or debentures called in under this section and not delivered or produced shall be exhibited in the office of the S-VACC and shall be advertised in such newspapers and at such times as the S-VACC thinks fit.

Refusal to register transfer by S-VACC

81. (1) A S-VACC may refuse to register any transfer of shares if—

(a) there exists a minimum requirement as to the number or value of shares that are to be held by any shareholder of the S-VACC and the transfer would result in either the transferor or transferee holding less than the required minimum; or

(b) the transfer is inconsistent with any provision of the S-VACC's constitution.

(2) If a S-VACC refuses to register a transfer of any share, debenture or other interest in the S-VACC, it shall, within 30 days after the date on which the transfer was lodged with it, send to the transferor and the transferee notice of the refusal.

(3) Where an application is made to a S-VACC for a person to be registered as a member in respect of shares which have been transferred or transmitted to him by act of parties or operation of law, the S-VACC shall not refuse registration by virtue of any discretion in that behalf conferred by its constitution unless it has served on the applicant, within 30 days beginning with the day on which the application was made, a notice in writing stating the facts which are considered to justify refusal in the exercise of that discretion.

(4) Nothing in this Act requires a S-VACC to register a transfer or give notice to any person of a refusal to register a transfer where registering the transfer or giving the notice would result in a contravention of any provision of law (including any law that is for the time being in force in a country or territory other than Singapore).

(5) If default is made in complying with this subsection (2) or (3), the S-VACC and every officer of the S-VACC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Certification of transfer of shares

82. (1) The certification by a S-VACC of any instrument of transfer of shares, debentures or other interests in the S-VACC shall be taken as a representation by the S-VACC to any person acting on the faith of the certification that there have been produced to the S-VACC such documents as on the face of them show a prima facie title to the shares, debentures or other interests in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the shares, debentures or other interests.

(2) Where any person acts on the faith of a false certification by a S-VACC made negligently, the S-VACC shall be under the same liability to him as if the certification had been made fraudulently.

(3) Where any certification by a S-VACC is expressed to be limited to 42 days or any longer period from the date of certification, the S-VACC and its officers shall not, in the absence of fraud, be liable in respect of the registration of any transfer of shares, debentures or other interests comprised in the certification after the expiration of the period so limited or any extension thereof given by the S-VACC if the instrument of transfer has not within that period been lodged with the S-VACC for registration.

(4) For the purposes of this section —

- (a) an instrument of transfer is to be treated as certificated if it bears the words “certificate lodged” or words to the like effect;

- (b) the certification of an instrument of transfer is to be treated as made by a S-VACC if —
 - (i) the person issuing the instrument is a person apparently authorised to issue certificated instruments of transfer on the S-VACC’s behalf; and
 - (ii) the certification is signed by a person apparently authorised to certificate transfers on the S-VACC’s behalf or by any officer either of the S-VACC or of a corporation so apparently authorised; and
- (c) a certification that purports to be authenticated by a person’s signature or initials (whether handwritten or not) shall be deemed to be signed by him unless it is shown that the signature or initials were not placed there by him and were not placed there by any other person apparently authorised to use the signature or initials for the purpose of certificating transfers on the S-VACC’s behalf.

Transfer by personal representative

83. (1) A transfer of the share, debenture or other interest of a deceased person made by his personal representative shall, although the personal representative is not himself a member of the S-VACC, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

(2) The production to a S-VACC of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, of a deceased person having been granted to some person shall be accepted by the S-VACC, notwithstanding anything in its constitution, as sufficient evidence of the grant.

(3) In this section, “instrument of transfer” includes a written application for transmission of a share, debenture or other interest to a personal representative.

Division 4 – Register of Members

Interpretation of Division

84. In this Division, a reference to the register means the register of members required to be kept by a S-VACC under section 85.

Register of members

85. (1) A S-VACC shall keep a register of its members and enter therein:

- (a) the names and addresses of the members;
- (b) a statement of the shares held by each member, distinguishing each share by its

number (if any) or by the number (if any) of the certificate evidencing the member's holding;

- (c) the Sub-Fund (if any) and share class (if any) to which the share relates;
- (d) the amount paid or agreed to be considered as paid on the shares of each member;
- (e) the date at which the name of each person was entered in the register as a member;
- (f) the date at which any person who ceased to be a member during the previous 7 years so ceased to be a member; and
- (g) the date of every allotment of shares to members and the number of shares comprised in each allotment.

(2) Notwithstanding anything in subsection (1), a S-VACC may keep the names and particulars relating to persons who have ceased to be members of the S-VACC separately and the names and particulars relating to former members need not be supplied to any person who applies for a copy of the register unless he specifically requests the names and particulars of former members.

(3) The register of members shall be prima facie evidence of any matters inserted therein as required or authorised by this Act.

Index of members of S-VACC

(4) Every S-VACC having more than 50 members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index in convenient form of the names of the members and shall, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(5) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(6) If default is made in complying with this section, the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Where register to be kept

86. (1) The register of members and index, if any, shall be kept at the registered office of the S-VACC, but —

- (a) if the work of making them up is done at another office of the S-VACC in

Singapore they may be kept at that other office; or

- (b) if the S-VACC arranges with some other person to make up the register and index, if any, on its behalf they may be kept at the office of that other person at which the work is done if that office is in Singapore.

(2) Every S-VACC shall, within 14 days after the register and index, if any, are first kept at a place other than the registered office, lodge with the Registrar notice of the place where the register and index, if any, are kept and shall, within 14 days after any change in the place at which the register and index, if any, are kept, lodge with the Registrar notice of the change.

(3) If default is made in complying with this section, the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Inspection of register

87. (1) No person shall be allowed to inspect the register of members save for the following persons —

- (a) a shareholder of the S-VACC;
- (b) the fund manager of the S-VACC;
- (c) a public authority and any organisation in the course of acting on behalf of a public authority, where inspection is required to properly exercise any functions of that public authority; and
- (d) any person who is entitled to inspect pursuant to an order of Court.

(2) For the purposes of subsection (1)(c), a public authority includes—

- (a) the Government, including the Authority, Registrar, the AML/CFT Authority, any ministry, department, agency of the Government, or organ of State;
- (b) any tribunal appointed under any written law; or
- (c) any statutory body.

(3) Any person allowed to inspect the register under subsection (1) may request the S-VACC to furnish him with a copy of the register, or any part thereof, on payment in advance of \$1 or such less sum as the S-VACC requires for every page thereof required to be copied and the S-VACC shall cause any copy so requested by any person to be sent to that person within a period of 21 days or within such further period as the Registrar considers reasonable in the circumstances commencing on the day next after the day on which the request is received by the S-VACC.

(4) If any copy so requested is not sent within the period prescribed by subsection (3), the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$400 and also to a default penalty.

(5) If default is made in complying with this section, the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Consequences of failure to comply with requirements as to register owing to agent's default

88. Where, by virtue of section 86(1)(b), the register of members is kept at the office of some person other than the S-VACC, and by reason of any default of his, the S-VACC fails to comply with section 86(1) or 86(2) or section 87 or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the S-VACC who was in default, and the power of the Court under section 380 shall extend to the making of orders against that other person and his officers and employees.

Power of Court to rectify register

89. (1) If—

- (a) the name of any person is, without sufficient cause, entered in, or omitted from, the register;
- (b) default is made as to the details contained in any entry on the register in respect of a person's holding of shares in the S-VACC;
- (c) default is made or unnecessary delay takes place in entering in the register of the fact of any person having ceased to be a member,

the person aggrieved, or any member of the S-VACC, or the S-VACC, may apply to the Court for rectification of the register and the Court may refuse the application or may order rectification of the register and payment by the S-VACC of any damages sustained by any party to the application.

(2) On an application under subsection (1), the Court may decide—

- (a) any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the S-VACC on the other hand; and
- (b) generally any question necessary or expedient to be decided for rectification of the register.

(3) The Court when making an order for the rectification of the register shall by its order direct a notice of the rectification to be so lodged.

(4) No application for the rectification of a register in respect of an entry which was made in the register more than 30 years before the date of the application shall be entertained by the Court.

(5) A S-VACC may, without application to the Court, at any time rectify any error or omission in the register provided that such a rectification shall not adversely affect any person unless the person agrees to the rectification made.

(6) Without prejudice to the generality of subsection (5), a rectification may be effected by the S-VACC under that subsection of an error or omission that relates to the amount of the S-VACC's issued share capital (whether it consists of an overstatement or an understatement of it).

Limitation of liability of trustee, etc., registered as holder of shares

90. (1) Any trustee, executor or administrator of the estate of any deceased person who was registered in a register as the holder of a share in any S-VACC may become registered as the holder of that share as trustee, executor or administrator of that estate and shall in respect of that share be subject to the same liabilities and no more as he would have been subject to if the share had remained registered in the name of the deceased person.

(2) Any trustee, executor or administrator of the estate of any deceased person who was beneficially entitled to a share in any S-VACC being a share registered in a register may with the consent of the S-VACC and of the registered holder of that share become registered as the holder of the share as trustee, executor or administrator of that estate and shall in respect of the share be subject to the same liabilities and no more as he would have been subject to if the share had been registered in the name of the deceased person.

(3) Shares in a S-VACC registered in a register and held by a trustee in respect of a particular trust shall at the request of the trustee be marked in the register in such a way as to identify them as being held in respect of the trust.

(4) Subject to this section, no notice of any trust expressed, implied or constructive shall be entered in a register and no liabilities shall be affected by anything done in pursuance of subsection (1), (2) or (3) or pursuant to the law of any other place which corresponds to this section and the S-VACC concerned shall not be affected by notice of any trust by anything so done.

Personal remedies in cases of oppression or injustice

91. (1) Any member or holder of a debenture of a S-VACC or, in the case of a declared S-VACC under Part 10, the Minister may apply to the Court for an order under

this section on the ground —

- (a) that the affairs of the S-VACC are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the S-VACC; or
- (b) that some act of the S-VACC has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

(2) If on such application the Court is of the opinion that either of such grounds is established the Court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may —

- (a) direct or prohibit any act or cancel or vary any transaction or resolution;
- (b) regulate the conduct of the affairs of the S-VACC in future;
- (c) authorise civil proceedings to be brought in the name of or on behalf of the S-VACC by such person or persons and on such terms as the Court may direct;
- (d) provide for the purchase of the shares or debentures of the S-VACC by other members or holders of debentures of the S-VACC or by the S-VACC itself; or
- (e) provide that the S-VACC be wound up.

(3) Where an order that the S-VACC be wound up is made pursuant to subsection (2)(e), the provisions of this Act relating to winding up of a S-VACC shall, with such adaptations as are necessary, apply as if the order had been made upon an application duly made to the Court by the S-VACC.

(4) Where an order under this section makes any alteration in or addition to any S-VACC's constitution, then, notwithstanding anything in any other provision of this Act, but subject to the provisions of the order, the S-VACC concerned shall not have power, without the leave of the Court, to make any further alteration in or addition to the constitution inconsistent with the provisions of the order; but subject to the foregoing provisions of this subsection the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the S-VACC.

(5) A copy of any order made under this section shall be lodged by the applicant with the Registrar within 14 days after the making of the order.

(6) Any person who fails to comply with subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(7) This section shall apply to a person who is not a member of a S-VACC but to whom shares in the S-VACC have been transmitted by operation of law as it applies to members of a S-VACC; and references to a member or members shall be construed accordingly.

Derivative or representative actions

92. (1) In this section and section 93 —

“complainant” means —

- (a) any member of a S-VACC;
- (b) the Minister, in the case of a declared S-VACC under Part 10; or
- (c) any other person who, in the discretion of the Court, is a proper person to make an application under this section.

(2) Subject to subsection (3), a complainant may apply to the Court for leave to bring an action or arbitration in the name and on behalf of the S-VACC or intervene in an action or arbitration to which the S-VACC is a party for the purpose of prosecuting, defending or discontinuing the action or arbitration on behalf of the S-VACC.

(3) No action or arbitration may be brought and no intervention in an action or arbitration may be made under subsection (2) unless the Court is satisfied that —

- (a) the complainant has given 14 days’ notice to the directors of the S-VACC of his intention to apply to the Court under subsection (2) if the directors of the S-VACC do not bring, diligently prosecute or defend or discontinue the action or arbitration;
- (b) the complainant is acting in good faith; and
- (c) it appears to be prima facie in the interests of the S-VACC that the action or arbitration be brought, prosecuted, defended or discontinued.

(4) Where a complainant on an application can establish to the satisfaction of the Court that it is not expedient to give notice as required in subsection (3)(a), the Court may make such interim order as it thinks fit pending the complainant giving notice as required.

(5) In granting leave under this section, the Court may make such orders or interim orders as it thinks fit in the interests of justice, including (but not limited to) the following:

- (a) an order authorising the complainant or any other person to control the conduct of the action or arbitration;
- (b) an order giving directions for the conduct of the action or arbitration by the person so authorised; and
- (c) an order requiring the S-VACC to pay reasonable legal fees and disbursements incurred by the complainant in connection with the action or arbitration.

(6) Where the action has been commenced or is to be brought in the State Courts, an application for leave under subsection (2) shall be made in a District Court.

Evidence of shareholders' approval not decisive — Court approval to discontinue action under section 92

93. (1) An application made or an action brought or intervened in under section 92 shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the S-VACC has been or may be approved by the members of the S-VACC, but evidence of approval by the members may be taken into account by the Court in making an order under section 92.

(2) An application made or an action brought or intervened in under section 92 shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given upon such terms as the Court thinks fit and, if the Court determines that the interest of any complainant may be substantially affected by such stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the complainant.

(3) In an application made or an action brought or intervened in under section 92, the Court may at any time order the S-VACC to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be accountable for such interim costs upon final disposition of the application or action.

Division 5 – Register of Charges

Registration of charges created by S-VACCs

94. (1) Subject to this Division, where a charge to which this section applies is created by a S-VACC there shall be lodged with the Registrar in the prescribed manner for registration, within 30 days after the creation of the charge, a statement containing the prescribed particulars of the charge, and if this section is not complied with in relation to the charge the charge shall, so far as any security on the S-VACC's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the S-VACC.

(2) In connection with the registration of a charge to which this section applies which

is created by a S-VACC there shall be produced to the Registrar, upon the Registrar's request and for the purposes of inspection, at no cost to the Registrar, the instrument (if any) by which the charge is created or evidenced or a certified true copy thereof.

(3) Nothing in subsection (1) shall prejudice any contract or obligation for repayment of the money secured by a charge and when a charge becomes void under this section the money secured thereby shall immediately become payable.

(4) This section applies to the following charges:

- (a) a charge to secure any issue of debentures;
- (b) a charge on uncalled share capital of a S-VACC;
- (c) a charge on shares of a subsidiary of a S-VACC which are owned by the S-VACC;
- (d) a charge created or evidenced by an instrument which if executed by an individual, would require registration as a bill of sale;
- (e) a charge on land wherever situate or any interest therein but not including any charge for any rent or other periodical sum issuing out of land;
- (f) a charge on book debts of the S-VACC;
- (g) a floating charge on the undertaking or property of a S-VACC;
- (h) a charge on calls made but not paid;
- (i) a charge on a ship or aircraft or any share in a ship or aircraft; and
- (j) a charge on goodwill, on a patent or a licence under a patent, on a trade mark or a licence to use a trademark, on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design.

(5) The reference to a charge on book debts in subsection (4)(f) shall not include a reference to a charge on a negotiable instrument or on debentures issued by the Government.

(6) A charge referred to in subsection (4) does not include a charge created at any time on or after the date of commencement of the International Interests in Aircraft Equipment Act 2009 to the extent that it is capable of being registered under that Act.

(7) In subsection (6), "registered" has the same meaning as in section 2(1) of the International Interests in Aircraft Equipment Act 2009.

(8) Where a charge created in Singapore affects property outside Singapore, the statement containing the prescribed particulars of the charge may be lodged for

registration under and in accordance with subsection (1) notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the place in which the property is situate.

(9) When a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture holders of that series are entitled equally is created by a S-VACC, it shall be sufficient if there are lodged with the Registrar for registration within 30 days after the execution of the instrument containing the charge, or if there is no such instrument after the execution of the first debenture of the series, a statement containing the following particulars:

- (a) the total amount secured by the whole series;
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering instrument, if any, by which the security is created or defined;
- (c) a general description of the property charged and where the property charged is property of a Sub-Fund, the name and registration number of the Sub-Fund; and
- (d) the names of the trustee, if any, for the debenture holders.

(10) For the purposes of subsection (9), where more than one issue is made of debentures in the series, there shall be lodged within 30 days after each issue particulars of the date and amount of each issue, but an omission to do so shall not affect the validity of the debentures issued.

(11) Where any commission, allowance or discount has been paid or made either directly or indirectly by a S-VACC to any person in consideration of his (whether absolutely or conditionally) subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any debentures the particulars required to be lodged under this section shall include particulars as to the amount or rate per cent of the commission, allowance or discount so paid or made, but omission to do so shall not affect the validity of the debentures issued.

(12) The deposit of any debentures as security for any debt of the S-VACC shall not for the purposes of subsection (11) be treated as the issue of the debentures at a discount.

(13) No charge or assignment to which this section applies (except a charge or assignment relating to land) need be filed or registered under any other written law.

(14) Where a charge requiring registration under this section is created before the lapse of 30 days after the creation of a prior unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or any part of that debt, then to the extent to which the subsequent charge is a security for the same debt or part thereof, and so far as respects the property comprised in the prior charge, the subsequent charge shall not be operative or have any validity unless it is proved to

the satisfaction of the Court that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.

Duty to register charges

95. (1) Documents and particulars required to be lodged for registration in accordance with section 94 may be lodged for registration in the prescribed manner by the S-VACC concerned or by any person interested in the documents, but if default is made in complying with that section the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(2) Where registration is effected by some person other than the S-VACC, that person shall be entitled to recover from the S-VACC the amount of any fees properly paid by him on the registration.

Duty of S-VACC to register charges existing on property acquired

96. (1) Where a S-VACC acquires any property which is subject to a charge of any such kind as would, if it had been created by the S-VACC after the acquisition of the property, have been required to be registered under this Division, the S-VACC shall cause a statement of the prescribed particulars to be lodged with the Registrar for registration within 30 days after the date on which the acquisition is completed or the date of the of the S-VACC in Singapore, as the case may be.

(2) If default is made in complying with this section, the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Register of charges to be kept by Registrar

97. (1) The Registrar shall keep a register of all the charges lodged for registration under this Division and shall enter in the register with respect to those charges the following particulars:

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are required to be contained in a statement furnished under section 94(9)94; and
- (b) in the case of any other charge —
 - (i) if the charge is a charge created by the S-VACC, the date of its creation, and if the charge was a charge existing on property acquired by the S-VACC the date of the acquisition of the property;

- (ii) the amount secured by the charge;
- (iii) a description sufficient to identify the property charged and where the property charged is property of a Sub-Fund, the name and registration number of the Sub-Fund; and
- (iv) the name of the person entitled to the charge.

(2) The Registrar shall issue a notice to the S-VACC concerned of the registration of a charge and the notice shall be conclusive evidence that the requirements as to registration have been complied with.

(3) Upon the application of the S-VACC and payment of the prescribed fee, the Registrar shall issue to the S-VACC a certificate confirming the registration of the charge and the certificate shall be conclusive evidence that the requirements as to registration have been complied with.

Endorsement of certificate of registration on debentures

98. (1) The S-VACC shall cause to be endorsed on every debenture forming one of a series of debentures, or certificate of debenture stock which is issued by the S-VACC and the payment of which is secured by a charge so registered —

- (a) a copy of the notice of registration; or
- (b) a statement that the registration has been effected and the date of registration.

(2) Subsection (1) shall not apply to any debenture or certificate of debenture stock which has been issued by the S-VACC before the charge was registered.

(3) Every person who knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which is not endorsed as required by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

Entries of satisfaction and release of property from charge

99. (1) Where, with respect to any registered charge —

- (a) the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) the property or undertaking charged or any part thereof has been released from the charge or has ceased to form part of the S-VACC's or Sub-Fund's property

or undertaking of the S-VACC or Sub-Fund concerned,

the S-VACC may lodge with the Registrar in the prescribed form a statement of satisfaction in whole or in part, or of the fact that the property or undertaking or any part thereof has been released from the charge or has ceased to form part of the S-VACC's or Sub-Fund's property or undertaking, as the case may be, and the Registrar shall enter particulars of that statement in the register.

(2) The statement shall be endorsed with a statement by the chargee of the payment, satisfaction, release or ceasing referred to in subsection (1), as the case may be, and the second-mentioned statement shall constitute sufficient evidence of that payment, satisfaction, release or ceasing.

Extension of time for registration of charges and rectification of register

100. The Court, on being satisfied that the omission to register a charge within the time required or that the omission or mis-statement of any particular with respect to any such charge or in a statement 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 shareholders or that on other grounds it is just and equitable to grant relief, may on the application of the S-VACC or any person interested and on such terms and conditions as seem to the Court just and expedient (including a term or condition that the extension or rectification is to be without prejudice to any liability already incurred by the S-VACC or any of its officers in respect of the default) order that the time for registration be extended or that the omission or mis-statement be rectified.

S-VACC to keep copies of charging instruments and register of charges

101. (1) Every S-VACC shall cause the instrument creating any charge requiring registration under this Division or a copy thereof to be kept at the registered office of the S-VACC for as long as the charge to which the instrument relates remains in force, but in the case of a series of debentures the keeping of a copy of one debenture of the series shall be sufficient for the purposes of this subsection.

(2) An instrument creating any charge or a copy thereof, or a copy of the series of debentures, as the case may be, that is required to be kept under subsection (1) —

- (a) shall be deemed to form part of the records that are required to be kept under section 199(1) and (2) ; and
- (b) for the purposes of section 199(3), shall be retained by the S-VACC for a period of 5 years after —
 - (i) the date the debt for which the charge was given was paid or satisfied in whole;

- (ii) the date the property or undertaking charged was released or ceased to form part of the S-VACC's or Sub-Fund's property or undertaking; or
- (iii) where both of the events referred to in sub-paragraphs (i) and (ii) occur in any particular case, the later of the dates.

(3) Every S-VACC shall keep at the registered office of the S-VACC a register of charges and enter therein all charges specifically affecting property of the S-VACC and all floating charges on the undertaking or any property of the S-VACC, giving in each case a short description of the property charged including, where the property is of a Sub-Fund, the name and registration number of the Sub-Fund; the amount of the charge and (except in the case of securities to bearer) the names of the persons entitled thereto.

(4) The instruments or copies thereof and the register of charges kept in pursuance of this section shall be open to the inspection of any creditor or member of the S-VACC without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee not exceeding \$2 for each inspection as is fixed by the S-VACC.

(5) Any person may, on application to a S-VACC and on payment of a fee, not exceeding \$1 for every page or part thereof, be furnished with a copy of any instrument or debenture kept by the S-VACC in pursuance of this regulation within 3 days of his making the application.

(6) If default is made in complying with this section, the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

Documents made out of Singapore

102. Where under this Division an instrument, deed, statement or other document is required to be lodged with the Registrar within a specified time, the time so specified shall, by force of this section, in relation to an instrument, deed, statement or other document executed or made in a place out of Singapore, be extended by 7 days or such further periods as the Registrar may from time to time allow.

PART 7 MANAGEMENT AND ADMINISTRATION

Division 1- Office and Name

Registered office

103. (1) A S-VACC shall as from the date of its incorporation have a registered office within Singapore to which all communications and notices may be addressed and which

shall be open and accessible to the public for not less than 3 hours during ordinary business hours on each business day.

(2) If default is made in complying with subsection (1), the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

Office hours

104. (1) Notice in the prescribed form of the situation of the registered office, the days and hours during which it is open and accessible to the public, shall, in the case of a proposed S-VACC, be lodged with the Registrar together with its constitution, at the time of lodgment for the incorporation of the proposed S-VACC and in the case of any subsequent change of the particulars therein be so lodged within 14 days after any such change, but no notice of the days and hours during which the office is open and accessible to the public shall be required if the office is open for at least 5 hours during ordinary business hours on each business day.

(2) In subsection (1), the word “particulars”, in relation to the situation of the registered office, shall be deemed to include the address and designation of the situation or address of the registered office.

(3) If default is made in complying with this section, the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

Disclosure of name, registration number etc.

105. (1) The name of a S-VACC shall appear in legible romanised letters on —

(a) its seal, if any; and

(b) all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, indorsements, cheques, orders, receipts and letters of credit of or purporting to be issued or signed by or on behalf of the S-VACC.

(2) The registration number of a S-VACC shall appear in a legible form on all business letters, statements of account, invoices, official notices and publications of or purporting to be issued or signed by or on behalf of the S-VACC.

(3) A S-VACC shall set out the following details in every document in which any of its Sub-Fund is referred to —

“[Name of that Sub-Fund][Registration number of that Sub-Fund](being a Sub-Fund with segregated liability under section 55(1) of the S-VACC Act)”

(4) In subsection (3), “document” includes agreements, business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, indorsements, cheques, orders, receipts and letters of credit.

(5) A S-VACC shall disclose, before entering into any oral agreement on behalf of any of its Sub-Funds, the following information in respect of that Sub-Fund:

(a) its name and registration number; and

(b) that it is a Sub-Fund with segregated liability under section 55(1) of the S-VACC Act.

(6) A S-VACC shall be guilty of an offence if default is made in complying with subsection (1), (2), (3) or (5).

(7) If an officer of a S-VACC or any person on its behalf —

(a) uses or authorises the use of any seal purporting to be a seal of the S-VACC whereon its name does not so appear;

(b) issues or authorises the issue of any business letter, statement of account, invoice or official notice or publication of the S-VACC wherein its name is not so mentioned;

(c) signs, issues or authorises to be signed or issued on behalf of the S-VACC any bill of exchange, promissory note, cheque or other negotiable instrument or any indorsement, order, receipt or letter of credit wherein its name is not so mentioned;

(d) signs, issues or authorises to be signed or issued on behalf of the S-VACC any document in which the name of any of its Sub-Funds appears wherein the details under subsection (3) are not included; or

(e) authorises or agrees to any oral agreement on behalf of any of the S-VACC’s Sub-Funds before disclosing the information under subsection (5) in respect of that Sub-Fund,

he shall be guilty of an offence, and where he has contravened paragraph (c) or (d) in respect of any bill of exchange, promissory note or other negotiable instrument or any indorsement thereon or order, he shall in addition be liable to the holder of the instrument or order for the amount due thereon unless it is paid by the S-VACC.

Division 2 – Fund Managers

Fund manager

- 106.** (1) Every S-VACC must have a fund manager to manage its property.
- (2) For the purposes of subsection (1), a fund manager must not be the S-VACC itself and must be any of the following –
- (a) a holder of a capital markets services licence for fund management under the Securities and Futures Act;
 - (b) a Registered Fund Management Company under regulation 2 of the Securities and Futures (Licensing and Conduct of Business) Regulations;
 - (c) a person exempted under section 99(1)(a), (b), (c) or (d) of the Securities and Futures Act in respect of fund management; or
 - (d) such person or class of persons as the Minister may prescribe.
- (3) A person referred to under subsection (2)(a) does not include a person whose licence is suspended.

Restrictions on appointment or advertisement of fund manager

- 107.** (1) A person shall not be named as fund manager or proposed fund manager in —
- (a) any document filed or lodged with or submitted to the Registrar for the purposes of the incorporation of the S-VACC; or
 - (b) the register of fund managers, directors and secretaries of a S-VACC,
- unless, before:
- (i) the incorporation of the S-VACC; or
 - (ii) the notice under sections 144(1)(a) and (b)(i) is provided to the Registrar;
- as the case may be, the person has complied with the conditions set out in subsection (2).
- (2) The conditions to be complied with by a person referred to in subsection (1) are that the person shall have, by itself or through a registered qualified individual authorised by it, filed with the Registrar:
- (a) a declaration in the prescribed form that it has consented to act as fund manager

containing the prescribed particulars; and

(b) a statement in the prescribed form stating that it is a fund manager under section 106(2).

(3) If default is made in complying with this section, the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and also to a default penalty.

Division 3 – Directors and Officers

Directors

108. (1) Each S-VACC shall have —

(a) at least one director who is ordinarily resident in Singapore; and

(b) at least one director who is also a director of the fund manager of the S-VACC.

(2) For the avoidance of doubt, a S-VACC may have a sole director provided the sole director satisfies subsections (1)(a) and (1)(b).

(3) No person other than a natural person who has attained the age of 18 years and who is otherwise of full legal capacity shall be a director of a S-VACC.

(4) Subject to subsection (6), unless the constitution otherwise provides, a director of a S-VACC may resign by giving the S-VACC a notice in writing of his resignation.

(5) Subject to subsection (6), the resignation of a director shall not be conditional upon the S-VACC's acceptance of his resignation.

(6) Notwithstanding anything in this Act or in the constitution of the S-VACC, or in any agreement with the S-VACC, a director of a S-VACC shall not resign or vacate his office unless there is remaining in the S-VACC at least one director who is ordinarily resident in Singapore and at least one director who is a director of the fund manager of the S-VACC; and any purported resignation or vacation of office in breach of this subsection shall be deemed to be invalid.

(7) Subsection (6) shall not apply where a director of a S-VACC is required to resign or vacate his office by virtue of his disqualification or removal or the revocation of his appointment as a director, as the case may be, under section 110, 111, 112, 113, 118, 119, 120 or 122 of this Act.

(8) If there is a contravention of subsection (1), the Registrar may, either of his own motion or on the application of any person, direct the members of the S-VACC to appoint at least one director to satisfy the requirements under subsection (1) if he

considers it to be in the interests of the S-VACC for such appointment to be made.

(9) If the direction under subsection (8) is not complied with, each member in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

(10) If there is a contravention of subsection (1) and —

- (a) the Registrar fails to give the direction under subsection (8); or
- (b) such direction has been given but is not complied with,

the court may, on the application of the Registrar or any person, order the members of the S-VACC to make the appointment if it considers it to be in the interests of the S-VACC for such appointment to be made.

(11) If a S-VACC carries on business without having at least one director who is ordinarily resident in Singapore and at least one director who is a director of the fund manager of the S-VACC for more than 6 months, a person who, for the whole or any part of the period that it so carries on business after those 6 months —

- (a) is a member of the S-VACC; and
- (b) knows that it is carrying on business in that manner,

shall be liable for the payment of all the debts of the S-VACC contracted during the period or, as the case may be, that part of it, and may be sued therefor.

Restrictions on appointment or advertisement of director

109. (1) A person shall not be named as a director or proposed director in —

- (a) any document filed or lodged with or submitted to the Registrar for the purposes of the incorporation of a S-VACC; or
- (b) the register of fund managers, directors and secretaries of a S-VACC,

unless, before —

- (i) the incorporation of the S-VACC; or
- (ii) the notice under sections 144(1)(a) and (b)(i) is provided to the Registrar,

as the case may be, the person has complied with the conditions set out in subsection (2).

(2) The conditions to be complied with by a person referred to in subsection (1) are the following:

- (a) he has, by himself or through a registered qualified individual authorised by him, filed with the Registrar —
 - (i) a declaration that he has consented to act as a director;
 - (ii) a statement in the prescribed form that he is not disqualified from acting as a director under this Act;
 - (iii) a statement in the prescribed form that he is not debarred under section 121 from acting as director of the S-VACC; and
 - (iv) a statement in the prescribed form that he is fit and proper to act as a director of the S-VACC.

(3) Subsections (1) and (2) (other than the provision relating to the signing of a consent to act as director) shall not apply to a S-VACC constitution adopted by a S-VACC after the expiration of one year from the date on which the S-VACC was entitled to commence business.

(4) If default is made in complying with this section, the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and also to a default penalty.

Requirement to be fit and proper person

110. (1) A S-VACC shall ensure that it appoints or employs fit and proper persons as its directors.

(2) Where the Registrar is satisfied that a director of a S-VACC is not a fit and proper person to act as director, the Registrar may, if it thinks necessary in the interests of the S-VACC, its shareholders or potential shareholders, or the public or a section of the public, by notice direct the S-VACC to remove the director from his office, appointment or employment or replace him, and that S-VACC shall comply with such notice, notwithstanding section 117 of this Act.

(3) In determining whether any person is a fit and proper person under subsection (1), the Registrar may consider such factors as may be prescribed.

(4) Before directing a S-VACC to remove a director from his office, appointment or employment or replace him under subsection (2), the Registrar shall —

- (a) give the S-VACC and the director notice in writing of the Registrar's intention to do so; and
- (b) in the notice referred to in paragraph (a), call upon the S-VACC and the director

to show cause within such time as may be specified in the notice why that director should not be removed or replaced.

- (5) If the S-VACC and the director referred to in subsection (4) —
- (a) fails to show cause within the time specified under subsection (4)(b) or within such extended period of time as the Registrar may allow; or
 - (b) fails to show sufficient cause,

the Registrar shall give notice in writing to the S-VACC of the date on which the direction to remove or replace the director is to take effect.

(6) Any person who is aggrieved by a direction of the Registrar under subsection (2) may, within 30 days after receiving the direction, appeal to the Minister.

(7) Notwithstanding the lodging of an appeal under subsection (6), a direction to remove or replace a S-VACC's director under subsection (2) shall continue to have effect pending the decision of the Minister.

(8) If default is made by a S-VACC in complying with subsection (1), the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and, in the case of a continuing offence, to a further fine not exceeding \$500.

(9) Any S-VACC which fails to comply with any direction of the Registrar under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

(10) No criminal or civil liability shall be incurred by a S-VACC, or any person acting on behalf of the S-VACC, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of the obligations of the S-VACC under this section.

Restriction on undischarged bankrupt

111. (1) Every person who, being an undischarged bankrupt (whether he was adjudged bankrupt by a Singapore Court or a foreign court having jurisdiction in bankruptcy), acts as director of, or directly or indirectly takes part in or is concerned in the management of, any S-VACC, except with the leave of the Court or the written permission of the Official Assignee, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) On an application by an undischarged bankrupt under subsection (1) to the Court or the Official Assignee, as the case may be, the Court or the Official Assignee may

refuse the application or approve the application subject to such condition as the Court or the Official Assignee, as the case may be, may impose.

(3) The Court shall not give leave under this section unless notice of intention to apply therefor has been served on the Minister and on the Official Assignee and the Minister and the Official Assignee or either of them may be represented at the hearing of and may oppose the granting of the application.

(4) Any person who has been granted leave by the Court or written permission by the Official Assignee under subsection (1) shall, within 14 days after the issue of the Court order or written permission, lodge a copy of the order or written permission with the Registrar.

Disqualification of unfit directors of insolvent companies

112. (1) The Court may —

- (a) on the application of the Minister or the Official Receiver as provided for in subsection (9)(a); and
- (b) on being satisfied as to the matters referred to in subsection (2),

make an order disqualifying a person specified in the order from being a director or in any way, whether directly or indirectly, being concerned in, or take part in, the management of a S-VACC during such period not exceeding 5 years after the date of the order as is specified in the order (referred to in this section as a disqualification order).

(2) The Court shall make a disqualification order under subsection (1) if it is satisfied that —

- (a) the person against whom the order is sought has been given not less than 14 days' notice of the application; and
 - (b) the person —
 - (i) is or has been a director of a company which has at any time gone into liquidation (whether while he was a director or within 3 years of his ceasing to be a director) and was insolvent at that time; and
 - (ii) that his conduct as director of that company either taken alone or taken together with his conduct as a director of any other company or companies makes him unfit to be a director of or in any way, whether directly or indirectly, be concerned in, or take part in, the management of a S-VACC.
- (3) If in the case of a person who is or has been a director of a company which is —
- (a) being wound up by the Court, it appears to the Official Receiver or to the

liquidator (if he is not the Official Receiver); or

- (b) being wound up otherwise than as mentioned in paragraph (a), it appears to the liquidator,

that the conditions mentioned in subsection (2)(b) are satisfied as respects that person, the Official Receiver or the liquidator, as the case may be, shall immediately report the matter to the Minister.

(4) The Minister may require the Official Receiver or the liquidator or the former liquidator of a company —

- (a) to furnish him with such information with respect to any person's conduct as a director of the company; and
- (b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director,

as the Minister may reasonably require for the purpose of determining whether to exercise, or of exercising, any of his functions under this section; and if default is made in complying with that requirement the Court may, on the application of the Minister, make an order requiring that person to make good the default within such time as is specified in the order.

(5) For the purposes of this section —

(a) a company has gone into liquidation —

- (i) if it is wound up by the Court, on the date of the filing of the winding up application;
- (ii) where a provisional liquidator was appointed under section 291(1) of the Companies Act or section 293(1) of this Act, as the case may be, at the time when the declaration made under that subsection was lodged with the Registrar; and
- (iii) in any other case, on the date of the passing of the resolution for the voluntary winding up; and

(b) a company was insolvent at the time it has gone into liquidation if it was unable to pay its debts, within the meaning of that expression in section 254(2) of the Companies Act or section 256(2) of this Act, as the case may be,

and references in this section to a person's conduct as a director of any company or companies include, where any of those companies have become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

(6) In deciding whether a person's conduct as a director of any particular company or companies make him unfit to be concerned in, or take part in, the management of a S-VACC as is mentioned in subsection (2)(b), the Court shall in relation to his conduct as a director of that company or, as the case may be, each of those companies have regard, generally to the matters referred to in paragraph (a), and, in particular, to the matters referred to in paragraph (b), notwithstanding that the director has not been convicted or may be criminally liable in respect of any of these matters —

- (a) (i) as to whether there has been any misfeasance or breach of any fiduciary or other duty by the director in relation to the company;
- (ii) as to whether there has been any misapplication or retention by the director of, or any conduct by the director giving rise to an obligation to account for, any money or other property of the company;
- (iii) as to the extent of the director's responsibility for any failure by the company to comply with sections 138, 190, 191, 197, 199 and 201 of the Companies Act or section 101, 85, 86, 197, 199 and 200 of this Act, as the case may be; and
- (b) (i) as to the extent of the director's responsibility for the causes of the company becoming insolvent;
- (ii) as to the extent of the director's responsibility for any failure by the company to supply any goods or services which have been paid for (in whole or in part);
- (iii) as to the extent of the director's responsibility for the company entering into any transaction liable to be set aside under section 259 of the Companies Act or section 261 of this Act, as the case may be;
- (iv) as to whether the causes of the company becoming insolvent are attributable to its carrying on business in a particular industry where the risk of insolvency is generally recognised to be higher.

(7) The Minister may, by notification in the Gazette, add to, vary or amend the matters referred to in subsection (6) and that notification may contain such transitional provisions as may appear to the Minister to be necessary or expedient.

(8) In this section, "company" includes a corporation and a foreign company as defined under s 4(1) of the Companies Act, but does not include a partnership or association to which Division 5 of Part X of the Companies Act applies.

(9) (a) In the case of a person who is or has been a director of a company which has gone into liquidation and is being wound up by the Court, an application under this section shall be made by the Official Receiver but in any other case an application shall be made by the Minister.

(b) On a hearing of an application under this section —

- (i) the Minister or the Official Receiver, as the case may be, shall appear and call the attention of the Court to any matter which appears to him to be relevant (and for this purpose the Minister may be represented) and may give evidence or call witnesses; and
- (ii) the person against whom an order is sought may appear and himself give evidence or call witnesses.

(10) This section shall not apply unless the company mentioned in subsection (2)(b) has gone into insolvent liquidation on or after 15th August 1984 and the conduct to which the Court shall have regard shall not include conduct as a director of a company that has gone into liquidation before that date.

(11) A person who acts as judicial manager, receiver or receiver manager shall not be liable to have a disqualification order made against him in respect of acts done in his capacity as judicial manager, receiver or receiver manager, as the case may be.

(12) Any person who acts in contravention of a disqualification order made under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(13) Nothing in this section shall prevent a person who is disqualified pursuant to an order made under subsection (1) from applying for leave of the Court to be concerned in or take part in the management of a S-VACC.

(14) On the hearing of an application made under subsection (13), the Minister or the Official Receiver shall appear (and for this purpose the Minister may be represented) and call attention of the Court to any matter which appears to him to be relevant to the application and may himself give evidence or call witnesses.

Disqualification of directors of companies wound up on grounds of national security or interest

113. (1) Subject to subsections (2) and (3), where a company is ordered to be wound up by the Court under section 254(1)(m) of the Companies Act or section 256(1)(j) of this Act, as the case may be, on the ground that it is being used for purposes against national security or interest, the Court may, on the application of the Minister, make an order (referred to in this section as a disqualification order) disqualifying any person who is a director of that company from being a director or in any way, directly or indirectly, being concerned in, or from taking part in, the management of a S-VACC for a period of 3 years from the date of the making of the winding up order.

(2) The Court shall not make a disqualification order against any person under subsection (1) unless the Court is satisfied that the person against whom the order is sought has been given not less than 14 days' notice of the Minister's application for the order.

(3) The Court shall not make a disqualification order against any person under subsection (1) if such person proves to the satisfaction of the Court that —

- (a) the company had been used for purposes against national security or interest without his consent or connivance; and
- (b) he had exercised such diligence to prevent the company from being so used as he ought to have exercised having regard to the nature of his function in that capacity and to all the circumstances.

(4) Any person who acts in contravention of a disqualification order made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Appointment of directors by ordinary resolution

114. Unless the constitution otherwise provides, a S-VACC may appoint a director by ordinary resolution passed at a general meeting.

Appointment of directors to be voted on individually

115. (1) At a general meeting of a S-VACC, a motion for the appointment of 2 or more persons as directors by a single resolution shall not be made unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution passed in pursuance of a motion made in contravention of this section shall be void, whether or not its being so moved was objected to at the time.

(3) Where a resolution pursuant to a motion made in contravention of this section is passed no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

(4) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(5) Nothing in this section shall —

- (a) apply to a resolution altering the S-VACC's constitution;
- (b) prevent the election of 2 or more directors by ballot or poll.

Validity of acts of directors and officers

116. The acts of a director or secretary shall be valid notwithstanding any defect that may afterwards be discovered in his appointment.

Removal of directors

117. (1) A S-VACC may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its constitution or in any agreement between it and him but where any director so removed was appointed to represent the interests of any particular class of shareholders or debenture holders the resolution to remove him shall not take effect until his successor has been appointed.

(2) Special notice shall be required of any resolution to remove a director of a S-VACC under subsection (1) or to appoint some person in place of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under subsection (1) the S-VACC shall immediately send a copy thereof to the director concerned, and the director, whether or not he is a member of the S-VACC, shall be entitled to be heard on the resolution at the meeting.

(3) Where notice is given pursuant to subsection (2) and the director concerned makes with respect thereto representations in writing to the S-VACC, not exceeding a reasonable length, and requests their notification to members of the S-VACC, the S-VACC shall, unless the representations are received by it too late for it to do so —

- (a) in any notice of the resolution given to members of the S-VACC state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the S-VACC to whom notice of the meeting is sent, whether before or after receipt of the representations by the S-VACC,

and if a copy of the representations is not so sent because they were received too late or because of the S-VACC's default the director may, without prejudice to his right to be heard orally, require that the representations shall be read out at the meeting.

(4) Notwithstanding subsections (1), (2) and (3), copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the S-VACC or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Court may order the S-VACC's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(5) A vacancy created by the removal of a director of a S-VACC under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(6) A person appointed director of a S-VACC in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become a director on the day on which the person in whose place he is appointed was last appointed a director.

(7) Nothing in subsections (1) to (6) shall be taken as depriving a person removed as a director of a S-VACC thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

(8) A director of a S-VACC shall not be removed by, or be required to vacate his office by reason of, any resolution, request or notice of the directors or any of them notwithstanding anything in the constitution or any agreement.

Disqualification to act as director on conviction of certain offences etc.

118. (1) A person shall be subject to the disqualifications provided in subsection (3) if —

- (a) the person is convicted of any of the following offences:
 - (i) any offence, whether in Singapore or elsewhere, involving fraud or dishonesty punishable with imprisonment for 3 months or more;
 - (ii) any offence under Part XII of the Securities and Futures Act;
 - (b) the person is subject to the imposition of a civil penalty under section 232 of the Securities and Futures Act;
 - (c) the person has been the subject of a direction issued under section 97(1A) of the Securities and Futures Act to remove him from his office or employment as a director or executive officer of the fund manager of the S-VACC; or
 - (d) the person has been removed as a director, executive officer or chief executive officer of the fund manager of the S-VACC in compliance with any condition under section 99(4) of the Securities and Futures Act.
- (2) Where a person is convicted in Singapore of —
- (a) any offence in connection with the formation or management of a corporation;
 - (b) any offence under section 157 or 339 of the Companies Act; or
 - (c) any offence under section 124 or 343 of this Act,

the court may make a disqualification order against the person in addition to any other sentence imposed.

(3) Subject to any leave which the Court may give pursuant to an application under subsection (6), a person who —

- (a) is disqualified under subsection (1); or

(b) has had a disqualification order made against him under subsection (2),

shall not act as a director, or take part (whether directly or indirectly) in the management of a S-VACC, during the period of the disqualification or disqualification order.

(4) The disqualifications in subsection (3) shall —

(a) in a case where the disqualified person has been convicted of any offence referred to in subsection (1) or (2) but has not been sentenced to imprisonment, take effect upon conviction and continue for a period of 5 years or for such shorter period as the court may order under subsection (2);

(b) in a case where the disqualified person has been convicted of any offence referred to in subsection (1) or (2) and has been sentenced to imprisonment, take effect upon conviction and continue for a period of 5 years after his release from prison;

(c) in a case where the disqualified person is subject to the imposition of a civil penalty under section 232 of the Securities and Futures Act, take effect upon the imposition of the civil penalty and continue for a period of 5 years after the imposition of the civil penalty;

(d) in a case where the disqualified person has been the subject of a direction issued under section 97(1A) of the Securities and Futures Act to remove him from his office or employment as a director or executive officer of the fund manager of the S-VACC, take effect upon the issuance of the direction and continue for a period of 5 years after the issuance of the direction; or

(e) in a case where the disqualified person has been removed as a director, executive officer or chief executive officer of the fund manager of the S-VACC in compliance with any condition under section 99(4) of the Securities and Futures Act, take effect upon the removal and continue for a period of 5 years after the removal.

(5) A person who contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) A person who —

(a) is disqualified under subsection (1); or

(b) has had a disqualification order made against him under subsection (2),

may apply to the Court for leave to act as a director, or to take part (whether directly or indirectly) in the management of a S-VACC during the period of the disqualification or

disqualification order, upon giving the Minister not less than 14 days' notice of his intention to apply for such leave.

(7) On the hearing of any application under subsection (6), the Minister may be represented at the hearing and may oppose the granting of the application.

(8) Without prejudice to section 388, a District Court may make a disqualification order under this section.

Disqualification for persistent default in relation to delivery of documents to Registrar

119. (1) Where a person has been persistently in default in relation to relevant requirements of the Companies Act or this Act and that person, within a period of 5 years after he has last been adjudged guilty of any offence or has had made against him an order under section 13 or 399 of the Companies Act or section 21 or 380 of this Act in relation to any such relevant requirements of the Companies Act or this Act, without the leave of the Court, is a director or promoter of, or is in any way directly or indirectly concerned or takes part in the management of a S-VACC, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) Any provision of this Act or the Companies Act which requires any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the Registrar is a relevant requirement of the Companies Act or this Act, as the case may be, for the purposes of this section.

(3) For the purposes of this section, the fact that a person has been persistently in default in relation to relevant requirements of the Companies Act or this Act may, subject to subsection (8), be conclusively proved by showing that, within a period of 5 years, he has been adjudged guilty of 3 or more offences in relation to any such requirements or has had 3 or more orders made against him under section 13 or 399 of the Companies Act, or section 21 or 380 of this Act in relation to those requirements.

(4) A person shall be treated as being adjudged guilty of 3 or more offences in relation to any such relevant requirements of the Companies Act or this Act for the purpose of subsection (3) if he is convicted of any 3 or more offences by virtue of any contravention of, or failure to comply with, any such requirements (whether on his own part or on the part of any company).

(5) For the purpose of this section, a conviction for an offence under section 154(2)(a) of the Companies Act or section 118(2)(a) of this Act shall not be treated as an offence in relation to a relevant requirement of the Companies Act or this Act.

(6) Where a person has had a third or subsequent order made against him under section 13 or 399 of the Companies Act, or section 21 or 380 of this Act and by virtue of the operation of this section that person is disqualified from being a director or

promoter of or from being in any way directly or indirectly concerned or taking part in the management of a S-VACC, nothing in this section shall be construed as preventing that person from complying with the order of the Court and for this purpose he shall be deemed to have the same status, powers and duties as he had at the time the act, matter or thing should have been done.

(7) For the purpose of this section, a certificate of the Registrar under the Companies Act and this Act stating that a person has been adjudged guilty of 3 or more offences or has had made against him 3 or more orders under section 13 or 399 of the Companies Act, or section 21 or 380 of this Act in relation to the requirements of the Companies Act or this Act shall in all courts be received as prima facie evidence of the facts stated therein.

(8) No account shall be taken for the purposes of this section of any offence which was committed or, in the case of a continuing offence, began before 15th May 1984.

(9) A person intending to apply for leave of the Court under this section shall give to the Minister not less than 14 days' notice of his intention so to apply.

(10) On the hearing of any application under this section, the Minister may be represented and may oppose the granting of the application.

(11) In this section, company includes an unregistered company within the meaning of section 350(1) of the Companies Act.

Disqualification for being director in not less than 3 companies which were struck off within 5-year period

120. (1) Subject to subsection (5), a person —

- (a) who was a director of a company (Company A) at the time that the name of Company A had been struck off the register under section 344 of the Companies Act or section 348 of this Act, as the case may be; and
- (b) who, within a period of 5 years immediately before the date on which the name of Company A was struck off the register under section 344 of the Companies Act or section 348 of this Act, as the case may be —
 - (i) had been a director of not less than 2 other companies whose names had been struck off the register under section 344 of the Companies Act or section 348 of this Act; and
 - (ii) was a director of those companies at the time the names of the companies were so struck off the register,

shall not act as director of, or in any way (whether directly or indirectly) take part in or be concerned in the management of, any S-VACC for a period of 5 years commencing after the date on which the name of Company A was struck off.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) A person who is subject to a disqualification under subsection (1) may apply to the Court for leave to act as director of, or to take part in or be concerned in the management of, a S-VACC during the period of disqualification upon giving the Minister not less than 14 days' notice of his intention to apply for such leave.

(4) On the hearing of any application under this section, the Minister may be represented at the hearing and may oppose the granting of the application.

(5) This section shall only apply where Company A and the companies referred to in subsection (1)(b)(i) were struck off on or after 3 January 2016.

Debarment for default of relevant requirement of this Act

121. (1) Where the Registrar is satisfied that a S-VACC is in default in relation to a relevant requirement of this Act, the Registrar may make a debarment order against any person who, at the time the order is made, is a director or secretary of the S-VACC.

(2) Subject to subsection (3), a person who has a debarment order made against him shall not —

- (a) except in respect of a S-VACC of which the person is a director immediately before the order was made, act as director of any S-VACC; or
- (b) except in respect of a S-VACC of which the person is a secretary immediately before the order was made, act as secretary of any S-VACC.

(3) The debarment order applies from the date that the order is made and continues in force until the Registrar cancels or suspends the order.

(4) The Registrar may, upon the application of a person who has a debarment order made against him or on his own accord, cancel or suspend such debarment order where the default in relation to the relevant requirements of this Act as at the time the debarment order is made has been rectified or on such other ground as may be prescribed, subject to such conditions as the Registrar may impose.

(5) Where the Registrar imposes conditions on the suspension of a debarment order under subsection (4), the suspension of the debarment order shall operate so long as that person fulfils and continues to fulfil all such conditions imposed by the Registrar.

- (6) The Registrar shall not make a debarment order under subsection (1) —
- (a) unless the default in relation to a relevant requirement of this Act has persisted for a continuous period of 3 months or more and the person was a director or secretary of the S-VACC during that period; and
 - (b) unless the Registrar has, not less than 14 days before the order is made, sent the director or secretary concerned a notice of the Registrar’s intention to make a debarment order under subsection (1) specifying the default in relation to the relevant requirement of this Act for which the debarment order is proposed to be made and giving the director or secretary an opportunity to show cause why the debarment order should not be made.
- (7) The Registrar must, in determining whether to make a debarment order, consider any representation from the director or secretary made pursuant to the notice under subsection (6)(b).
- (8) Any person who is aggrieved by a debarment order made under subsection (1), or the Registrar’s refusal to cancel or suspend a debarment order under subsection (4), may appeal to the Minister.
- (9) An appeal under subsection (8) shall not suspend the effect of the debarment order.
- (10) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.
- (11) The Registrar may from time to time prepare and publish, in such form and manner as the Registrar may decide, the names and particulars of the persons against whom a debarment order has been made and which continues in force.
- (12) In this section —
- “debarment order” means a debarment order made under subsection (1);
- “relevant requirement of this Act” has the same meaning as in section 119(2);
- “secretary” means a secretary of the S-VACC appointed under section 139.

Disqualification under Limited Liability Partnerships Act

122. (1) Subject to any leave which the Court may give pursuant to an application under subsection (3), a person who is subject to a disqualification or disqualification order under section 34, 35 or 36 of the Limited Liability Partnerships Act (Cap. 163A) shall not act as director of, or in any way (whether directly or indirectly) take part in or

be concerned in the management of, any S-VACC during the period of disqualification or disqualification order.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) A person who is subject to a disqualification or disqualification order under section 34 or 36 of the Limited Liability Partnerships Act may apply to the Court for leave to act as director of, or to take part in or be concerned in the management of, a S-VACC during the period of disqualification or disqualification order, upon giving the Minister not less than 14 days' notice of his intention to apply for such leave.

(4) On the hearing of any application under subsection (3), the Minister may be represented at the hearing and may oppose the granting of the application.

Disclosure of interests in transactions, property, offices, etc.

123. (1) Subject to this section, every director of a S-VACC who is in any way, whether directly or indirectly, interested in a transaction or proposed transaction with the S-VACC shall as soon as is practicable after the relevant facts have come to his knowledge —

- (a) declare the nature of his interest at a meeting of the directors of the S-VACC; or
- (b) send a written notice to the S-VACC containing details on the nature, character and extent of his interest in the transaction or proposed transaction with the S-VACC.

(2) A notice under subsection (1)(b) shall be given as soon as is practicable after —

- (a) the date on which the director became a director; or
- (b) (if already a director) the date on which the director became, directly or indirectly, interested in a transaction or proposed transaction with the S-VACC,

as the case requires.

(3) The requirements of subsection (1) shall not apply in any case where the interest of the director consists only of being a member or creditor of a corporation which is interested in a transaction or proposed transaction with the S-VACC if the interest of the director may properly be regarded as not being a material interest.

(4) A director of a S-VACC shall not be deemed to be interested or to have been at any time interested in any transaction or proposed transaction by reason only —

- (a) in the case where the transaction or proposed transaction relates to any loan to

the S-VACC — that he has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or

- (b) in the case where the transaction or proposed transaction has been or will be made with or for the benefit of or on behalf of a related corporation of the S-VACC — that he is a director or chief executive officer (as the case may be) of that corporation,

and this subsection shall have effect not only for the purposes of this Act but also for the purposes of any other law, but shall not affect the operation of any provision in the constitution of the S-VACC.

(5) A declaration given by a director under subsection (1)(a), or a written notice given by a director under subsection (1)(b), shall be treated as a sufficient declaration or written notice under those provisions in relation to a transaction or proposed transaction if —

- (a) in the case of a declaration, the declaration is given at a meeting of the directors or 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;
- (b) the declaration or written notice is to the effect that —
 - (i) he is an officer or a member of a specified corporation, a member of a specified firm, or a partner or officer of a specified limited liability partnership; and
 - (ii) he is to be regarded as interested in any transaction which may, after the date of the declaration or written notice, be made with the specified corporation, firm or limited liability partnership;
- (c) the declaration or written notice specifies the nature and extent of his interest in the specified corporation, firm or limited liability partnership; and
- (d) at the time any transaction is made with the specified corporation, firm or limited liability partnership, his interest is not different in nature or greater in extent than the nature and extent specified in the declaration or written notice.

(6) Every director of a S-VACC who holds any office or possesses any property whereby, whether directly or indirectly, any duty or interest might be created in conflict with his duties or interests as a director shall —

- (a) declare at a meeting of the directors of the S-VACC the fact and the nature, character and extent of the conflict; or
- (b) send a written notice to the S-VACC setting out the fact and the nature, character and extent of the conflict.

(7) A declaration under subsection (6)(a) shall be made at the first meeting of the directors of the S-VACC held —

(a) after he becomes a director; or

(b) (if already a director) after he commenced to hold the office or to possess the property,

as the case requires.

(8) A written notice under subsection (6)(b) shall be given as soon as is practicable after —

(a) the date on which the director became a director; or

(b) (if already a director) after he commenced to hold the office or to possess the property,

as the case requires.

(9) The S-VACC shall, as soon as practicable after the receipt of the written notice referred to in subsection (1)(b) or (6)(b), send a copy of the notice to all the other directors.

(10) Where a director of the S-VACC declares an interest or conflict by a written notice referred to in subsection (1)(b) or (6)(b), respectively, in accordance with this section —

(a) the making of the declaration is deemed to form part of the proceedings at the next meeting of the directors after the notice is given; and

(b) the provisions of section 172 (minutes of proceedings) shall apply as if the declaration had been made at that meeting.

(11) The secretary of the S-VACC shall record every declaration under this section in the minutes of the meeting at which it was made and keep records of every written resolution duly signed and returned to the S-VACC under this section.

(12) For the purposes of this section, an interest of a member of a director's family shall be treated as an interest of the director and the words "member of a director's family" shall include his spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter.

(13) Subject to subsection (4), this section shall be in addition to and not in derogation of the operation of any rule of law or any provision in the constitution restricting a director from having any interest in transactions with the S-VACC or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director.

(14) Any director of a S-VACC who fails to comply with any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

As to the duty and liability of officers

124. (1) A director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.

(2) An officer or agent of a S-VACC shall not make improper use of his position as an officer or agent of the S-VACC or any information acquired by virtue of his position as an officer or agent of the S-VACC to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the S-VACC.

(3) An officer or agent who commits a breach of any of the provisions of this section shall be —

(a) liable to the S-VACC for any profit made by him or for any damage suffered by the S-VACC as a result of the breach of any of those provisions; and

(b) guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

(4) This section is in addition to and not in derogation of any other written law or rule of law relating to the duty or liability of directors or officers of a company incorporated under section 4(1) of the Companies Act, which shall apply to S-VACCs.

(5) In this section —

“officer” includes a person who at any time has been an officer of the S-VACC;

“agent” includes a fund manager, approved custodian, banker, solicitor or auditor of the S-VACC and any person who at any time has been a fund manager, approved custodian, banker, solicitor or auditor of the S-VACC.

Powers of directors

125. (1) The business of a S-VACC shall be managed by, or under the direction or supervision of, the directors.

(2) The directors may exercise all the powers of a S-VACC except any power that this Act or the constitution of the S-VACC requires the S-VACC to exercise in general meeting.

Director declarations where S-VACC has one director

126. Where a S-VACC only has one director, that director may make a declaration required or authorised to be made under this Act by recording the declaration and signing the record; and such recording and signing of the declaration satisfies any requirement in this Act that the declaration be made at a meeting of the directors.

Use of information and advice

127. (1) Subject to subsection (2), a director of a S-VACC may, when exercising powers or performing duties as a director, rely on reports, statements, financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

- (a) an employee of the S-VACC whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
- (b) a professional adviser or an expert, including its fund manager, in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence;
- (c) any other director or any committee of directors upon which the director did not serve in relation to matters within that other director's or committee's designated authority.

(2) Subsection (1) shall apply to a director only if the director —

- (a) acts in good faith;
- (b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and
- (c) has no knowledge that such reliance is unwarranted.

Disclosure of S-VACC information by certain directors

128. (1) A director of a S-VACC may disclose information which he has in his capacity as a director or an employee of the S-VACC, being information that would not otherwise be available to him, to the persons specified in subsection (2) if such disclosure is not likely to prejudice the S-VACC and is made with the authorisation of the board of directors.

(2) The information referred to in subsection (1) may be disclosed to —

- (a) a person whose interests the director represents; or
- (b) a person in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties.

(3) The authorisation referred to in subsection (1) may be conferred in respect of disclosure of —

- (a) all or any class of information; or
- (b) only such information as may be specified in the authorisation.

Power of directors to have regard to interest of its employees and members

129. The matters to which the directors of a S-VACC are entitled to have regard in exercising their powers shall include the interests of the S-VACC's employees generally, as well as the interests of its members.

Prohibition of loans and quasi-loans to directors, credit transactions and related arrangements

130. (1) Subject to sections 132 and 133, a S-VACC shall not make a restricted transaction.

(2) For the purposes of this section, a S-VACC makes a restricted transaction if it —

- (a) makes a loan or quasi-loan to a director —
 - (i) of the S-VACC; or
 - (ii) of a related corporation of that S-VACC,
(referred to in this section as a relevant director);
- (b) enters into any guarantee or provides any security in connection with a loan or quasi-loan made to a relevant director by any other person;
- (c) enters into a credit transaction as creditor for the benefit of a relevant director;
- (d) enters into any guarantee or provides any security in connection with a credit transaction entered into by any person for the benefit of a relevant director;
- (e) takes part in an arrangement under which —
 - (i) another person enters into a transaction that, if it had been entered into by the S-VACC, would have been a restricted transaction under paragraph (a), (b), (c), (d) or (f); and
 - (ii) that person, in pursuance of the arrangement, obtains a benefit from the S-VACC or related corporation of that S-VACC; or
- (f) arranges the assignment to the S-VACC, or assumption by the S-VACC, of any

rights, obligations or liabilities under a transaction that, if it had been entered into by the S-VACC, would have been a restricted transaction under paragraphs (a) to (e).

(3) Where a S-VACC contravenes this section, any director who authorises the making of the restricted transaction shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years.

(4) Nothing in this section shall operate to prevent the S-VACC from recovering the amount of any loan, quasi-loan, credit transaction or arrangement or amount for which it becomes liable under any guarantee entered into or in respect of any security given contrary to this section.

(5) For the purpose of subsection (2), a reference to a director or relevant director therein includes a reference to the director's spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter.

(6) In determining for the purposes of this section whether a transaction is a restricted transaction under subsection (2)(e), the transaction shall be treated as having been entered into on the date of the arrangement.

(7) In this section and section 131 —

“conditional sale agreement” has the same meaning as in section 2 of the Hire-Purchase Act (Cap. 125);

“credit transaction” means a transaction under which one party (referred to in this section and section 131 as the creditor) —

- (a) supplies any goods or disposes of any immovable property under a hire-purchase agreement or a conditional sale agreement;
- (b) leases or hires any immovable property or goods in return for periodic payments; or
- (c) otherwise disposes of immovable property or supplies goods or services on the understanding that payment (whether in a lump sum or instalments or by way of periodic payments or otherwise) is to be deferred;

“quasi-loan” means a transaction under which one party (referred to in this section and section 131 as the creditor) agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another (referred to in this section as the borrower) or agrees to reimburse, or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another party for another (referred to in this section and section 131 as the borrower) —

- (a) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or
- (b) in circumstances giving rise to a liability on the borrower to reimburse the creditor;

“services” means any thing other than goods or immovable property.

(8) For the purposes of subsection (7) —

- (a) a reference to the person to whom a quasi-loan is made is a reference to the borrower;
- (b) the liabilities of the borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower;
- (c) a reference to the person for whose benefit a credit transaction is entered into is a reference to the person to whom goods, immovable property or services are supplied, sold, leased, hired or otherwise disposed of under the transaction; and
- (d) a reference to the supply of services means the supply of anything other than goods or immovable property and includes the transfer or disposal of choses in action or of intellectual property rights.

Approval of S-VACC required for loans and quasi-loans to, and credit transactions for benefit of, persons connected with directors of lending S-VACC, etc.

131. (1) Subject to this section and sections 132 and 133, it shall not be lawful for a S-VACC—

- (a) to make a loan or quasi-loan to another company or a limited liability partnership;
- (b) to enter into any guarantee or provide any security in connection with a loan or quasi-loan made to another company or a limited liability partnership by a person other than the S-VACC;
- (c) to enter into a credit transaction as creditor for the benefit of another company or a limited liability partnership; or
- (d) to enter into any guarantee or provide any security in connection with a credit transaction entered into by any person for the benefit of another company or a limited liability partnership,

if a director or directors of the S-VACC is or together are interested in 20% or more of the total voting power in the other company or the limited liability partnership, as the case may be, unless there is prior approval by the S-VACC in general meeting

for the making of, provision for or entering into the loan, quasi-loan, credit transaction, guarantee or security (as the case may be) at which the interested director or directors and his or their family members abstained from voting.

- (2) Subsection (1) shall extend to apply to—
- (a) a loan or quasi-loan made by a S-VACC to another company or a limited liability partnership;
 - (b) a credit transaction made by a S-VACC for the benefit of another company or to a limited liability partnership; and
 - (c) a guarantee entered into or security provided by a S-VACC in connection with a loan or quasi-loan made to another company or a limited liability partnership by a person other than the S-VACC or with a credit transaction made for the benefit of another company or a limited liability partnership entered into by a person other than the S-VACC,

where such other company or such limited liability partnership is incorporated or formed, as the case may be, outside Singapore, if a director or directors of the S-VACC have an interest in the other company or the limited liability partnership, as the case may be.

- (3) For the purposes of subsection (2), a director or directors of a S-VACC—
- (a) have an interest in the other company if —
 - (i) in the case of a company with a share capital, the director or directors is or together are interested in 20% or more of the total voting power in the other company; or
 - (ii) in the case of a company without a share capital, the director or directors exercises or together exercise control over the other company (whether by reason of having the power to appoint directors or otherwise); or
 - (b) have an interest in a limited liability partnership if the director or directors is or together are interested in 20% or more of the total voting power in the limited liability partnership.
- (4) Subject to this section and sections 132 and 133, a S-VACC shall not—
- (a) take part in an arrangement under which —
 - (i) another person enters into a transaction that, if it had been entered into by the S-VACC, would have required approval under this section; and
 - (ii) that person, in pursuance of the arrangement, obtains a benefit from the S-VACC or a related company; or

- (b) arrange the assignment to it, or assumption by it, of any rights, obligations or liabilities under a transaction that, if it had been entered into by the S-VACC, would have required such approval,

unless there is prior approval by the S-VACC in general meeting for taking part in such an arrangement or for arranging the assignment or assumption of rights, obligations or liabilities under such a transaction at which the interested director or directors or his or their family members abstained from voting.

(5) In determining for the purposes of subsection (4) whether a transaction is one that would have required approval under this section if it had been entered into by the S-VACC, the transaction shall be treated as having been entered into on the date of the arrangement.

(6) The requirement in subsections (1) and (4) that the interested director or directors or his or their family members abstain from voting at the general meeting of the S-VACC shall not apply where all the shareholders of the S-VACC have each voted to approve the arrangement.

(7) For the purposes of this section —

- (a) where a S-VACC makes a loan or quasi-loan to another company, enters into a credit transaction for the benefit of another company, gives a guarantee or provides security in connection with a loan, quasi-loan or credit transaction made to or entered into for the benefit of another company, or enters into an arrangement referred to in subsection (4), a director or directors of the S-VACC shall not be taken to have an interest in shares in that other company by reason only that the S-VACC has an interest in shares in that other company and a director or directors have an interest in shares in the S-VACC;
- (b) “interest in shares” has the meaning assigned to that expression in section 3;
- (c) a person who has an interest in a share of a S-VACC under section 3 is to be treated as having an interest in the voting power conferred on the holder by that share;
- (d) a reference to prior approval of the S-VACC in subsection (1) shall not include any approval of the S-VACC that is given after the loan, quasi-loan, credit transaction, guarantee or security referred to in that subsection has been made, provided for or entered into (as the case may be); and
- (e) a reference to prior approval of the S-VACC in subsection (4) shall not include any approval of the S-VACC that is given after the arrangement referred to in that subsection has been entered into.

(8) This section shall not apply to anything done by a S-VACC where the other company (whether that company is incorporated in Singapore or otherwise) is its subsidiary or holding company or a subsidiary of its holding company.

(9) For the purposes of this section—

- (a) an interest of a member of a director's family shall be treated as the interest of the director; and
- (b) a reference to a member of a director's family shall include the director's spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter.

(10) Nothing in this section shall operate to prevent the recovery of the amount of any loan, quasi-loan, credit transaction or arrangement or the enforcement of any guarantee or security whether made or given by the S-VACC or any other person.

(11) Where a S-VACC contravenes this section, any director who authorises the making of any loan or quasi-loan, the entering into of any credit transaction, the entering into of any guarantee, the providing of any security or the entering into of any arrangement contrary to this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years.

Exception for expenditure on defending proceedings, etc.

132. (1) Sections 130 and 131 shall not apply to anything done by a S-VACC—

- (a) to provide a director of the S-VACC with funds by way of any loan to meet expenditure incurred or to be incurred by him —
 - (i) in defending any criminal or civil proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by him in relation to the S-VACC; or
 - (ii) in connection with an application for relief; or
- (b) to enable any such director to avoid incurring such expenditure,

if it is done on the terms provided in subsection (2).

(2) The terms referred to in subsection (1) are—

- (a) that the loan is to be repaid, or (as the case may be) any liability of the S-VACC incurred under any transaction connected with the thing done is to be discharged, in the event of —
 - (i) the director being convicted in the proceedings;

- (ii) judgment being given against him in the proceedings; or
- (iii) the court refusing to grant him relief on the application; and
- (b) that it is to be repaid or discharged not later than 14 days after —
 - (i) the date when the conviction becomes final;
 - (ii) the date when the judgment becomes final; or
 - (iii) the date when the refusal of relief becomes final.
- (3) For the purposes of this section—
 - (a) a conviction, judgment or refusal of relief becomes final —
 - (i) if it is not appealed against, at the end of the period for bringing an appeal; or
 - (ii) if it is appealed against, when the appeal (or any further appeal) is disposed of;
 - (b) an appeal or further appeal is disposed of—
 - (i) if it is determined and there is no right of further appeal, or if there is a right of further appeal, the period for bringing any further appeal has ended; or
 - (ii) if it is abandoned or otherwise ceases to have effect; and
 - (c) a reference to the repayment of a loan includes the payment of any interest which is chargeable under the terms on which the loan was given.
- (4) the reference in this section to an application for relief is to an application for relief under section 371.

Exception for expenditure in connection with regulatory action or investigation

133. Sections 130, 131 and 140 shall not apply to anything done by a S-VACC—

- (a) to provide a director of the S-VACC with funds by way of any loan to meet expenditure incurred or to be incurred by him in defending himself —
 - (i) in an investigation by a regulatory authority; or
 - (ii) against any action proposed to be taken by a regulatory authority,
 in connection with any alleged negligence, default, breach of duty or breach of trust by him in relation to the S-VACC; or

- (b) to enable any such director to avoid incurring such expenditure.

Register of director's shareholdings etc.

134. (1) A S-VACC shall keep a register showing with respect to each director of the S-VACC particulars of —

- (a) shares in that S-VACC or in a related corporation, being shares of which the director is a registered holder or in which he has an interest and the nature and extent of that interest;
- (b) debentures of the S-VACC or a related corporation which are held by the director;
- (c) where the related corporation of a S-VACC is not a S-VACC, the participatory interests made available by that related corporation in which he has an interest and the nature and extent of that interest;
- (d) rights or options of the director or of the director and another person or other persons in respect of the acquisition or disposal of shares in the S-VACC or a related corporation; and
- (e) contracts to which the director is a party or under which he is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the S-VACC or in a related corporation.

(2) A S-VACC need not show, in its register with respect to a director, particulars of shares in a related corporation that is a wholly-owned subsidiary of the S-VACC or of another corporation.

(3) A S-VACC shall, within 3 days after receiving notice from a director under section 136(1)(a) of this Act, enter in its register in relation to the director the particulars referred to in subsection (1) including the number and description of shares, debentures, participatory interests (if applicable), rights, options and contracts to which the notice relates and in respect of shares, debentures, participatory interests (if applicable), rights or options acquired or contracts entered into after he became a director —

- (a) the price or other consideration for the transaction, if any, by reason of which an entry is required to be made under this section; and
- (b) the date of—
 - (i) the agreement for the transaction or, if it is later, the completion of the transaction; or
 - (ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

(4) A S-VACC shall, within 3 days after receiving a notice from a director under section 136(1)(b) of this Act, enter in its register the particulars of the change referred to in the notice.

(5) A S-VACC is not, by reason of anything done under this section, to be taken for any purpose to have notice of or to be put upon inquiry as to the right of a person or in relation to a share in debenture of the S-VACC.

(6) A S-VACC shall, subject to this section, keep its register at the registered office of the S-VACC and the register shall be open for inspection by a member of the S-VACC without charge and by any other person on payment for each inspection of a sum of \$3 or such lesser sum as the S-VACC requires.

(7) A person may request a S-VACC to furnish him with a copy of its register or any part thereof on payment in advance of a sum of \$1 or such lesser sum as the S-VACC requires for every page or part thereof required to be copied and the S-VACC shall send the copy to that person within 21 days or such longer period as the Registrar thinks fit after the day on which the request is received by the S-VACC.

(8) The Registrar may by notice in writing require a S-VACC to send to him within such time as may be specified in the notice a copy of its register or any part thereof.

(9) It is a defence to a prosecution for failing to comply with subsection (1) or (3) in respect of particulars relating to a director if the defendant proves that the failure was due to the failure of the director to comply with section 136 of this Act with respect to those particulars.

(10) In this section —

- (a) a reference to a participatory interest is a reference to a unit in a collective investment scheme; and
- (b) a reference to a person who holds or acquires shares, debentures or participatory interests or an interest in shares, debentures or participatory interests includes a reference to a person who under an option holds or acquires a right to acquire or dispose of a share, debenture or participatory interest or an interest in a share, debenture or participatory interest.

(11) In determining for the purposes of this section whether a person has an interest in a debenture or participatory interest, the provisions of section 3, except subsections (1) and (5) thereof, have effect and in applying those provisions a reference to a share shall be read as a reference to a debenture or participatory interest.

(12) For the purposes of the application of this section —

- (a) a director of a S-VACC shall be deemed to hold or have an interest or a right in or over any shares or debentures if —

- (i) a wife or husband of the director (not being herself or himself a director) holds or has an interest or a right in or over any shares or debentures; or
 - (ii) a child of less than 18 years of age of that director (not being himself or herself a director) holds or has an interest in shares or debentures; and
- (b) any contract, assignment or right of subscription shall be deemed to have been entered into or exercised or made by, or a grant shall be deemed as having been made to, the director if —
- (i) the contract, assignment or right of subscription is entered into, exercised or made by, or a grant is made to, the wife or husband of a director of a S-VACC (not being herself or himself a director thereof); or
 - (ii) the contract, assignment or right of subscription is entered into, exercised or made by, or a grant is made to, a child of less than 18 years of age of a director of a S-VACC (not being himself or herself a director thereof).
- (13) In subsection (12), “child” includes step-son, adopted son, step-daughter and adopted daughter.
- (14) If default is made in complying with this section the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a further fine of \$1,000 for every day during which the offence continues after conviction.

Power to require disclosure of directors’ emoluments

135. (1) If a S-VACC is served with a notice sent by or on behalf of —

- (a) at least 10% of the total number of members of the S-VACC (excluding the S-VACC itself if it is registered as a member); or
- (b) a member or members with at least 5% of the total number of issued shares of the S-VACC,

requiring the emoluments and other benefits received by the directors of the S-VACC or of a subsidiary to be disclosed, the S-VACC shall —

- (c) within 14 days or such longer period as the Registrar may allow, prepare or cause to be prepared and cause to be audited a statement showing the total amount of emoluments and other benefits paid to or received by each of the directors of the S-VACC and each director of a subsidiary; including any amount paid by way of salary, for the financial year immediately preceding the service of the notice;

- (d) when the statement referred to in paragraph (c) has been audited, within 14 days send a copy of the statement to all persons entitled to receive notice of general meetings of the S-VACC; and
 - (e) lay the statement before the next general meeting of the S-VACC held after the statement is audited.
- (2) If default is made in complying with this section, the S-VACC and every director of the S-VACC shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

General duty to make disclosure

- 136.** (1) Every director of a S-VACC shall give notice in writing to the S-VACC —
- (a) of such particulars relating to shares, debentures, participatory interests, rights, options and contracts as are necessary for the purposes of compliance by the S-VACC with section 134 that are applicable in relation to him;
 - (b) of particulars of any change in respect of the particulars referred to in paragraph (a) of which notice has been given to the S-VACC including the consideration, if any, received as a result of the event giving rise to the change; and
 - (c) of such events and matters affecting or relating to himself as are necessary for the purposes of compliance by the S-VACC with section 144 that are applicable in relation to him.
- (2) A notice under subsection (1) shall be given —
- (a) in the case of a notice under subsection (1)(a), within 2 business days after —
 - (i) the date on which the director became a director; or
 - (ii) the date on which the director became a registered holder of or acquired an interest in the shares, debentures, participatory interests, rights, options or contracts,whichever last occurs; and
 - (b) in the case of a notice under subsection (1)(b), within 2 business days after the occurrence of the event giving rise to the change referred to in that paragraph.
- (3) A S-VACC shall, within 7 days after it receives a notice given under subsection (1), send a copy of the notice to each of the other directors of the S-VACC.
- (4) It is a defence to a prosecution for failing to comply with subsection (1)(a) or (b) or with subsection (2) if the defendant proves that his failure was due to his not being

aware of a fact or occurrence the existence of which was necessary to constitute the offence and that—

- (a) he was not so aware on the date of the information or summons; or
- (b) he became so aware less than 7 days before the date of the summons.

(5) For the purposes of subsection (4), a person shall conclusively be presumed to have been aware at a particular time of a fact or occurrence —

- (a) of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time; or
- (b) of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his master's or principal's interest or interests in a share in or a debenture of or participatory interest issued (if applicable) by the company concerned, was aware or would, if he had acted with reasonable diligence in the conduct of his master's or principal's affairs, have been aware at that time.

(6) In this section—

- (a) a reference to a participatory interest is a reference to a unit in a collective investment scheme; and
- (b) a reference to a person who holds or acquires shares, debentures or participatory interests or an interest in shares, debentures or participatory interests includes a reference to a person who under an option holds or acquires a right to acquire a share, debenture, or participatory interest or an interest in a share, debenture or participatory interest.

(7) In determining for the purposes of this section whether a person has an interest in a debenture or participatory interest, the provisions of section 3, except subsections (1) and (5) thereof, have effect and in applying those provisions a reference to a share shall be read as a reference to a debenture or participatory interest.

(8) Any director who fails to comply with subsection (1) or (2) or any S-VACC that fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a further fine of \$1,000 for every day during which the offence continues after conviction.

Payment to director for loss of office, etc.

137. (1) It shall not be lawful —

- (a) for a S-VACC to make to any director any payment by way of compensation

for loss of office as an officer of the S-VACC or of a subsidiary of the S-VACC or as consideration for or in connection with his retirement from any such office; or

- (b) for any payment to be made to any director of a S-VACC in connection with the transfer of the whole or any part of the undertaking or property of the S-VACC,

unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the S-VACC and the proposal has been approved by the S-VACC in general meeting and when any such payment has been unlawfully made the amount received by the director shall be deemed to have been received by him in trust for the S-VACC.

(2) The requirement for approval by the S-VACC in subsection (1) shall not apply in respect of any payment to a director holding a salaried employment or office in the S-VACC by way of compensation for termination of employment pursuant to an existing legal obligation arising from an agreement made between the S-VACC and the director if —

- (a) the amount of the payment does not exceed the total emoluments of the director for the year immediately preceding his termination of employment; and
- (b) the particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the S-VACC upon or prior to the payment.

(3) For the purposes of subsection (2) —

- (a) an existing legal obligation is an obligation of the S-VACC, or any related corporation of the S-VACC, that was not entered into in connection with, or in consequence of, the event giving rise to the payment for loss of office; and
- (b) if paragraph (a) or (b) of that subsection is not complied with, the amount received by the director shall be deemed to have been received by him on trust for the S-VACC.

(4) Where such a payment is to be made to a director in connection with the transfer to any person, as a result of an offer made to shareholders, of all or any of the shares in the S-VACC, that director shall take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders, unless those particulars are furnished to the shareholders by virtue of any requirement of law relating to take-over offers.

(5) A director who fails to comply with subsection (4) and a person who has been properly required by a director to include in or send with any notice under this section the particulars required by that subsection and who fails to do so shall be guilty of an

offence, and if the requirements of that subsection are not complied with any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any person who has sold his shares as a result of the offer made.

(6) If in connection with any such transfer the price to be paid to a director of the S-VACC whose office is to be abolished or who is to retire from office for any shares in the S-VACC held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

As to payments to directors

(7) Any reference in this section to payments to any director of a S-VACC by way of compensation for loss of office or as consideration for or in connection with his retirement from office shall not include —

- (a) any payment under an agreement particulars of which have been disclosed to and approved by special resolution of the S-VACC;
- (b) any bona fide payment by way of damages for breach of contract;
- (c) any bona fide payment by way of pension or lump sum payment in respect of past services, including any superannuation or retiring allowance, superannuation gratuity or similar payment, where the value or amount of the pension or payment, except in so far as it is attributable to contributions made by the director, does not exceed the total emoluments of the director in the 3 years immediately preceding his retirement or death; or
- (d) any payment to a director pursuant to an agreement made between the S-VACC and him before he became a director of the S-VACC as the consideration or part of the consideration for the director agreeing to serve the S-VACC as a director.

(8) This section shall be in addition to and not in derogation of any rule of law requiring disclosure to be made with respect to any such payments or any other like payment.

(9) In this section, “director” includes any person who has at any time been a director of the S-VACC or of a related corporation of the S-VACC.

Provision and improvement of director’s emoluments

138. (1) A S-VACC shall not at any meeting or otherwise provide emoluments or improve emoluments for a director of a S-VACC in respect of his office as such unless

the provision is approved by a resolution that is not related to other matters and any resolution passed in breach of this section shall be void.

(2) In this section, “emoluments” in relation to a director includes fees and percentages, any sums paid by way of expenses allowance in so far as those sums are charged to income tax in Singapore, any contribution paid in respect of a director under any pension scheme and any benefits received by him otherwise than in cash in respect of his services as director.

Secretary

139. (1) Every S-VACC shall have one or more secretaries each of whom shall be a natural person who has his principal or only place of residence in Singapore and who is not debarred under section 121 from acting as secretary of the S-VACC.

(2) It shall be the duty of the directors of a S-VACC to take all reasonable steps to secure that each secretary of the S-VACC is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the S-VACC.

(3) In addition, it shall be the duty of the directors of a S-VACC to take all reasonable steps to secure that each secretary of a S-VACC is a person who satisfies such requirements relating to experience, professional and academic requirements and membership of professional associations, as may be prescribed.

(4) Any person who is appointed by the directors of a S-VACC as a secretary shall, at the time of his appointment, by himself or through a registered qualified individual authorised by him, file with the Registrar a declaration in the prescribed form that he consents to act as secretary and providing the prescribed particulars.

(5) In this section and sections 143 to 149 and 150, “secretary” includes an assistant or deputy secretary.

(6) Where a director is the sole director of a S-VACC, he shall not act or be appointed as the secretary of the S-VACC.

(7) The secretary or secretaries shall be appointed by the directors and at least one of those secretaries shall be present at the registered office of the S-VACC by himself or his agent or clerk on the days and at the hours during which the registered office is to be accessible to the public.

(8) Notwithstanding subsection (7), a secretary, his agent or clerk of a S-VACC need not be physically present at the registered office during the times specified in that subsection if a secretary, his agent or clerk of the S-VACC is readily contactable by a person at the registered office by telephone or other means of instantaneous communication during those times.

(9) Anything required or authorised to be done by or in relation to the secretary may, if the office is vacant or for any other reason the secretary is not capable of acting, be done by or in relation to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or in relation to any officer of the S-VACC authorised generally or specially in that behalf by the directors:

Provided that the office of secretary shall not be left vacant for more than 6 months at any one time.

(10) A provision requiring or authorising a thing to be done by or in relation to a director and the secretary shall not be satisfied by its being done by or in relation to the same person acting both as director and as, or in place of, the secretary.

Provision protecting officers from liability

140. (1) Any provision that purports to exempt an officer of a S-VACC (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the S-VACC is void.

(2) Any provision by which a S-VACC directly or indirectly provides an indemnity (to any extent) for an officer of the S-VACC against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the S-VACC is void, except as permitted by section 141 or 142.

(3) This section shall apply to any provision, whether contained in a S-VACC's constitution or in any contract with the S-VACC or otherwise.

Provision of insurance

141. Section 140(2) shall not prevent a S-VACC from purchasing and maintaining for an officer of the S-VACC insurance against any such liability referred to in that subsection.

Third party indemnity

142. (1) Section 140(2) shall not apply where the provision for indemnity is against liability incurred by the officer to a person other than the S-VACC, except when the indemnity is against —

(a) any liability of the officer to pay —

(i) a fine in criminal proceedings; or

(ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising); or

(b) any liability incurred by the officer —

- (i) in defending criminal proceedings in which he is convicted;
 - (ii) in defending civil proceedings brought by the S-VACC or a related company in which judgment is given against him; or
 - (iii) in connection with an application for relief referred to in subsection (4) in which the court refuses to grant him relief.
- (2) The references in subsection (1)(b) to a conviction, judgment or refusal of relief are references to the final decision in the proceedings.
- (3) For the purposes of subsection (2) —
- (a) a conviction, judgment or refusal of relief becomes final —
 - (i) if it is not appealed against, at the end of the period for bringing an appeal; or
 - (ii) if it is appealed against, at the time when the appeal (or any further appeal) is disposed of; and
 - (b) an appeal (or further appeal) is disposed of —
 - (i) if it is determined and there is no right of further appeal, or if there is a right of further appeal, the period for bringing any further appeal has ended; or
 - (ii) if it is abandoned or otherwise ceases to have effect.
- (4) The reference in subsection (1)(b)(iii) to an application for relief is to an application for relief under section 371.

Registers of fund managers, directors, secretaries and auditors

- 143.** (1) The Registrar shall, in respect of each S-VACC, keep a register of the S-VACC's —
- (a) fund managers;
 - (b) directors;
 - (c) secretaries; and
 - (d) auditors.
- (2) The register under subsection (1) shall be kept in such form as the Registrar may determine.

(3) Subject to subsection (5), the register of a S-VACC's fund managers shall contain the following information in respect of each fund manager of the S-VACC:

- (a) name and any former name;
- (b) identification, if any;
- (c) an address at which the fund managers may be contacted;
- (d) date of appointment; and
- (e) date of cessation of appointment.

(4) Subject to subsection (5), the register of a S-VACC's directors shall contain the following information in respect of each director of the S-VACC:

- (a) full name and any former name;
- (b) residential address or, at the director's option, alternate address;
- (c) nationality;
- (d) identification;
- (e) date of appointment; and
- (f) date of cessation of appointment.

(5) The Registrar shall only keep any former name of a director or fund manager in the register of the S-VACC for a period of 5 years from the date on which the name was furnished to the Registrar.

(6) The register of a S-VACC's secretaries shall contain the following information in respect of each secretary of the S-VACC:

- (a) full name;
- (b) residential address or, at the secretary's option, alternate address;
- (c) identification;
- (d) date of appointment; and
- (e) date of cessation of appointment.

(7) The register of a S-VACC's auditors shall contain the following information in respect of each auditor of the S-VACC:

- (a) full name;

(b) an address at which the auditors may be contacted;

(c) identification, if any;

(d) date of appointment; and

(e) date of cessation of appointment.

(8) An entry in the register of fund managers, register of directors, register of secretaries and register of auditors required to be kept by the Registrar under this section, is prima facie evidence of the truth of any matters which are by this Act directed or authorised to be entered or inserted in the respective register.

(9) A certificate of the Registrar setting out any of the particulars required to be entered or inserted in the register of fund managers, register of directors, register of secretaries or register of auditors required to be kept by the Registrar under this section shall in all courts and before all persons and bodies authorised by law to receive evidence be received as prima facie evidence of the entry of such particulars in the respective register.

(10) A certificate of the Registrar stating that, at the time specified in the certificate, a person was named as fund manager, director, secretary or auditor of the S-VACC in the register of fund managers, register of directors, register of secretaries or register of auditors, as the case may be, shall in all courts and before all persons and bodies authorised by law be received as prima facie evidence of the fact, until by a notification of change given to the Registrar it appears that he has ceased to be or becomes disqualified to act as such a fund manager, director, secretary or auditor, as the case may be.

(11) For the purposes of this section —

(a) a person's name and identification —

(i) in the case of a person registered under the National Registration Act (Cap. 201), means the name and identification as they appear in the latest identity card issued to that person under section 7 of that Act; or

(ii) in the case of a person not registered under the National Registration Act, means the name and identification as they appear in the latest passport issued to that person or such other similar evidence of identification as is available;

(b) a director includes an alternate, a substitute or a local director.

(12) For the purposes of this section, only one alternate address may be provided at any one time.

(13) An alternate address of an individual must comply with the following conditions:

- (a) it is an address at which the individual can be located;
- (b) it is not a post office box number;
- (c) it is not the residential address of the individual; and
- (d) it is located in the same jurisdiction as the individual's residential address.

(14) Any document required to be served under this Act on any person who is a director or secretary shall be sufficiently served if addressed to the person and left at or sent by post to his residential address or alternate address, as the case may be, which is entered in the register of directors or register of secretaries kept by the Registrar under this section.

(15) Any document required to be served under this Act on a person who is for the time being a fund manager or an auditor of a S-VACC shall be sufficiently served if addressed to the person and left at or sent by post to the address which is entered in the register of fund managers and register of auditors kept by the Registrar under this section.

Duty of S-VACC to provide information on fund managers, directors, secretaries and auditors

144. (1) A S-VACC shall by notice furnish to the Registrar —

- (a) within 14 days after a person becomes a fund manager, director, secretary or auditor, the information required under section 143(3), (4), (6) or (7) , as the case may be; and
- (b) within 14 days after any change in —
 - (i) the appointment of any fund manager, director, secretary or auditor; or
 - (ii) any information required to be contained in the registers of fund managers, directors, secretaries and auditors referred to in section 143(3), (4), (6) or (7) .

(2) A prescribed fee is payable for the provision of an alternate address in prescribed circumstances for the purposes of the register of directors or register of secretaries (as the case may be) under section 143.

(3) The information to be furnished to the Registrar under subsection (1) shall be given in a notice in such form as may be prescribed or, if not prescribed, in such form as the Registrar may determine.

Duty of fund managers, directors, secretaries and auditors to provide information to S-VACC

145. (1) A fund manager, a director, a secretary or any auditor, as the case may be, shall give the S-VACC —

- (a) any information the S-VACC needs to comply with section 144(1)(a) as soon as practicable but not later than 14 days after his initial appointment unless he has previously given the information to the S-VACC in writing; and
- (b) any information the S-VACC needs to comply with section 144(1)(b) as soon as practicable but not later than 14 days after any change to the information referred to in sections 143(3),(4), (6) and (7).

(2) Notwithstanding subsection (1), a fund manager, a director, a secretary or an auditor, as the case may be, shall, subject to subsection (3), provide any information referred to in sections 143(3), (4), (6) and (7) for the purpose of enabling the S-VACC to confirm its record of such information or reinstate its record of the information where the original record of the information has been destroyed or lost.

(3) The fund manager, director, secretary or auditor, as the case may be, referred to in subsection (2) shall furnish the information to the S-VACC as soon as practicable but not later than 14 days after receipt of a written request for such information from the S-VACC.

(4) A director or secretary who wishes to—

- (a) substitute his residential address, as stated in the register of directors or register of secretaries, with an alternate address; or
- (b) substitute his alternate address, as stated in the register of directors or register of secretaries, with his residential address or with a different alternate address,

must inform the S-VACC which will treat the change as a change of particulars under section 144(1)(b)(ii).

Duty of S-VACC to keep consents of fund managers, directors and secretaries

146. (1) Every S-VACC shall keep at its registered office —

- (a) in respect of its fund manager –
 - (i) a signed copy of his consent to act as fund manager; and
 - (ii) a statement that it is a fund manager under section 106(2).
- (b) in respect of each director —

- (i) a signed copy of his consent to act as director;
 - (ii) a statement that he is not disqualified to act as director under this Act or under any other written law;
 - (iii) a statement that he is a fit and proper person to act as a director of the S-VACC; and
 - (iv) documentary evidence (if any) of any change in his name;
- (c) in respect of a secretary, a signed copy of his consent to act as secretary.

Self-notification in certain circumstances

147. (1) A fund manager who ceases to be a fund manager under section 106(2) of this Act shall notify the S-VACC of this fact as soon as practicable but not later than 14 days after he ceases to be a fund manager.

(2) A fund manager who resigns from office and who has given notice of his resignation to the S-VACC, or a fund manager who is removed or retires from office may give the notice referred to in section 144(1)(b) to the Registrar if he has reasonable cause to believe that the S-VACC will not do so.

(3) A director who ceases to qualify to act as director by virtue of section 111 or 119—

- (a) shall, without prejudice to section 136(1)(c), notify the S-VACC of his disqualification as soon as practicable but not later than 14 days after the disqualification; and
- (b) may give the notice referred to in section 144(1)(b) to the Registrar if he has reasonable cause to believe that the S-VACC will not do so.

(4) A director who resigns from office and who has given notice of his resignation to the S-VACC, or a director who is removed or retires from office may give the notice referred to in section 144(1)(b) to the Registrar if he has reasonable cause to believe that the S-VACC will not do so.

(5) A secretary who resigns from office and who has given notice of his resignation to the S-VACC, or a secretary who is removed or retires from office may give the notice referred to in section 144(1)(b) to the Registrar if he has reasonable cause to believe that the S-VACC will not do so.

(6) A director or secretary who has changed his residential address or alternate address, as the case may be, which is entered in the register of directors or register of secretaries kept by the Registrar under section 143, or a fund manager or an auditor who has changed his address which is entered in the register of fund managers and register

of auditors kept by the Registrar under section 143 may give the notice referred to in section 144(1)(b) to the Registrar if he has reasonable cause to believe that the S-VACC will not do so.

Amendment of register by Registrar

148. (1) Where the Registrar has reasonable cause to believe that a person has ceased to be a fund manager under section 106(2) of this Act, the Registrar may on his own initiative amend the register of fund managers of the S-VACC kept by the Registrar under section 143 to indicate that the person has ceased to be a fund manager of the S-VACC by virtue of that fact.

(2) Where the Registrar has reasonable cause to believe that a director of a S-VACC —

(a) is no longer qualified to act as such by virtue of section 111 or 119; or

(b) is dead,

the Registrar may on his own initiative amend the register of directors of the S-VACC kept by the Registrar under section 143 to indicate that the person has ceased to be a director by virtue of that fact.

(3) Where the Registrar has reasonable cause to believe that a secretary of a S-VACC is dead, the Registrar may on his own initiative amend the register of secretaries of the S-VACC kept by the Registrar under section 143 to indicate that the person has ceased to be a secretary of the S-VACC by virtue of that fact.

(4) Where the Registrar has reasonable cause to believe that the auditor of a S-VACC —

(a) has had its registration as an accounting entity suspended or removed; or

(b) being an individual is dead,

the Registrar may on his own initiative amend the register of auditors of the S-VACC kept by the Registrar under section 143 to indicate that the person has ceased to be an auditor of the S-VACC by virtue of that fact.

(5) Where the Registrar has reasonable cause to believe that he has made an amendment to the relevant register under subsection (1), (2), (3), or (4) under a mistaken belief that a fund manager, director, a secretary or an auditor, as the case may be, of a S-VACC has ceased to be a fund manager, director, a secretary or an auditor, as the case may be, of the S-VACC, the Registrar may on his own initiative amend the register of fund managers, register of directors, register of secretaries or register of auditors to restore the name of the person in such register.

Provision and use of residential address

149. (1) Subject to this section, a director and a secretary of a S-VACC is required to give notice to the Registrar of the following:

- (a) at incorporation or within 14 days after the date of his appointment, as the case may be, his residential address, unless his residential address has already been entered in the register of directors or register of secretaries kept by the Registrar under section 143;
- (b) if there is any change to his residential address, the particulars of the change within 14 days after the change, unless such change has already been entered in the register of directors, or register of secretaries, as the case may be, kept by the Registrar under section 143.

(2) Where a director or secretary of a S-VACC has made a report of a change of his residential address under section 8 of the National Registration Act (Cap. 201), he shall be taken to have notified the Registrar of the change in compliance with subsection (1)(b).

(3) Notwithstanding section 16 or 17, where the residential address of a person is notified to the Registrar under subsection (1), or is transmitted to the Registrar by the Commissioner of National Registration under section 8A of the National Registration Act, the residential address of the individual is protected from disclosure and is not available for public inspection or access except as provided for under this section or where the individual's residential address is entered in the register of directors or register of secretaries kept by the Registrar under section 143.

(4) Where —

- (a) the alternate address of a director or secretary is entered in the register of directors or register of secretaries, as the case may be, that is kept by the Registrar under section 143(1)(b) or (c), respectively; and
- (b) the circumstances set out in subsection (5) apply,

the Registrar may enter the residential address of the director or secretary in the respective register of directors or register of secretaries, as the case may be.

(5) Subsection (4) applies where —

- (a) communications sent by the Registrar under this Act, or by any officer of the Authority under any ACRA administered Act to the director or secretary, as the case may be, at his alternate address and requiring a response within a specified period remain unanswered; or
- (b) there is evidence to show that service of any document under this Act or under

any ACRA administered Act at the alternate address is not effective to bring it to the notice of the director or secretary, as the case may be.

(6) Before proceeding under subsection (4), the Registrar shall give notice to the director or secretary affected, and to every S-VACC of which the Registrar has been notified under this Act that the individual is a director or secretary, as the case may be.

(7) The notice referred to in subsection (6) shall —

(a) state the grounds on which it is proposed to enter the individual's residential address in the register of directors or register of secretaries, as the case may be; and

(b) specify a period within which representations may be made before that is done.

(8) The Registrar shall take account of any representations received within the specified period.

(9) Where the Registrar enters the residential address in the register of directors or register of secretaries under subsection (4), the Registrar shall give notice of that fact to the director or secretary affected, and to every S-VACC of which the Registrar has been notified under this Act that the individual is a director or secretary, as the case may be.

(10) A notice to a director or secretary under subsection (6) or (9) shall be sent to the individual at his residential address unless it appears to the Registrar that service at that address may be ineffective to bring it to the individual's notice, in which case it may be sent to any other last known address of that individual.

(11) Where the Registrar enters an individual's residential address in the register of directors or register of secretaries under subsection (4), or a Registrar appointed under any other ACRA administered Act discloses and makes available for public inspection under that Act the particulars of an individual's residential address under a provision of that Act equivalent to subsection (4) —

(a) the residential address ceases to be protected under subsection (3) from disclosure or from public inspection or access; and

(b) the individual is not, for a period of 3 years after the date on which the residential address is entered in the register of directors or register of secretaries, allowed to provide an alternate address under section 145(1)(b) or 147(6).

(12) Nothing in this section prevents the residential address of an individual that is notified to the Registrar under subsection (1), or is transmitted to the Registrar by the Commissioner of National Registration under section 8A of the National Registration Act from —

(a) being used by the Registrar for the purposes of any communication with the

individual;

- (b) being disclosed for the purposes of issuing any summons or other legal process against the individual for the purposes of this Act or any other written law;
- (c) disclosure in compliance with the requirement of any court or the provisions of any written law;
- (d) disclosure for the purpose of assisting any public officer or officer of any other statutory body in the investigation or prosecution of any offence under any written law; or
- (e) disclosure in such other circumstances as may be prescribed.

(13) Any individual aggrieved by the decision of the Registrar under subsection (4) may, within 30 days after the date of receiving the notice under subsection (9), appeal to the High Court which may confirm the decision or give such directions in the matter as seem proper or otherwise determine the matter.

(14) In this section, “ACRA administered Act” means the Accounting and Corporate Regulatory Authority Act (Cap. 2A) and any of the written laws specified in the Second Schedule to that Act.

Penalty for breach under sections 143, 144, 145, 146 and 149

150. (1) If default is made by a S-VACC in section 144(1) or 146, the S-VACC and every officer of the S-VACC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

(2) Subject to subsection (3) —

- (a) a fund manager, director, a secretary or an auditor who being bound to comply with a requirement under section 145 fails to do so; or
- (b) a director or a secretary who being bound to comply with a requirement under section 149(1) fails to do so,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

(3) A director or a secretary who has opted to provide the S-VACC with an alternate address instead of his residential address for the purpose of section 143(4)(b) or (6)(b), must ensure that the alternate address that he has provided is and continues to be an address at which he may be located, and if he fails to do so he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) For the purposes of subsection (3), a reference to the director or secretary being located at an address means the director or secretary may be physically found at the address after reasonable attempts have been made to contact the person at the address.

Division 4 – Meetings and Proceedings

Annual general meeting

151. (1) Subject to this section and section 152, a general meeting of every S-VACC to be called the “annual general meeting” must, in addition to any other meeting, be held after the end of each financial year within 6 months.

(2) The Registrar may extend the period mentioned in subsection (1) —

- (a) upon an application by the S-VACC, if the Registrar thinks there are special reasons to do so; or
- (b) in respect of any prescribed class of S-VACCs.

(3) Subject to notice being given to all persons entitled to receive notice of the meeting, a general meeting may be held at any time and the S-VACC may resolve that any meeting held or summoned to be held shall be the annual general meeting of the S-VACC.

(4) If default is made in holding an annual general meeting —

- (a) the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty; and
- (b) the Court may on the application of any member order a general meeting to be called.

(5) The Minister may, by order in the *Gazette*, specify such other period in substitution of the period mentioned in subsection (1).

When S-VACC need not hold annual general meeting

152. (1) A S-VACC need not hold an annual general meeting for a financial year —

- (a) if its directors elect to dispense with the holding of annual general meetings by giving at least 60 days’ written notice to the S-VACC’s members; or
- (b) if, at the end of that financial year, the S-VACC has sent to all persons entitled to receive notice of general meetings of the S-VACC the documents mentioned in section 204(1) within the period specified in section 204(1)(b).

(2) An election under subsection (1)(a) has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.

(3) In any year in which an annual general meeting would be required to be held but for this section, and in which no such meeting has been held, one or more members of the S-VACC holding, or together holding, not less than 10% of the total number of paid-up shares carrying the right of voting at general meetings may, by notice to the S-VACC not later than 14 days before the date by which an annual general meeting would have been required under section 151 to be held, require the holding of an annual general meeting in that year.

(4) The power of a member under subsection (3) to require the holding of an annual general meeting is exercisable not only by the giving of a notice but also by the transmission to the S-VACC at such address as may for the time being be specified for the purpose by or on behalf of the S-VACC of an electronic communication containing the requirement.

(5) If such a notice is given or electronic communication is transmitted, section 151(1) and (4) shall apply with respect to the calling of the meeting and the consequences of default.

(6) If the election under subsection (1)(a) ceases to be in force but less than 3 months remain to the date on which the S-VACC is required under section 151 to hold an annual general meeting, the S-VACC need not hold that annual general meeting.

(7) Subsection (6) does not affect any obligation of the S-VACC to hold an annual general meeting in that year in pursuance of a notice given under subsection (3) or an electronic communication transmitted under subsection (4).

(8) Unless the contrary intention appears, if a S-VACC need not hold an annual general meeting for a financial year then for that financial year —

- (a) a reference in any provision of this Act to the doing of anything at an annual general meeting is to be read as a reference to the doing of that thing by way of a resolution by written means under section 162;
- (b) a reference in any provision of this Act to the date or conclusion of an annual general meeting is, unless the meeting is held, to be read as a reference to the date of expiry of the period by which an annual general meeting would have been required under section 151 to be held;
- (c) the reference in section 197(1) to the lodging of a return with the Registrar after its annual general meeting is to be read as a reference to the lodging of that return, in the case of a S-VACC mentioned in subsection (1), after the S-VACC has sent to all persons entitled to receive notice of general meetings of the S-VACC the documents mentioned in section 204(1).

(9) In this section, an address of a person includes any number or address used for electronic communication.

Convening of extraordinary general meeting on requisition

153. (1) The directors of a S-VACC, notwithstanding anything in its constitution, shall, on the requisition of members holding at the date of the deposit of the requisition not less than 10% of the total number of paid-up shares as at the date of the deposit carries the right of voting at general meetings immediately proceed duly to convene an extraordinary general meeting of the S-VACC to be held as soon as practicable but in any case not later than 2 months after the receipt by the S-VACC of the requisition.

(2) The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the S-VACC, and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the directors do not within 21 days after the date of the deposit of the requisition proceed to convene a meeting the requisitionists, or any of them representing more than 50% of the total voting rights of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by directors convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months from that date.

(4) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors to convene a meeting shall be paid to the requisitionists by the S-VACC, and any sum so paid shall be retained by the S-VACC out of any sums due or to become due from the S-VACC by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(5) A meeting at which a special resolution is to be proposed shall be deemed not to be duly convened by the directors if they do not give such notice thereof as is required by this Act in the case of special resolutions.

Calling of meetings

154. (1) Two or more members holding not less than 10% of the total number of issued shares of the S-VACC or such lesser number as is provided by the constitution may call a meeting of the S-VACC.

(2) A meeting of a S-VACC or of a class of members, other than a meeting for the passing of a special resolution, shall be called by notice in writing of not less than 14 days or such longer period as is provided in the constitution.

(3) A meeting shall, notwithstanding that it is called by notice shorter than is required by subsection (2), be deemed to be duly called if it is so agreed—

(a) in the case of a meeting called as the annual general meeting, by all the members

entitled to attend and vote thereat; or

- (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote thereat, being a majority which together holds not less than 95% of the total voting rights of all the members having a right to vote at that meeting.

Right to demand a poll

155. (1) Any provision in a S-VACC's constitution shall be void in so far as it would have the effect —

- (a) of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting;
 - (b) of making ineffective a demand for a poll on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting that is made—
 - (i) by not less than 5 members having the right to vote at the meeting;
 - (ii) by a member or members representing not less than 5% of the total voting rights of all the members having the right to vote at the meeting; or
 - (iii) by a member or members holding shares in the S-VACC conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 5% of the total sum paid up on all the shares conferring that right; or
 - (c) of requiring the instrument appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy to be received by the S-VACC or any other person more than 72 hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.
- (2) The instrument appointing a proxy to vote at a meeting of a S-VACC shall be deemed to confer authority to demand or join in demanding a poll, and for the purposes of subsection (1) a demand by a person as proxy for a member of the S-VACC shall be deemed to be the same as a demand by the member.
- (3) A person entitled to vote on a poll at a meeting shall be deemed to be a person entitled to vote for the purposes of this Act.

Quorum, chairman, voting, etc., at meetings

156. (1) So far as the constitution does not make other provision in that behalf and subject to section 58 —

- (a) 2 members of the S-VACC personally present shall form a quorum;
 - (b) any member elected by the members present at a meeting may be chairman thereof;
 - (c) on a show of hands, each member who is personally present and entitled to vote shall have one vote; and
 - (d) on a poll, each member shall have one vote in respect of each share held by him.
- (2) On a poll taken at a meeting a person entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.
- (3) A corporation may by resolution of its directors or other governing body—
- (a) if it is a member of a S-VACC, authorise such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of the S-VACC or of any class of members; or
 - (b) if it is a creditor, including a holder of debentures, of a S-VACC, authorise such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of any creditors of the S-VACC,

and a person so authorised shall, in accordance with his authority and until his authority is revoked by the corporation, be entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member, creditor or holder of debentures of the S-VACC.

- (4) Where—
- (a) a person present at a meeting is authorised to act as the representative of a corporation at the meeting by virtue of an authority given by the corporation under subsection (3); and
 - (b) the person is not otherwise entitled to be present at the meeting as a member or proxy or as a corporate representative of another member,

the corporation shall, for the purposes of subsection (1), be deemed to be personally present at the meeting.

(5) Subject to sections 41(8) and (9) of the Companies Act or sections 49(6) of this Act, as the case may be, a certificate under the seal of the corporation shall be prima facie evidence of the appointment or of the revocation of the appointment, as the case may be, of a representative pursuant to subsection (3).

As to member's rights at meetings

157. (1) A member shall, notwithstanding any provision in the constitution of the S-VACC, have a right to attend any general meeting of the S-VACC and to speak on any resolution before the meeting.

(2) The holder of a share may vote on a resolution before a general meeting of the S-VACC if, in accordance with the provisions of section 58, the share confers on the holder a right to vote on that resolution.

Proxies

158. (1) Subject to this section, a member of a S-VACC entitled to attend and vote at a meeting of the S-VACC, or at a meeting of any class of members of the S-VACC, shall be entitled to appoint another person, whether a member or not, as his proxy to attend and vote instead of the member at the meeting and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting.

(2) Subject to this section, unless the constitution otherwise provides —

- (a) a proxy shall not be entitled to vote except on a poll;
- (b) a member shall not be entitled to appoint more than 2 proxies to attend and vote at the same meeting; and
- (c) where a member appoints 2 proxies, the appointments shall be invalid unless he specifies the proportions of his holdings to be represented by each proxy.

(3) A member of a S-VACC who is a relevant intermediary may appoint more than 2 proxies in relation to a meeting to exercise all or any of his rights to attend and to speak and vote at the meeting, but each proxy must be appointed to exercise the rights attached to a different share or shares held by him (which number and class of shares shall be specified).

(4) A proxy appointed under subsection (3) shall at a meeting have the right to vote on a show of hands.

(5) In every notice calling a meeting of a S-VACC or a meeting of any class of members of a S-VACC there shall appear with reasonable prominence a statement as to the rights of the member to appoint a proxy or proxies to attend and vote instead of the member, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting, every officer of the S-VACC who is in default shall be guilty of an offence.

(6) Any person who authorises or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued at the S-VACC's

expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

(7) No person shall be guilty of an offence under subsection (6) by reason only of the issue to a member at his request of a form of appointment naming the proxy or a list of persons willing to act as proxies if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(8) Any person who authorises or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued or circulated shall be guilty of an offence unless the invitation is accompanied by a form of proxy which shall entitle the member to direct the proxy to vote either for or against the resolution.

(9) In this section, “relevant intermediary” means —

- (a) a banking corporation licensed under the Banking Act (Cap. 19) or a wholly-owned subsidiary of such a banking corporation, whose business includes the provision of nominee services and who holds shares in that capacity;
- (b) a person holding a capital markets services licence to provide custodial services for securities under the Securities and Futures Act (Cap. 289) and who holds shares in that capacity; or
- (c) the Central Provident Fund Board established by the Central Provident Fund Act (Cap. 36), in respect of shares purchased under the subsidiary legislation made under that Act providing for the making of investments from the contributions and interest standing to the credit of members of the Central Provident Fund, if the Board holds those shares in the capacity of an intermediary pursuant to or in accordance with that subsidiary legislation.

Power of Court to order meeting

159. If for any reason it is impracticable to call a meeting in any manner in which meetings may be called or to conduct the meeting in the manner prescribed by the constitution or this Act, the Court may, either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting or of the personal representative of any such member, order a meeting to be called, held and conducted in such manner as the Court thinks fit, and may give such ancillary or consequential directions as it thinks expedient, including a direction that one member present in person or by proxy shall be deemed to constitute a meeting or that the personal representative of any deceased member may exercise all or any of the powers that the deceased member could have exercised if he were present at the meeting.

Circulation of members' resolutions, etc.

160. (1) Subject to this section, a S-VACC shall on the requisition of such number of members of the S-VACC as is specified in subsection (2) and, unless the S-VACC otherwise resolves, at the expense of the requisitionists —

- (a) give to members of the S-VACC entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting or (if the resolution is proposed to be passed by written means under section 162) for which agreement is sought; and
- (b) circulate to members entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (1) shall be—

- (a) any number of members representing not less than 5% of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
- (b) not less than 100 members holding shares in the S-VACC.

(3) Subject to subsection (4), notice of a resolution referred to in subsection (1) shall be given, and any statement so referred to shall be circulated, to members of the S-VACC entitled to have notice of the meeting sent to them by serving on each member, in any manner permitted for service of the notice of the meeting, a copy of the resolution and statement.

(4) Where the resolution is proposed to be passed by written means under section 162, the notice of the resolution and statement shall be given and circulated to members of the S-VACC entitled to have notice of the meeting sent to them by serving on each member —

- (a) copy of the resolution and statement; and
- (b) a notification that formal agreement to the resolution is being sought under section 162.

(5) Notice of the resolution shall be given to any other member of the S-VACC by serving on him notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the S-VACC.

(6) Except where the resolution is proposed to be passed by written means under section 162, the copy of the resolution referred to in subsection (3) shall be served, or notice of the general effect of the resolution referred to in subsection (5) shall be given,

as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(7) Subject to subsection (8), a S-VACC shall not be bound under this section to give notice of any resolution or to circulate any statement unless —

- (a) a copy of the requisition signed by the requisitionists, or 2 or more copies which between them contain the signatures of all the requisitionists, is deposited at the registered office of the S-VACC —
 - (i) in the case of a requisition requiring notice of a resolution, not less than 6 weeks before the meeting; and
 - (ii) in the case of any other requisition, not less than one week before the meeting; and
- (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the S-VACC's expenses in giving effect thereto,

but if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the S-VACC, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

(8) A S-VACC shall not be bound under this section to give notice of any resolution which is proposed to be passed by written means under section 162, or to circulate any statement relating thereto, unless—

- (a) the requisition setting out the text of the resolution and the statement is received by a director of the S-VACC in legible form or a permitted alternative form; and
- (b) the notice states that formal agreement to the resolution is sought under section 162.

(9) Where the requisition under subsection (8)(a) requests that the date of its receipt by a S-VACC be notified to a specified person, the directors shall, without delay after it is first received by a director in legible form or a permitted alternative form, notify that person of the date when it was first so received.

(10) The S-VACC shall not be bound under this section to circulate any statement if, on the application either of the S-VACC or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Court may order the S-VACC's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(11) Notwithstanding anything in the S-VACC's constitution, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this subsection notice shall be deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members.

(12) In the event of any default in complying with this section, the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

(13) For the purposes of this section, something is "in legible form or a permitted alternative form" if, and only if, it is sent or otherwise supplied —

- (a) in a form (such as a paper document) that is legible before being sent or otherwise supplied and does not change form during that process; or
- (b) in another form that —
 - (i) is currently agreed between the S-VACC and the person as a form in which the thing may be sent or otherwise supplied to the S-VACC; and
 - (ii) is such that documents sent or supplied in that form can (where particular conditions are met) be received in legible form or be made legible following receipt in non-legible form.

Special resolutions

161. (1) A resolution shall be a special resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at a general meeting of which not less than 21 days' written notice specifying the intention to propose the resolution as a special resolution has been duly given.

(2) Notwithstanding subsection (1), if it so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority which together holds not less than 95% of the total voting rights of all the members having a right to vote at that meeting, a resolution may be proposed and passed as a special resolution at a meeting of which written notice of a period less than that required under subsection (1) has been given.

(3) At any meeting at which a special resolution is submitted a declaration of the chairman that the resolution is carried shall unless a poll is demanded be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which a special resolution is submitted a poll shall be deemed to be effectively demanded if demanded —

- (a) by such number of members for the time being entitled under the constitution to vote at the meeting as is specified in the constitution, but it shall not in any case be necessary for more than 5 members to make the demand;
- (b) if no such provision is made by the constitution, by 3 members so entitled, or by one or 2 members so entitled, if —
 - (i) that member holds or those 2 members together hold not less than 10% of the total number of paid-up shares of the S-VACC; or
 - (ii) that member represents or those 2 members together represent not less than 10% of the total voting rights of all the members having a right to vote at that meeting.

(5) For the purposes of subsection (4), any reference to a member includes a reference to a S-VACC itself where it is registered as a member pursuant to a cross Sub-Fund investment under section 57 of this Act, but does not include reference to a S-VACC itself where it is registered as a member in any other case.

(6) In computing the majority on a poll demanded on the question that a special resolution be passed reference shall be had to the number of votes cast for and against the resolution and to the number of votes to which each member is entitled by this Act or the constitution of the S-VACC.

(7) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting shall be deemed to be duly held when the notice is given and the meeting held in the manner provided by this Act or by the constitution.

Passing of resolutions by written means

162. (1) Notwithstanding any other provision of this Act, a S-VACC may pass any resolution by written means in accordance with the provisions of this section and sections 163 and 168.

(2) Subsection (1) shall not apply to a resolution for which special notice is required.

(3) A special resolution is passed by written means if the resolution indicates that it is a special resolution and if it has been formally agreed on any date by one or more members of the S-VACC who on that date represent —

- (a) at least 75%; or
- (b) if the constitution of the S-VACC requires a greater majority for that resolution, that greater majority,

of the total voting rights of all the members who on that date would have the right to vote on that resolution at a general meeting of the S-VACC.

(4) An ordinary resolution is passed by written means if the resolution does not indicate that it is a special resolution and if it has been formally agreed on any date by one or more members of the S-VACC who on that date represent —

- (a) a majority; or
- (b) if the constitution of the S-VACC requires a greater majority for that resolution, that greater majority,

of the total voting rights of all the members who on that date would have the right to vote on that resolution at a general meeting of the S-VACC.

(5) For the purposes of this section, a resolution of a S-VACC is formally agreed by a member if —

- (a) the S-VACC receives from the member (or his proxy if this is allowed) a document that—
 - (i) is given to the S-VACC in legible form or a permitted alternative form;
 - (ii) indicates the member's agreement (or agreement on his behalf) to the resolution by way of the member's signature (or his proxy's signature if that is allowed), or such other method as the constitution may provide; and
 - (iii) includes the text of the resolution or otherwise makes clear that it is that resolution that is being agreed to; and
- (b) the member (or his proxy) had a legible text of the resolution before giving that document.

(6) Nothing in subsection (3) or (4) shall be construed as requiring the requisite number of members to formally agree to the resolution on a single day.

(7) For the purposes of this section, something is “in legible form or a permitted alternative form” if, and only if, it is sent or otherwise supplied —

- (a) in a form (such as a paper document) that is legible before being sent or otherwise supplied and does not change form during that process; or
- (b) in another form that—
 - (i) is currently agreed between the S-VACC and the person as a form in which the thing may be sent or otherwise supplied to the S-VACC; and
 - (ii) is such that documents sent or supplied in that form can (where particular conditions are met) be received in legible form or be made legible following receipt in non-legible form.

(8) Any reference in this Act or any other law to the passing or making of a resolution, or the passing or making of a resolution at a meeting, includes a reference to the passing of the resolution by written means in accordance with this section.

(9) Any reference in this Act or any other law to the doing of anything at a general meeting of a S-VACC includes a reference to the passing of a resolution authorising the doing of that thing by written means in accordance with this section.

Requirements for passing of resolutions by written means

163. (1) A resolution of a S-VACC may only be passed by written means if —

(a) either —

(i) agreement to the resolution was first sought by the directors of the S-VACC in accordance with section 164; or

(ii) a requisition for that resolution was first given to the S-VACC in accordance with section 160 and, by reason of that notice, the documents referred to in section 160(4) in respect of the resolution were served on members of the S-VACC in accordance with section 160(4);

(b) the constitution of the S-VACC does not prohibit the passing of resolutions (either generally or for the purpose in question) by written means; and

(c) all conditions in the S-VACC's constitution relating to the passing of the resolution by written means are met.

(2) Any resolution that is passed in contravention of subsection (1) shall be invalid.

Where directors seek agreement to resolution by written means

164. (1) The directors of a S-VACC who wish to seek agreement to a resolution of the S-VACC and for it to be passed by written means shall send to each member, having the right to vote on that resolution at a general meeting, a copy of the text of the resolution.

(2) As far as practicable, the directors shall comply with subsection (1) as respects every member at the same time and without delay.

(3) Without prejudice to any other means of complying with subsections (1) and (2), the directors shall have complied with those subsections if they secure that the same paper document containing the text of the resolution is sent without delay to each member in turn.

(4) Subject to section 165, if the resolution is passed before the directors have complied with subsection (1) as respects every member, that fact shall not affect the

validity of the resolution or any obligation already incurred by the directors under subsections (1) and (2).

Members may require general meeting for resolution

165. (1) Any member or members of a S-VACC representing at least 5% of the total voting rights of all the members having the right to vote on a resolution at a general meeting of the S-VACC may, within 7 days after —

- (a) the text of the resolution has been sent to him or them in accordance with section 164; or
- (b) the documents referred to in section 160 in respect of the resolution have been served on him or them,

as the case may be, give notice to the S-VACC requiring that a general meeting be convened for that resolution.

(2) Where notice is given under subsection (1)—

- (a) the resolution is invalid even though it may have in the meantime been passed in accordance with section 162; and
- (b) the directors shall proceed to convene a general meeting for the resolution.

Period for agreeing to written resolution

166. (1) Unless the constitution of a S-VACC otherwise provides, a resolution proposed to be passed by written means lapses if it is not passed before the end of the period of 28 days beginning with the date on which the written resolution is circulated to the members of the S-VACC.

(2) The agreement to a resolution is ineffective if indicated after the expiry of that period.

S-VACC's duty to notify members that resolution passed by written means

167. (1) Where a resolution of a S-VACC is passed by written means, the S-VACC shall —

- (a) notify every member that it has been passed; and
- (b) do so within 15 days from the earliest date on which a director or secretary of the S-VACC is aware that it has been passed.

(2) Non-compliance with this section shall not render the resolution invalid.

Recording of resolutions passed by written means

168. (1) Where a resolution of a S-VACC is passed by written means, the S-VACC shall cause a record of the resolution, and the indication of each member's agreement (or agreement on his behalf) to it, to be entered in a book in the same way as minutes of proceedings of a general meeting of the S-VACC.

(2) Non-compliance with subsection (1) shall not render the resolution invalid.

(3) Any such record, if purporting to be signed by a director or the secretary of the S-VACC, is evidence of the proceedings in passing the resolution.

(4) Where a record is made in accordance with this section, then, until the contrary is proved, the requirements of this Act with respect to those proceedings shall be deemed to have been complied with.

(5) Section 173 applies in relation to a record made in accordance with this section as it applies in relation to minutes of proceedings of a general meeting.

Resolution requiring special notice

169. Where by this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the S-VACC not less than 28 days before the meeting at which it is moved, and the S-VACC shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, in any manner allowed by the constitution, not less than 14 days before the meeting, but if after notice of the intention to move such a resolution has been given to the S-VACC, a meeting is called for a date 28 days or less after the notice has been given, the notice, although not given to the S-VACC within the time required by this section, shall be deemed to be properly given.

Registration and copies of certain resolutions

170. (1) A copy of—

(a) every special resolution; and

(b) every resolution which effectively binds any class of shareholders whether agreed to by all the members of that class or not,

shall, except where otherwise expressly provided by this Act within 14 days after the passing or making thereof, be lodged by the S-VACC with the Registrar.

(2) Where the constitution of a S-VACC has not been registered a printed copy of every resolution to which this section applies shall be forwarded to any member at his request on payment of \$1 or such less sum as the S-VACC directs.

(3) In the event of any default in complying with subsection (1) the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(4) In the event of any default in complying with subsection (2) the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine of \$50 for each copy in respect of which default is made.

Resolutions at adjourned meetings

171. Where a resolution is passed at an adjourned meeting of a S-VACC or of holders of any class of shares or of directors the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

Minutes of proceedings

172. (1) Every S-VACC shall cause—

- (a) minutes of all proceedings of general meetings and of meetings of its directors, if any, to be entered in books kept for that purpose within one month of the date upon which the relevant meeting was held; and
- (b) those minutes to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting.

(2) Any minutes so entered that purports to be signed as provided in subsection (1) shall be evidence of the proceedings to which they relate, unless the contrary is proved.

(3) Where minutes have been so entered and signed, then, until the contrary is proved—

- (a) the meeting shall be deemed to have been duly held and convened;
- (b) all proceedings had thereat shall be deemed to have been duly had; and
- (c) all appointments of officers or liquidators made thereat shall be deemed to be valid.

(4) Every S-VACC shall keep minute books in which it shall cause to be entered the following matters:

- (a) if the S-VACC has only one director —
 - (i) the passing of resolutions by that director; and
 - (ii) the making of declarations by that director;

- (b) resolutions passed by written means under section 162,
within one month of the passing or making of each resolution or declaration.
- (5) The S-VACC shall ensure that minutes of the passing of a resolution referred to in subsection (4)(b) are signed by a director within a reasonable time after the resolution is passed.
- (6) The director of a S-VACC with only one director who has passed a resolution or made a declaration shall sign the minutes thereof within a reasonable time after the resolution is passed or the declaration is made.
- (7) Minutes entered in accordance with subsection (4) and purportedly signed in accordance with subsection (5) or (6) (as the case may be) shall be evidence of the resolution or declaration to which they relate, unless the contrary is proved.
- (8) If default is made in complying with this section, the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

Inspection of minute books

- 173.** (1) The books referred to in section 172(1) and (4) shall be kept by the S-VACC at the registered office or the principal place of business in Singapore of the S-VACC, and shall be open to the inspection of any member without charge.
- (2) Any member shall be entitled to be furnished within 14 days after he has made a request in writing in that behalf to the S-VACC with a copy of any minutes specified in section 172(1) and (4) at a charge not exceeding \$1 for every page thereof.
- (3) Subsection (1) shall not apply to books containing minutes of proceedings of meetings of a S-VACC's directors, or (as the case may be) books containing minutes of the passing of resolutions and the making of declarations by the director of a S-VACC that has only one director; and subsection (2) shall not apply to any of those minutes.
- (4) If any copy required under this section is not so furnished the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$400 and also to a default penalty.

PART 8 PREVENTION OF MONEY LAUNDERING AND TERRORISM FINANCING

Division 1 – General Provisions

Interpretation of this Part

- 174.** (1) In this Part, unless the context otherwise requires —

“AML/CFT requirement”, or Anti-Money Laundering/Countering the Financing of Terrorism requirement —

- (a) in relation to a foreign country, means a law or regulatory requirement of that foreign country for the detection or prevention of money laundering or the financing of terrorism; or
- (b) in relation to Singapore, means a written law, or a regulatory requirement imposed under a written law, for the detection or prevention of money laundering or the financing of terrorism;

“applicable offence” means a drug dealing offence or a serious offence as defined in the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A);

“book” includes any record, register, document or other record of information and any account or accounting record, however compiled, recorded or stored, and whether in written or printed form or on microfilm or any electronic form or otherwise;

“corresponding authority” means a public authority of a foreign country which exercises a function that corresponds to a regulatory function of –

- (a) the Authority under this Act (except for Part 8);
- (b) the AML/CFT Authority in relation to Part 8 of this Act; or
- (c) the AML/CFT Authority under any prescribed written law;

“domestic authority” means a Law Officer, a ministry or department of the Government, or a statutory body established by or under a public Act for a public purpose, other than –

- (a) the AML/CFT Authority; and
- (b) the Authority only in respect of the Authority’s regulation of S-VACCs for compliance with the fit and proper provisions;

“employee” includes an individual seconded or temporarily transferred from another employer;

“enforcement action” means any criminal or civil action taken by a domestic authority against a person for an applicable offence, including the restraining of dealing with, or the seizure or confiscation of, any property in connection with an applicable offence, and the offer of composition of the offence;

“executive officer”, in relation to a S-VACC, means any person, by whatever name described, who —

- (a) is in the direct employment of, or acting for or by arrangement with, the S-VACC; and

- (b) is concerned with or takes part in the management of the S-VACC on a day-to-day basis;

“fit and proper provisions” refers to the following provisions of this Act –

- (a) section 110; and
- (b) section 109(2)(a)(iv) read with section 383(3);

“foreign AML/CFT authority”, or foreign Anti-Money Laundering/Countering the Financing of Terrorism authority, means a public authority of a foreign country which is responsible for the supervision of foreign financial institutions in that foreign country;

“foreign country” means any country or territory other than Singapore;

“foreign financial institution” means an institution that is licensed, approved, registered or otherwise regulated under any law administered by a corresponding authority in a foreign country to carry on any financial activities in that country, or that is exempted from such licensing, approval, registration or regulation for the carrying on of any financial activities in that country;

“information” includes any information, book, document or other record in any form whatsoever (including an electronic form), as well as any container or article containing any information or record;

“investigation”, in relation to a domestic authority, means an investigation by that authority to determine if a person has committed or is committing an applicable offence;

“Law Officer” means the Attorney-General, a Deputy Attorney-General, the Solicitor-General, a Deputy Public Prosecutor or a legally qualified member of the Attorney-General’s Chambers;

“office holder”, in relation to a S-VACC, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the S-VACC, or acting in an equivalent capacity in relation to that S-VACC;

“prescribed written law” has the same meaning as in section 30X(1) of the Monetary Authority of Singapore Act;

“protected information” means information that is protected from unauthorised disclosure under any prescribed written law;

“public authority” includes a financial supervisor established as an independent non-governmental authority under a law of a foreign country;

“supervision” —

- (a) in relation to a foreign AML/CFT authority of a foreign country, means the supervision by that authority of foreign financial institutions carrying on any financial activities in that country for compliance with the AML/CFT requirements of that country applicable to those institutions; or

- (b) in relation to a domestic authority, means the supervision by the domestic authority of persons regulated by it for compliance with the applicable AML/CFT requirements of Singapore;

“supervisory action” —

- (a) in relation to a foreign AML/CFT authority, means any action taken by the authority for or in connection with its supervision of foreign financial institutions; or
- (b) in relation to a domestic authority, means any action taken by the authority for or in connection with its supervision of persons regulated by it.

(2) In this Part, a foreign AML/CFT authority exercises consolidated supervision authority over a S-VACC if —

- (a) the S-VACC is a subsidiary of a foreign financial institution established or incorporated in the foreign country of the foreign AML/CFT authority; and
- (b) the foreign AML/CFT authority carries out consolidated supervision of the foreign financial institution mentioned in paragraph (a) and its subsidiaries, branches, agencies and offices outside that foreign country, for compliance with the AML/CFT requirements of that foreign country that are applicable to the foreign financial institution.

Division 2 – Powers of the AML/CFT Authority

Directions or regulations to discharge Government’s international obligations

175. (1) The AML/CFT Authority may, from time to time —

- (a) issue such directions to a S-VACC or class of S-VACCs; and
- (b) make such regulations concerning any S-VACC or class of S-VACCs or relating to the activities of any S-VACC or class of S-VACCs,

as the AML/CFT Authority considers necessary in order to discharge or facilitate the discharge of any obligation binding on Singapore by virtue of a decision of the Security Council of the United Nations.

(2) A S-VACC to which a direction is issued under subsection (1)(a) or which is bound by any regulations made under subsection (1)(b) shall comply with the direction or regulations notwithstanding any other duty imposed on the S-VACC by any rule of law, written law or contract.

(3) A S-VACC shall not in carrying out any act in compliance with any direction or regulations made under subsection (1) be treated as being in breach of any such rule of law, written law or contract.

(4) A S-VACC shall not disclose any direction issued under subsection (1)(a) if the AML/CFT Authority notifies the S-VACC that the AML/CFT Authority is of the opinion that the disclosure of the direction is against the public interest.

(5) A S-VACC which —

- (a) fails or refuses to comply with a direction issued to it under subsection (1)(a);
- (b) contravenes any regulations made under subsection (1)(b); or
- (c) discloses a direction issued to it in contravention of subsection (4),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million.

Requirements for prevention of money laundering and terrorism financing

176. (1) The AML/CFT Authority may, from time to time, issue such directions or make such regulations concerning any S-VACC or class of S-VACCs as the AML/CFT Authority considers necessary for the prevention of money laundering or for the prevention of the financing of terrorism.

(2) In particular, the directions and regulations under subsection (1) may provide for —

- (a) customer due diligence measures to be conducted by S-VACCs to prevent money laundering and the financing of terrorism; and
- (b) the records to be kept for that purpose.

(3) A S-VACC must —

- (a) conduct such customer due diligence measures as may be specified by the directions referred to in subsection (2) that are issued to it, or as may be prescribed by the regulations referred to in that subsection that are applicable to it; and
- (b) maintain records on transactions and information obtained through the conduct of those measures for such period and in such manner as may be specified by the directions referred to in subsection (2) that are issued to it, or as may be prescribed by the regulations referred to in that subsection that are applicable to it.

(4) A S-VACC which —

- (a) fails to comply with a direction issued to it under subsection (1);
- (b) contravenes any regulation made under subsection (1); or
- (c) contravenes subsection (3),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million and, in the case of a continuing offence, to a further fine of \$100,000 for every day or part of a day during which the offence continues after conviction.

Inspection of S-VACCs for compliance with directions and regulations under sections 175 and 176

177. (1) The AML/CFT Authority may, from time to time, inspect under conditions of secrecy the books of —

- (a) a S-VACC; or
- (b) any subsidiary, branch, agency or office outside Singapore of a S-VACC,

for the purpose of determining the extent of compliance by the S-VACC with the directions issued and the regulations made under sections 175 and 176.

(2) The AML/CFT Authority may appoint any person, including an auditor (not being an auditor of the S-VACC), to carry out an inspection under this section.

(3) If the inspection is carried out on the ground that the AML/CFT Authority has reason to believe that the S-VACC has contravened or is contravening any direction issued or regulation made under section 175 or 176, and if the AML/CFT Authority so directs, then the S-VACC is liable to pay for the remuneration and expenses of any person appointed under subsection (2) for the inspection.

(4) The AML/CFT Authority may recover from the S-VACC the remuneration and expenses referred to in subsection (3) as a civil debt due to the AML/CFT Authority.

(5) The AML/CFT Authority may, in its discretion, waive the payment of all or any part of the remuneration and expenses referred to in subsection (3).

Obligation of S-VACC under inspection

178. (1) For the purposes of an inspection under section 177(1), the S-VACC must —

- (a) give the AML/CFT Authority access to such of the books of the S-VACC as the AML/CFT Authority may reasonably require to conduct the inspection;
- (b) procure a person who is in possession of such of the books of the S-VACC as the AML/CFT Authority may reasonably require to conduct the inspection, to

give the AML/CFT Authority access to the books;

- (c) provide such information (including information relating to the internal control systems of the S-VACC) and facilities as the AML/CFT Authority may reasonably require to conduct the inspection; and
- (d) procure a person who is in possession of such information (including information relating to the internal control systems of the S-VACC) and facilities as the AML/CFT Authority may reasonably require to conduct the inspection, to provide the information and facilities to the AML/CFT Authority.

(2) Subsection (1) has effect despite any obligation of confidentiality or other restrictions on the disclosure of information imposed on the S-VACC or any of its officers, or on any person referred to in subsection (1)(b) or (d), by this Act or any requirement imposed by this Act, written law, any rule of law, any contract or any rule of professional conduct.

(3) A S-VACC which refuses or neglects, without reasonable excuse, to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(4) No civil or criminal liability is incurred by a S-VACC or any of its officers, or by any person referred to in subsection (1)(b) or (d), in respect of any obligation or restriction referred to in subsection (2), for doing or omitting to do any act, if the act is done or omitted to be done with reasonable care and in good faith and for the purpose of complying with subsection (1).

(5) A S-VACC or any of its officers, or any person referred to in subsection (1)(b) or (d), that, with reasonable care and in good faith, does or omits to do any act for the purpose of complying with subsection (1) is not to be treated as being in breach of any obligation or restriction referred to in subsection (2).

Confidentiality of inspection reports

179. (1) Except as provided in subsection (2), where a written report has been produced in respect of a S-VACC by the AML/CFT Authority following an inspection under section 177, the report must not be disclosed to any person by —

- (a) the S-VACC; or
- (b) any officer or auditor of the S-VACC.

(2) Disclosure of the report may be made —

- (a) by the S-VACC to any officer or auditor of that S-VACC solely in connection

with the performance of the duties of the officer or auditor, as the case may be, in that S-VACC;

(b) by any officer or auditor of the S-VACC to any other officer or auditor of that S-VACC, solely in connection with the performance of their respective duties in that S-VACC; or

(c) to such other person as the AML/CFT Authority may approve in writing.

(3) In granting approval for any disclosure under subsection (2)(c), the AML/CFT Authority may impose such conditions or restrictions as it thinks fit on the S-VACC, any officer or auditor of that S-VACC or the person to whom disclosure is approved, and that S-VACC, officer, auditor or person (as the case may be) must comply with those conditions or restrictions.

(4) The obligations of an officer or auditor under subsections (1) and (3) continue after the termination or cessation of the employment or appointment of the officer or auditor by the S-VACC.

(5) Any person who contravenes subsection (1), or fails to comply with any condition or restriction imposed by the AML/CFT Authority under subsection (3), shall be guilty of an offence and shall be liable on conviction —

(a) in any case where the person is an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) in any other case, to a fine not exceeding \$250,000.

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the person in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction —

(a) in any case where the person is an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) in any other case, to a fine not exceeding \$250,000.

(7) Where a person is charged with an offence under subsection (6), it is a defence for the person to prove that —

(a) the disclosure was made contrary to the person's desire;

(b) where the disclosure was made in any written or printed form, the person had as soon as practicable after receiving the report surrendered, or taken all reasonable steps to surrender, the report and all copies of the report to the AML/CFT Authority; and

- (c) where the disclosure was made in an electronic form, the person had, as soon as practicable after receiving the report, taken all reasonable steps to ensure the deletion of all electronic copies of the report and the surrender of the report and all copies of the report in other forms to the AML/CFT Authority.

AML/CFT Authority may transmit information from inspection to corresponding authority

180. (1) The AML/CFT Authority or any person authorised by the AML/CFT Authority may, on the AML/CFT Authority's own motion, and subject to the satisfaction of such conditions as the AML/CFT Authority may determine, transmit any information obtained by the AML/CFT Authority from an inspection under section 177 to a corresponding authority of a foreign country that exercises consolidated supervision authority (whether or not for compliance with any AML/CFT requirement) over the S-VACC to which the inspection relates.

(2) Subsection (1) applies despite the provisions of this Act or any requirement imposed under this Act, any written law, rule of law, contract or rule of professional conduct, and is without prejudice to section 188 or any other written law or rule of law authorising the AML/CFT Authority, or a person authorised by the AML/CFT Authority, to disclose information in the AML/CFT Authority's or the person's possession to another person.

Division 3 – Assistance to Foreign Authorities and Domestic Authorities for their Supervisory and Other Actions in respect of Money Laundering, Terrorism Financing and Other Offences

Subdivision 1 — General provisions

Purposes of this Part

181. The purposes of this Part are —

- (a) to enable the AML/CFT Authority to provide information to a foreign AML/CFT authority of a foreign country in connection with the foreign AML/CFT authority's supervision of foreign financial institutions carrying on any financial activities in that country for compliance with the AML/CFT requirements of that country applicable to those institutions, including the taking of supervisory action against them for a contravention of those requirements;
- (b) to enable the AML/CFT Authority to provide information to a domestic authority in connection with —
 - (i) an investigation into the commission or an alleged commission of an applicable offence by a person;

- (ii) an enforcement action against a person for the commission or an alleged commission of an applicable offence; or
 - (iii) a supervisory action against a person regulated by the domestic authority for a contravention of an applicable AML/CFT requirement of Singapore; and
- (c) to enable a foreign AML/CFT authority to carry out an inspection in Singapore of a S-VACC over which the foreign AML/CFT authority exercises consolidated supervision authority.

Subdivision 2 — Assistance to AML/CFT authorities

Conditions for provision of assistance to foreign AML/CFT authority

182. (1) The AML/CFT Authority may, on the request of a foreign AML/CFT authority, provide the assistance referred to in section 183 to the foreign AML/CFT authority, if the AML/CFT Authority is satisfied that all of the following conditions are fulfilled:

- (a) the request is received by the AML/CFT Authority on or after the date of commencement of this Act;
- (b) the assistance is intended to enable the foreign AML/CFT authority to carry out supervision or take supervisory action;
- (c) the foreign AML/CFT authority has given a written undertaking that any information or copy of any information obtained as a result of the request will not be used for any purpose other than a purpose that is specified in the request and approved by the AML/CFT Authority;
- (d) the foreign AML/CFT authority has given a written undertaking that the foreign AML/CFT authority will not disclose to a third party any information or copy of any information obtained as a result of the request, unless the foreign AML/CFT authority is compelled to do so by the law or a court of the foreign country, and that the foreign AML/CFT authority will inform the AML/CFT Authority promptly if the foreign AML/CFT authority is so compelled;
- (e) the foreign AML/CFT authority has given a written undertaking to obtain the prior consent of the AML/CFT Authority before disclosing any information or copy of any information obtained as a result of the request to a third party, and to make such disclosure only in accordance with such conditions as may be imposed by the AML/CFT Authority;
- (f) the foreign AML/CFT authority has given a written undertaking to otherwise protect the confidentiality of any information or copy of any information obtained pursuant to the request;
- (g) the request specifies —
 - (i) the purpose of the request and the nature of the assistance being sought;
 - (ii) the identity of the S-VACC which has in its possession the information requested for;
 - (iii) the relevance of the information requested to the supervision or supervisory action (as the case may be) of the foreign AML/CFT authority; and

- (iv) any other information that may assist in giving effect to the request;
 - (h) the type and amount of information requested for are proportionate to, and are of sufficient importance to, the carrying out of supervision or the taking of the supervisory action by the foreign AML/CFT authority;
 - (i) the matter to which the request relates is of sufficient gravity;
 - (j) the foreign AML/CFT authority has given or is willing to give an undertaking to the AML/CFT Authority to comply with a future request by the AML/CFT Authority to the foreign AML/CFT authority for similar assistance;
 - (k) the rendering of assistance will not be contrary to the national interest or public interest.
- (2) Despite subsections (1)(c), (d), (e) and (f), the AML/CFT Authority may provide the assistance sought without any of the undertakings referred to in one or more of those provisions if
- (a) none of the information requested for is protected information; and
 - (b) the AML/CFT Authority considers it appropriate to provide the assistance in the circumstances of the case.
- (3) In considering whether to provide the assistance referred to in section 183 to a foreign AML/CFT authority, the AML/CFT Authority may also have regard to the following:
- (a) if the request concerns a contravention of an AML/CFT requirement of a foreign country, whether the act or omission that is alleged to constitute the contravention would, if it had occurred in Singapore, have constituted a contravention of any direction or regulation issued or made under section 175 or 176;
 - (b) whether the foreign AML/CFT authority has given or is willing to give an undertaking to the AML/CFT Authority to contribute towards the costs of providing the assistance.

Assistance that may be rendered to foreign AML/CFT authority

183. (1) Despite the provisions of this Act or any requirement imposed under any written law, any rule of law, any contract or any rule of professional conduct, the AML/CFT Authority or any person authorised by the AML/CFT Authority may, in relation to a request by a foreign AML/CFT authority for assistance, transmit to the foreign AML/CFT authority any information in the possession of the AML/CFT Authority that is requested by the foreign AML/CFT authority or a copy of the information.

(2) The AML/CFT Authority or any person authorised by the AML/CFT Authority may, in relation to a request by a foreign AML/CFT authority for assistance —

- (a) order any S-VACC or any person who is or used to be a director or an executive officer, fund manager, approved custodian, employee, agent or office holder, of a S-VACC to furnish to the AML/CFT Authority any information requested by the foreign AML/CFT authority which is in the possession or control of the S-VACC or person (as the case may be), or a copy of that information, for transmission to the foreign AML/CFT authority; or
- (b) request a domestic authority to furnish to the AML/CFT Authority any information that is requested by the foreign AML/CFT authority, or a copy of that information, for transmission to the foreign AML/CFT authority.

(3) An order under subsection (2)(a) has effect despite any obligation of confidentiality or other restrictions on the disclosure of information imposed by this Act or any requirement imposed under any written law, any rule of law, any contract or any rule of professional conduct.

(4) Nothing in this section requires an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97) —

- (a) to provide or transmit any information, or a copy of any information, that contains; or
- (b) to disclose,

a privileged communication made by or to the advocate and solicitor or legal counsel in that capacity.

(5) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act, who refuses to provide or transmit any information, or copy of any information, that contains, or to disclose, any privileged communication must nevertheless give the name and address (if known) of the person to whom, or by or on behalf of whom, the privileged communication was made.

Subdivision 3 — Assistance to domestic authorities

Conditions for provision of assistance to domestic authority

184. The AML/CFT Authority may, on the request of a domestic authority, provide the assistance referred to in section 185 to the domestic authority, if the AML/CFT Authority is satisfied that all of the following conditions, and all such other conditions as the AML/CFT Authority may determine, are fulfilled:

- (a) the request is received by the AML/CFT Authority on or after the date of commencement of this Act;

- (b) the assistance requested for is intended to enable the domestic authority to carry out any investigation, or take any enforcement action or supervisory action;
- (c) the type and amount of information requested for are proportionate to, and are of sufficient importance to, the investigation or enforcement action or supervisory action;
- (d) the matter to which the request relates is of sufficient gravity.

Assistance that may be rendered to domestic authority

185. (1) Despite the provisions of this Act or any requirement imposed under any written law, any rule of law, any contract or any rule of professional conduct, the AML/CFT Authority or any person authorised by the AML/CFT Authority may, in relation to a request by a domestic authority for assistance, transmit to the domestic authority any information in the possession of the AML/CFT Authority that is requested by the domestic authority or a copy of the information.

(2) The AML/CFT Authority or any person authorised by the AML/CFT Authority may, in relation to a request by a domestic authority for assistance, order any S-VACC or any person who is or used to be a director, or an executive officer, fund manager, approved custodian, employee, agent or office holder, of a S-VACC to furnish to the AML/CFT Authority any information requested by the domestic authority which is in the possession or control of the S-VACC or person (as the case may be), or a copy of that information, for transmission to the domestic authority.

(3) An order under subsection (2) has effect despite any obligation of confidentiality or other restrictions on the disclosure of information imposed by this Act or any requirement imposed under any written law, any rule of law, any contract or any rule of professional conduct.

(4) Nothing in this section requires an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97) —

- (a) to provide or transmit any information, or copy of any information, that contains;
or
- (b) to disclose,

a privileged communication made by or to the advocate and solicitor or legal counsel in that capacity.

(5) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act, who refuses to provide or transmit any information, or copy of any information, that contains, or to disclose, any privileged communication must nevertheless give the name and address (if known) of the person to whom, or by or on behalf of whom, the privileged communication was made.

Subdivision 4 — Additional provisions for Subdivisions 2 and 3

Offences under this Part

- 186.** (1) A person shall be guilty of an offence if the person —
- (a) without reasonable excuse, refuses or fails to comply with an order under section 183(2)(a) or 185(2);
 - (b) without reasonable excuse, refuses or fails to comply with section 183(5) or 185(5); or
 - (c) in purported compliance with an order under section 183(2)(a) or 185(2) or with section 183(5) or 185(5), furnishes to the AML/CFT Authority any information, or copy of any information, known to the person to be false or misleading in a material particular.
- (2) Any person who is guilty of an offence under subsection (1)(a) or (b) shall be liable on conviction —
- (a) in any case where the person is an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction; or
 - (b) in any other case, to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.
- (3) Any person who is guilty of an offence under subsection (1)(c) shall be liable on conviction —
- (a) in any case where the person is an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both; or
 - (b) in any other case, to a fine not exceeding \$100,000.

Immunities

- 187.** (1) No civil or criminal liability is incurred by any person for —
- (a) providing to the AML/CFT Authority any information or copy of any information, if the person had provided the information or copy with reasonable care and in good faith and in compliance with an order under section 183(2)(a) or 185(2) or with section 183(5) or 185(5); or

- (b) doing or omitting to do any act, if the person had done or omitted to do the act with reasonable care and in good faith and for the purpose of complying with an order under section 183(2)(a) or 185(2) or with section 183(5) or 185(5).

(2) A person does not breach any restriction upon the disclosure of information imposed by this Act or any requirement imposed under any written law, any rule of law, any contract or any rule of professional conduct, if the person makes the disclosure with reasonable care and in good faith and in compliance with an order made under section 183(2)(a) or 185(2) or with section 183(5) or 185(5).

AML/CFT Authority may provide assistance

188. Despite the provisions of this Act or any requirement imposed under any written law, any rule of law, any contract or any rule of professional conduct, the AML/CFT Authority or any person authorised by the AML/CFT Authority may, on the AML/CFT Authority's own motion, and subject to the satisfaction of such conditions as the AML/CFT Authority may determine, transmit any information in the possession of the AML/CFT Authority or a copy of the information, to —

- (a) a foreign AML/CFT authority in connection with any supervision or supervisory action by the foreign AML/CFT authority; or
- (b) a domestic authority in connection with an investigation, an enforcement action or a supervisory action by the domestic authority.

Subdivision 5 — Inspection by foreign AML/CFT authority

Conditions for inspection by foreign AML/CFT authority

189. (1) A foreign AML/CFT authority may, with the prior written approval of the AML/CFT Authority and under conditions of secrecy, conduct an inspection in Singapore of the books of a S-VACC in accordance with this section, if all of the following conditions are satisfied:

- (a) the S-VACC is one over which the foreign AML/CFT authority exercises consolidated supervision authority, and the inspection is solely for the purpose of such consolidated supervision;
- (b) the foreign AML/CFT authority —
 - (i) is prohibited by the laws applicable to it from disclosing information obtained by it in the course of the inspection to any other person, except when compelled to do so by the laws or a court of the country or territory where it is established; or

- (ii) has given to the AML/CFT Authority such written undertaking to protect the confidentiality of the information obtained as the AML/CFT Authority may require;
 - (c) the foreign AML/CFT authority has given a written undertaking to the AML/CFT Authority to comply with such conditions as the AML/CFT Authority may impose under subsection (3);
 - (d) the foreign AML/CFT authority has provided or is willing to provide similar assistance to the AML/CFT Authority.
- (2) The AML/CFT Authority may take into account other factors which it considers relevant, besides the satisfaction of the conditions under subsection (1), when deciding whether or not to give its approval under that subsection.
- (3) The AML/CFT Authority may at any time, whether before, when or after giving its approval for an inspection under this section, impose conditions on the foreign AML/CFT authority relating to —
- (a) the classes of information to which the foreign AML/CFT authority may or may not have access in the course of inspection;
 - (b) the conduct of the inspection;
 - (c) the use or disclosure of any information obtained in the course of the inspection; and
 - (d) such other matters as the AML/CFT Authority may determine.
- (4) A foreign AML/CFT authority may, with the prior written approval of the AML/CFT Authority, appoint any person to conduct the inspection under subsection (1), and in such event, this section (other than this subsection) and sections 190 and 191 apply to the person, as if a reference to the foreign AML/CFT authority in those sections includes a reference to the person.
- (5) The AML/CFT Authority may, in relation to an inspection by a foreign AML/CFT authority conducted or to be conducted under this section on a S-VACC, at any time, by notice in writing to the S-VACC impose such conditions or restrictions on the S-VACC as the AML/CFT Authority may think fit, and the S-VACC must comply with such conditions or restrictions.

Duty of S-VACC under inspection

190. (1) For the purposes of an inspection under section 189, and subject to subsection (2), the S-VACC must —

- (a) give the foreign AML/CFT authority access to such of the books of the S-VACC; and
- (b) provide such information (including information relating to the internal control systems of the S-VACC) and facilities,

as the foreign AML/CFT authority may require for the inspection.

(2) The S-VACC need not give the foreign AML/CFT authority access to the books of the S-VACC, or provide information or facilities, at such times or at such places as would unduly interfere with the proper conduct of the normal daily business of the S-VACC.

(3) Subsection (1) has effect despite any obligation of confidentiality or other restrictions on the disclosure of information imposed on the S-VACC or any of its officers by this Act or any requirement imposed under any written law, any rule of law, any contract or any rule of professional conduct.

(4) A S-VACC which refuses or neglects, without reasonable excuse, to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(5) No civil or criminal liability is incurred by a S-VACC or any of its officers in respect of any obligation or restriction referred to in subsection (3) for doing or omitting to do any act, if the act is done or omitted to be done with reasonable care and in good faith and for the purpose of complying with subsection (1).

(6) A S-VACC which or any of its officers who, with reasonable care and in good faith, does or omits to do any act for the purpose of complying with subsection (1) is not to be treated as being in breach of any obligation or restriction referred to in subsection (3).

Confidentiality of inspection reports

191. (1) Except as provided under subsection (2), where a written report has been produced by a foreign AML/CFT authority in respect of a S-VACC following an inspection under section 189, and is provided by the foreign AML/CFT authority to the S-VACC, the report must not be disclosed to any person by —

- (a) the S-VACC; or
 - (b) any officer or auditor of the S-VACC.
- (2) Disclosure of the report may be made —

- (a) by the S-VACC to any officer or auditor of that S-VACC solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that S-VACC;
 - (b) by any officer or auditor of the S-VACC to any other officer or auditor of that S-VACC, solely in connection with the performance of their respective duties in that S-VACC;
 - (c) to the AML/CFT Authority, if requested by the AML/CFT Authority; or
 - (d) to such other person as the AML/CFT Authority may approve in writing.
- (3) In granting approval for any disclosure under subsection (2)(d), the AML/CFT Authority may impose such conditions or restrictions as it thinks fit on the S-VACC, any officer or auditor of that S-VACC or the person to whom disclosure is approved, and that S-VACC, officer, auditor or person (as the case may be) must comply with those conditions or restrictions.
- (4) The obligations on an officer or auditor under subsections (1) and (3) continue after the termination or cessation of the employment or appointment of the officer or auditor by the S-VACC.
- (5) Any person who contravenes subsection (1), or fails to comply with any condition or restriction imposed by the AML/CFT Authority under subsection (3), shall be guilty of an offence and shall be liable on conviction —
- (a) in any case where the person is an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or
 - (b) in any other case, to a fine not exceeding \$250,000.
- (6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the person in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction —
- (a) in any case where the person is an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or
 - (b) in any other case, to a fine not exceeding \$250,000.
- (7) Where a person is charged with an offence under subsection (6), it is a defence for the person to prove that —
- (a) the disclosure was made contrary to the person's desire;
 - (b) where the disclosure was made in any written or printed form, the person had, as soon as practicable after receiving the report, surrendered, or taken all

reasonable steps to surrender, the report and all copies of the report to the AML/CFT Authority; and

- (c) where the disclosure was made in an electronic form, the person had, as soon as practicable after receiving the report, taken all reasonable steps to ensure the deletion of all electronic copies of the report and the surrender of the report and all copies of the report in other forms to the AML/CFT Authority.

Division 4 – Miscellaneous

Corporate offenders and unincorporated associations

192. (1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate, the officer as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of the body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Part committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under this Part committed by a limited liability partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner or manager of the limited liability partnership, the partner or manager (as the case may be) as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) Where an offence under this Part committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the unincorporated association or a member of its governing body, the officer or member (as the case may be) as well as the unincorporated association shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(6) In this section —

“body corporate” and “partnership” exclude a limited liability partnership within the meaning of the Limited Liability Partnerships Act (Cap. 163A);

“officer” —

- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate, and includes a person purporting to act in any such capacity; or
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary or a member of the committee of the unincorporated association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

“partner”, in relation to a partnership, includes a person purporting to act as a partner.

(7) The AML/CFT Authority may make regulations to provide for the application of any provision of this section, with such modifications as the AML/CFT Authority considers appropriate, to any body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

Public servants and public officers

193. The directors, including the managing director, and the officers and employees of the AML/CFT Authority shall, in relation to their administration, collection and enforcement of payment of any moneys to be paid to or into the Consolidated Fund under this Part, be deemed to be public officers for the purposes of the Financial Procedure Act (Cap. 109), and section 20 of that Act shall apply to such persons notwithstanding that they are not or were not in the employment of the Government.

Composition of offences

194. (1) The AML/CFT Authority may, in its discretion, compound any offence under this Part which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence.

(2) The AML/CFT Authority may, in its discretion, compound any offence under this Part (including an offence under a provision that has been repealed) which —

- (a) was compoundable under this section at the time the offence was committed; but
- (b) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence at the time it was committed.

(3) On payment of the sum of money referred to in subsection (1) or (2), no further proceedings shall be taken against that person in respect of the offence.

(4) The AML/CFT Authority may make regulations to prescribe the offences which may be compounded.

(5) All sums collected by the AML/CFT Authority under subsection (1) or (2) shall be paid into the Consolidated Fund.

Exemption

195. (1) The AML/CFT Authority may, by regulations, exempt any person or class of persons from any regulations made under section 175 or 176, subject to such conditions or restrictions as may be prescribed.

(2) The AML/CFT Authority may, on the application of any person, by notice in writing exempt the person from —

(a) any regulations made under section 175 or 176; and

(b) all or any of the requirements specified in any direction made by the AML/CFT Authority under this Part,

subject to such conditions or restrictions as the AML/CFT Authority may specify by notice in writing.

(3) The AML/CFT Authority may at any time, by notice in writing to a person, add to, vary or revoke any condition or restriction imposed on the person under subsection (2).

(4) It shall not be necessary to publish any exemption granted under subsection (2) in the Gazette.

Additional powers for contravention of section 175 or 176

196. (1) The AML/CFT Authority may, if it is of the opinion that there has been a contravention of section 175 or 176 of this Act, by notice in writing direct a S-VACC to take such action as the AML/CFT Authority considers necessary or expedient in the interests of the public or a section of the public.

(2) Without prejudice to subsection (1), the actions which the AML/CFT Authority may direct a S-VACC to take include —

(a) terminating or suspending any transaction entered into by the S-VACC; and

(b) suspending its business or restricting its business activities.

(3) Subject to subsection (4), the AML/CFT Authority shall not issue directions under subsection (1) without giving the S-VACC an opportunity to be heard.

(4) The AML/CFT Authority may issue directions under subsection (1) without giving the S-VACC an opportunity to be heard on any of the following grounds —

- (a) the S-VACC is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
 - (b) a receiver or a receiver and manager has been appointed for or in respect of any property of the S-VACC; or
 - (c) the S-VACC has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.
- (5) Any S-VACC to which a notice is given under subsection (1) shall comply with such direction as may be contained in the notice.
- (6) The power under subsection (1) for the AML/CFT Authority to issue directions shall include the power, if the AML/CFT Authority considers it desirable to do so, to at any time –
- (a) extend the period during which the S-VACC is required to take the action; or
 - (b) add to, vary or revoke any direction.
- (7) Where the AML/CFT Authority has issued any direction under subsection (1), the S-VACC must immediately inform its fund manager, approved custodian and all its shareholders by notice in writing of such direction.
- (8) A S-VACC which contravenes –
- (a) any of the directions issued under subsection (1); or
 - (b) subsection (7),
- shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.
- (9) A direction issued under subsection (1) shall not operate so as to –
- (a) void or affect any agreement, transaction or arrangement entered into by the S-VACC, whether the agreement, transaction or arrangement was entered into before, on or after the direction under subsection (1) was issued, as the case may be; or
 - (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.
- (10) Any S-VACC which is aggrieved by any direction issued by the AML/CFT Authority under subsection (1), may within 30 days after it is notified of such direction, appeal to Minister whose decision shall be final.

PART 9
FINANCIAL STATEMENTS AND AUDIT

Division 1- Annual Return

Annual return by S-VACCs

197. (1) Every S-VACC must lodge a return with the Registrar after its general meeting within 7 months after the end of its financial year.

(2) The Registrar may, if the Registrar thinks there are special reasons to do so, extend any period within which a S-VACC must lodge a return under subsection (1) –

- (a) upon an application by the S-VACC; or
- (b) in respect of any prescribed class of S-VACCs.

(3) The return referred to in subsection (1) —

- (a) shall be in such form;
- (b) shall contain such particulars and information; and
- (c) shall be accompanied by such documents,

as may be prescribed.

(4) The particulars to be contained in, and the documents that are to accompany, the return referred to in subsection (1) may differ according to the class or description of S-VACC prescribed.

(5) If a S-VACC is required under section 152(3) to hold an annual general meeting for a financial year after it has lodged its annual return for that financial year, the S-VACC must lodge a notice of the date on which the annual general meeting was held with the Registrar within 14 days after that date.

(6) If a S-VACC fails to comply with this section, the S-VACC and every officer of the S-VACC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

Financial year of S-VACC

198. (1) A S-VACC's financial year shall be determined as follow —

- (a) the S-VACC's first financial year starts on the S-VACC's date of incorporation and, subject to subsection (3), ends on the last day of the S-VACC's first financial year as furnished under section 29(1)(d); and
- (b) each of the S-VACC's subsequent financial years starts immediately after the

end of the previous financial year and ends on the last day of a period of 12 months (or such other regular interval as the Registrar may allow).

(2) A S-VACC's first financial year must not be longer than 18 months unless the Registrar on the application of the S-VACC otherwise approves.

(3) Despite subsection (1), but subject to subsections (4) and (5), a S-VACC may by notice lodged with the Registrar in the prescribed form specify a new date as the last day of the S-VACC's financial year to apply to its previous or current financial year.

(4) The Registrar's approval must be obtained if the notice mentioned in subsection (3) —

- (a) results in a financial year being longer than 18 months; or
- (b) is lodged less than 5 years after the end of an earlier financial year, if the end of that earlier financial year was changed under this section.

(5) The notice under subsection (3) cannot specify a new date as the last day of the S-VACC's financial year —

- (a) after the expiry of the period under section 151 within which an annual general meeting of the S-VACC must be held after that financial year;
- (b) after the expiry of the period under section 197 within which an annual return of the S-VACC must be lodged with the Registrar after that financial year; or
- (c) after the expiry of the period under section 204 within which a copy of the financial statements, or consolidated financial statements, balance-sheet, and documents mentioned in section 204(1) are required to be sent to all persons entitled to receive notice of general meetings of the S-VACC.

Division 2 — Financial Statements

Accounting records and systems of control

199. (1) Every S-VACC shall cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the S-VACC and enable true and fair financial statements and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

(2) Where a S-VACC has Sub-Funds, it shall cause to be kept separate accounting and other records in respect of each Sub-Fund as will sufficiently explain the transactions and financial position of that Sub-Fund and enable true and fair financial statements and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

(3) The S-VACC shall retain the records referred to in subsections (1) and (2) for a period of not less than 5 years from the end of the financial year in which the transactions or operations to which those records relate are completed.

(4) Every S-VACC and every subsidiary company of a S-VACC shall devise and maintain a system of internal accounting controls sufficient to provide a reasonable assurance that in respect of the S-VACC, its subsidiary company and Sub-Funds (if any) —

- (a) assets are safeguarded against loss from unauthorised use or disposition; and
- (b) transactions are properly authorised and that they are recorded as necessary to permit the preparation of true and fair financial statements and to maintain accountability of assets.

(5) The records referred to in subsections (1) and (2) shall be kept at the registered office of the S-VACC or at such other place as the directors think fit and shall at all times be open to inspection by the directors.

(6) If accounting and other records are kept by the S-VACC at a place outside Singapore there shall be sent to and kept at a place in Singapore and be at all times open to inspection by the directors such statements and returns with respect to the business dealt with in the records so kept as will enable to be prepared true and fair financial statements and any documents required to be attached thereto.

(7) The Court may in any particular case order that the accounting and other records of a S-VACC be open to inspection by a public accountant acting for a director, but only upon an undertaking in writing given to the Court that information acquired by the public accountant during his inspection shall not be disclosed by him except to that director.

(8) If default is made in complying with this section, the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months and also to a default penalty.

Financial statements and consolidated financial statements

200. (1) The directors of every S-VACC must lay before the S-VACC at its annual general meeting the financial statements for the financial year in respect of which the annual general meeting is held.

(2) Subject to subsections (9) to (12), the financial statements referred to in subsection (1) shall —

- (a) in the case of a S-VACC with Sub-Funds, contain separate accounts in respect of each Sub-Fund prepared using the same Accounting Standard used to prepare

the financial statements of the S-VACC;

- (b) comply with the requirements of the Accounting Standards and give a true and fair view of the financial position and performance of the S-VACC and its Sub-Funds (if any).

(3) Subject to subsections (9) to (12), the directors of a S-VACC that is a parent company at the end of its financial year need not comply with subsection (1) but must cause to be made out and laid before the S-VACC at its annual general meeting —

- (a) consolidated financial statements dealing with the financial position and performance of the group for the financial year in respect of which the annual general meeting is held; and
- (b) a balance-sheet dealing with the state of affairs of the parent company and its Sub-Funds (if any) at the end of its financial year,

each of which –

- (c) contains, where the S-VACC has Sub-Funds, separate accounts in respect of each Sub-Fund prepared using the same Accounting Standard used to prepare the financial statements of the S-VACC; and
- (d) complies with the requirements of the Accounting Standards and gives a true and fair view of the matters referred to in paragraph (a) or (b), as the case may be, so far as it concerns members of the parent company.

(4) The directors shall (before the financial statements referred to in subsection (1) and the balance-sheet referred to in subsection (3)(b) are made out) take reasonable steps —

- (a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;
- (b) to ascertain whether any current assets (other than current assets to which paragraph (a) applies) are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the S-VACC and its Sub-Funds (if any) and, if so, to cause —
 - (i) those assets to be written down to an amount which they might be expected so to realise; or
 - (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and
- (c) to ascertain whether any non-current asset is shown in the books of the S-VACC

and its Sub-Funds (if any) at an amount which, having regard to its value to the S-VACC or any of its Sub-Fund as a going concern, exceeds the amount which would be recoverable over its useful life or on its disposal and (unless adequate provision for writing down that asset is made) to cause to be included in the financial statements such information and explanations as will prevent the financial statements from being misleading by reason of the overstatement of the amount of that asset.

(5) The financial statements shall be duly audited before they are laid before the S-VACC at its annual general meeting as required by this section, and the auditor's report required by section 215 shall be attached to or endorsed upon those financial statements.

(6) The directors of the S-VACC shall —

- (a) take reasonable steps to ensure that the financial statements are audited as required by this Part not less than 14 days before the annual general meeting of the S-VACC, unless all the persons entitled to receive notice of general meetings of the S-VACC agree that the financial statements may be audited as required by this Part less than 14 days before the annual general meeting of the S-VACC; and
- (b) cause to be attached to those financial statements the auditor's report that is furnished to the directors under section 215(2).

(7) In subsections (5) and (6), "financial statements", in relation to a S-VACC, means —

- (a) in the case where the S-VACC is not a parent company, the financial statements required to be laid before the S-VACC at its annual general meeting under subsection (1); or
- (b) in the case where the S-VACC is a parent company, the consolidated financial statements of the group and the balance-sheet of the parent company required to be laid before the S-VACC at its annual general meeting under subsection (3).

(8) Where at the end of a financial year a S-VACC is the subsidiary company of another corporation, the directors of the S-VACC shall state in, or in a note as a statement annexed to, the financial statements laid before the S-VACC at its annual general meeting the name of the corporation which is its ultimate parent corporation.

(9) The financial statements or consolidated financial statements of a S-VACC need not comply with any requirement of the Accounting Standards for the purposes of subsection (1) or (3), if the S-VACC has obtained the approval of the Registrar to such non-compliance.

(10) Where financial statements or consolidated financial statements prepared in accordance with any requirement of the Accounting Standards for the purposes of subsection (1) or (3), would not give a true and fair view of any matter required by this section to be dealt with in the financial statements or consolidated financial statements, the financial statements or consolidated financial statements need not comply with that requirement to the extent that this is necessary for them to give a true and fair view of the matter.

(11) In the event of any non-compliance with a requirement of the Accounting Standards referred to in subsection (10), there shall be included in the financial statements or consolidated financial statements, as the case may be —

- (a) a statement by the auditor of the S-VACC that he agrees that such non-compliance is necessary for the financial statements or consolidated financial statements, as the case may be, to give a true and fair view of the matter concerned;
- (b) particulars of the departure, the reason therefor and its effect, if any; and
- (c) such further information and explanations as will give a true and fair view of that matter.

(12) The Minister may, by order published in the Gazette, in respect of S-VACCs of a specified class or description, substitute other accounting standards for the Accounting Standards, and the provisions of this section and sections 215 and 219 shall apply accordingly in respect of such S-VACCs.

(13) The financial statements laid before a S-VACC at its general meeting (including any consolidated financial statements annexed to the balance-sheet of a parent company) shall be accompanied, before the auditor reports on the financial statements under this Part, by a statement signed on behalf of the directors by 2 directors of the S-VACC containing the information set out in the First Schedule.

(14) Any document (other than any financial statements or a balance-sheet prepared in accordance with this Act) or advertisement published, issued or circulated by or on behalf of a S-VACC shall not contain any direct or indirect representation that the S-VACC has any reserve unless the representation is accompanied —

- (a) if the reserve is invested outside the business of the S-VACC — by a statement showing the manner in which and the security upon which it is invested; or
- (b) if the reserve is being used in the business of the S-VACC — by a statement to the effect that the reserve is being so used.

Retention of documents laid before S-VACC at annual general meeting

201. (1) Every S-VACC shall cause to be kept at the S-VACC's registered office, or such other place as the directors think fit —

- (a) a copy of each of the documents that was laid before the S-VACC at its annual general meeting under section 200 for a period of not less than 5 years after the date of the annual general meeting; or
- (b) in respect of any financial year for which the S-VACC need not hold an annual general meeting because of section 152(1)—
 - (i) a copy of the financial statements; or
 - (ii) in the case of a parent company, a copy of the consolidated financial statements and balance-sheet (including every document required by law to be attached thereto),

and a copy of the auditors' report where such financial statements or consolidated financial statements are duly audited, that were sent to all persons entitled to receive notice of general meetings of the S-VACC in accordance with section 204(1) for a period of not less than 5 years after the date on which the documents were sent.

(2) If default is made in complying with subsection (1), the S-VACC and every officer of the S-VACC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months and also to a default penalty.

(3) The Registrar or an authorised officer may at any time require the S-VACC to furnish any document kept under subsection (1), and may, without fee or reward, inspect, make copies of or extracts from such document.

(4) Any person who —

- (a) without lawful excuse, refuses to produce any document required of him by the Registrar or an authorised officer under subsection (3); or
- (b) assaults, obstructs, hinders or delays the Registrar or the authorised officer in the course of inspecting or making copies or extracts from the document,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(5) In this section, "authorised officer" means an officer of the Authority authorised by the Registrar for the purposes of this section.

When directors need not lay financial statements before S-VACC

202. (1) The directors of a S-VACC need not comply with the requirement in section 200 to lay before the S-VACC at its annual general meeting financial statements or consolidated financial statements of the S-VACC if the S-VACC need not hold an annual general meeting because of section 152.

(2) Where the financial statements or consolidated financial statements are not laid before the S-VACC at its annual general meeting under subsection (1), the reference in section 215(1) to financial statements required to be laid before the S-VACC in general meeting is to be read as a reference to the documents required to be sent to persons entitled to receive notice of general meetings of the S-VACC under section 204(1).

Relief from requirements as to form and content of financial statements and directors' statement

203. (1) The directors of a S-VACC may apply to the Registrar in writing for an order relieving them from any requirement of this Act relating to the form and content of financial statements or consolidated financial statements (other than a requirement of the Accounting Standards) or to the form and content of the statement required by section 200(13) and the Registrar may make such an order either unconditionally or on condition that the directors comply with such other requirements relating to the form and content of the financial statements or consolidated financial statements or directors' statement as the Registrar thinks fit to impose.

(2) The Registrar may, where he considers it appropriate, make an order in respect of a specified class of S-VACCs relieving the directors of a S-VACC in that class from compliance with any specified requirements of this Act relating to the form and content of financial statements or consolidated financial statements (other than a requirement of the Accounting Standards) or to the form and content of the statement required by section 200(13) and the order may be made either unconditionally or on condition that the directors of the S-VACC comply with such other requirements relating to the form and content of financial statements or consolidated financial statements or directors' statement as the Registrar thinks fit to impose.

(3) The Registrar shall not make an order under subsection (1) unless he is of the opinion that compliance with the requirements of this Act would render the financial statements or consolidated financial statements or directors' statement, as the case may be, misleading or inappropriate to the circumstances of the S-VACC or would impose unreasonable burdens on the S-VACC or any officer of the S-VACC.

(4) The Registrar may make an order under subsection (1) which may be limited to a specific period and may from time to time either on application by the directors or without any such application (in which case the Registrar shall give to the directors an opportunity of being heard) revoke or suspend the operation of any such order.

Members of S-VACC entitled to financial statements, etc.

204. (1) A copy of the financial statements or, in the case of a parent company, a copy of the consolidated financial statements and balance-sheet (including every document required by law to be attached thereto), which is duly audited and which (or which but for section 202) is to be laid before the S-VACC in general meeting accompanied by a copy of the auditor's report thereon shall be sent to all persons entitled to receive notice of general meetings of the S-VACC —

- (a) unless subsection (2) applies, not less than 14 days before the date of the meeting; or
- (b) if the S-VACC is not required to hold an annual general meeting because of section 152(1)(a), not later than 5 months after the end of the financial year to which the financial statements, or consolidated financial statements and balance-sheet, relate.

(2) The financial statements, or consolidated financial statements, balance-sheet and documents referred to in subsection (1) may be sent less than 14 days before the date of the meeting as required under subsection (1)(a) if all the persons entitled to receive notice of general meetings of the S-VACC so agree.

(3) Any member of a S-VACC (whether he is or is not entitled to have sent to him copies of the financial statements, or consolidated financial statements and balance-sheet) to whom copies have not been sent and any holder of a debenture shall, on a request being made by him to the S-VACC, be furnished by the S-VACC without charge with a copy of the last financial statements, or consolidated financial statements and balance-sheet (including every document required by this Act to be attached thereto) together with a copy of the auditor's report thereon.

(4) If default is made in complying with subsection (1) or (3), the S-VACC and every officer of the S-VACC who is in default shall, unless it is proved that the member or holder of a debenture in question has already made a request for and been furnished with a copy of the financial statements, or consolidated financial statements and balance-sheet, and all documents referred to in subsection (1) or (3), each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

(5) In a case referred to in subsection (1)(b), any member or auditor of the S-VACC may, by notice to the S-VACC not later than 14 days after the day on which the documents referred to in subsection (1) were sent out, require that a general meeting be held for the purpose of laying those documents before the S-VACC.

(6) Where a S-VACC is not required to hold an annual general meeting because of section 152(1)(b), any member or auditor of the S-VACC may, by notice to the S-VACC not later than 14 days after the day on which the documents mentioned in

subsection (1) were sent out, require that a general meeting be held for the purpose of laying those documents before the S-VACC.

(7) Section 152(4) shall apply, with the necessary modifications, to the giving of a notice under subsection (5) or (6).

(8) The directors of the S-VACC shall, within 14 days after the date of giving of the notice referred to in subsection (5) or (6), convene a meeting for the purpose referred to in that subsection.

(9) If default is made in convening the meeting under subsection (8) —

- (a) each director in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000; and
- (b) the Court may, on application of the member or auditor, order a general meeting to be called.

Provision of summary financial statement to members

205. (1) Notwithstanding section 204 and anything in its constitution, a S-VACC may, in such cases as may be specified by regulations and provided all the conditions so specified are complied with, send a summary financial statement instead of copies of the documents referred to in section 204(1) to members of the S-VACC.

(2) Where a S-VACC sends to its members a summary financial statement under subsection (1), any member of the S-VACC, and any holder of a debenture, entitled to be furnished by the S-VACC with a copy of the documents referred to in section 204(3) may instead request for a summary financial statement.

(3) A summary financial statement need not be sent to any member of the S-VACC who does not wish to receive the statement.

(4) Copies of the documents referred to in section 204(1) shall be sent to any member of the S-VACC who wishes to receive them.

(5) The summary financial statement shall be derived from the S-VACC's annual financial statements or consolidated financial statements, and directors' statement and shall be in such form and contain such information as may be specified by regulations.

(6) Every summary financial statement shall —

- (a) state that it is only a summary of information in the S-VACC's annual financial statements or consolidated financial statements, and directors' statement; and
- (b) contain a statement by the S-VACC's auditors, if any, of their opinion as to whether the summary financial statement is consistent with the financial statements or consolidated financial statements, and the directors' statement and

complies with the requirements of this section and any regulations made under subsection (9).

(7) The directors of the S-VACC shall ensure that the summary financial statements comply with the requirements referred to in subsections (5) and (6).

(8) If default is made in complying with this section other than subsection (7) or any regulations made under subsection (9), the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

(9) The Minister may make regulations to give effect to this section, including making provision as to the manner in which it is to be ascertained whether a member of the S-VACC wishes to receive copies of the documents referred to in section 204(1) or does not wish to receive the summary financial statement under this section.

Penalty

206. (1) If any director of a S-VACC fails to comply with section 200(2), (3) or (13), he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(2) If any director of a S-VACC —

- (a) fails to comply with any provision of this Division (other than section 200(2), (3) or (13));
- (b) fails to take all reasonable steps to secure compliance by the S-VACC with any such provision; or
- (c) has by his own wilful act been the cause of any default by the S-VACC of any such provision,

he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

(3) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the preceding provisions of this Division relating to the form and content of the financial statements of a S-VACC or consolidated financial statements of a parent company by reason of an omission from the financial statements or consolidated financial statements, it is a defence to prove that the omission was not intentional and that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by section 200 to be dealt with in the financial statements or consolidated financial statements.

(4) If an offence under this section is committed with intent to defraud creditors of the S-VACC or creditors of any other person or for a fraudulent purpose, the offender shall be liable on conviction —

- (a) in the case of an offence under subsection (1), to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both; or
 - (b) in the case of an offence under subsection (2), to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years or to both.
- (5) A person shall not be sentenced to imprisonment for any offence under this section unless in the opinion of the Court dealing with the case the offence was committed wilfully.

Division 3— Audit

Appointment and remuneration of auditors

207. (1) The directors of a S-VACC shall, within 3 months after incorporation of the S-VACC, appoint an accounting entity or accounting entities to be the auditor or auditors of the S-VACC, and any auditor or auditors so appointed shall, subject to this section, hold office until the conclusion of the first annual general meeting.

(2) A S-VACC shall at each annual general meeting of the S-VACC appoint an accounting entity or accounting entities to be the auditor or auditors of the S-VACC, and any auditor or auditors so appointed shall, subject to this section, hold office until the conclusion of the next annual general meeting of the S-VACC.

(3) Subject to subsections (7) and (8) and section 213, the directors may appoint an accounting entity to fill any casual vacancy in the office of auditor of the S-VACC, but while such a vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(4) An auditor of a S-VACC may be removed from office by resolution of the S-VACC at a general meeting of which special notice has been given, but not otherwise.

(5) Where special notice of a resolution to remove an auditor is received by a S-VACC —

- (a) it shall immediately send a copy of the notice to the auditor concerned and to the Registrar; and
 - (b) the auditor may, within 7 days after the receipt by him of the copy of the notice, make representations in writing to the S-VACC (not exceeding a reasonable length) and request that, prior to the meeting at which the resolution is to be considered, a copy of the representations be sent by the S-VACC to every member of the S-VACC to whom notice of the meeting is sent.
- (6) Unless the Registrar on the application of the S-VACC otherwise orders, the S-VACC shall send a copy of the representations as so requested and the auditor may,

without prejudice to his right to be heard orally, require that the representations be read out at the meeting.

(7) Where an auditor of a S-VACC is removed from office in pursuance of subsection (4) at a general meeting of the S-VACC —

- (a) the S-VACC may, at the meeting, by a resolution passed by a majority of not less than three-fourths of such members of the S-VACC as being entitled to do so vote in person or, where proxies are allowed, by proxy immediately appoint another accounting entity nominated at the meeting as auditor; or
- (b) the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the meeting and the S-VACC may, by ordinary resolution, appoint another accounting entity as auditor, being an accounting entity notice of whose nomination as auditor has, at least 10 days before the resumption of the adjourned meeting, been received by the S-VACC.

(8) A S-VACC shall, immediately after the removal of an auditor from office in pursuance of subsection (4), give notice in writing of the removal to the Registrar and, if the S-VACC does not appoint another auditor under subsection (7), the Registrar may appoint an auditor.

(9) An auditor appointed in pursuance of subsection (7) or (8) shall, subject to this section, hold office until the conclusion of the next annual general meeting of the S-VACC.

(10) If the directors do not appoint an auditor or auditors as required by this section, the Registrar may on the application in writing of any member of the S-VACC make the appointment.

(11) Subject to subsection (7), an accounting entity shall not be capable of being appointed auditor of a S-VACC at an annual general meeting unless it held office as auditor of the S-VACC immediately before the meeting or notice of its nomination as auditor was given to the S-VACC by a member of the S-VACC not less than 21 days before the meeting.

(12) Where notice of nomination of an accounting entity as an auditor of a S-VACC is received by the S-VACC whether for appointment at an adjourned meeting under subsection (7) or at an annual general meeting, the S-VACC shall, not less than 7 days before the adjourned meeting or the annual general meeting, send a copy of the notice to the accounting entity nominated, to each auditor, if any, of the S-VACC and to each person entitled to receive notice of general meetings of the S-VACC.

(13) Where a S-VACC need not hold an annual general meeting for a financial year under section 152 and the auditor or auditors of the S-VACC is or are to be appointed by a resolution by written means under section 162 by virtue of section 152(8),

references in subsections (11) and (12) to the date of an annual general meeting shall be read as references to the time —

- (a) agreement to that resolution is sought in accordance with section 164; or
- (b) documents referred to in section 160(4) in respect of the resolution are served or made accessible in accordance with section 160(4),

as the case may be.

(14) If, after notice of nomination of an accounting entity as an auditor of a S-VACC has been given to the S-VACC, the annual general meeting of the S-VACC is called for a date 21 days or less after the notice has been given, subsection (11) shall not apply in relation to the accounting entity and, if the annual general meeting is called for a date not more than 7 days after the notice has been given and a copy of the notice is, at the time notice of the meeting is given, sent to each person to whom, under subsection (12), it is required to be sent, the S-VACC shall be deemed to have complied with that subsection in relation to the notice.

(15) The fees and expenses of an auditor of a S-VACC —

- (a) in the case of an auditor appointed by the S-VACC at a general meeting — shall be fixed by the S-VACC in general meeting or, if so authorised by the members at the last preceding annual general meeting, by the directors; and
- (b) in the case of an auditor appointed by the directors or by the Registrar under this section or under section 213 — may be fixed by the directors or by the Registrar, as the case may be, and, if not so fixed, shall be fixed as provided in paragraph (a) as if the auditor had been appointed by the S-VACC.

(16) If default is made in complying with this section, the S-VACC and every director of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

Resignation of non-public interest S-VACC auditors

208. (1) An auditor of a non-public interest S-VACC (other than a S-VACC which is a subsidiary company of a public interest S-VACC) may resign before the end of the term of office for which he was appointed by giving the S-VACC a notice of resignation in writing.

(2) Where a notice of resignation is given under subsection (1), the auditor's term of office expires —

- (a) at the end of the day on which notice is given to the S-VACC; or
- (b) if the notice specifies a time on a later day for the purpose, at that time.

(3) Within 14 days beginning on the date on which a S-VACC receives a notice of resignation under subsection (1), the S-VACC must lodge with the Registrar a notification of that fact in such form as the Registrar may require.

(4) In this section and sections 209, 210 and 213 —

“non-public interest S-VACC” means a S-VACC other than a public interest S-VACC;

“public interest S-VACC” means a S-VACC which consists of at least one collective investment scheme authorised under section 286(1) of the Securities and Futures Act (Cap. 289), or such other S-VACC as the Minister may prescribe.

Resignation of auditor of public interest S-VACC or subsidiary company of public interest S-VACC

209. (1) An auditor of a public interest S-VACC, or a subsidiary company of a public interest S-VACC, may by giving the S-VACC a notice of resignation in writing, resign before the end of the term of office for which he was appointed, if —

- (a) the auditor has applied for consent from the Registrar to the resignation and provided a written statement of his reasons for his resignation and, at or about the same time as the application, notified the S-VACC in writing of the application to the Registrar and provided the S-VACC with the written statement of his reasons for his resignation; and
- (b) the consent of the Registrar has been given.

(2) The Registrar shall, as soon as practicable after receiving the application from an auditor under subsection (1), notify the auditor and the S-VACC whether it consents to the resignation of the auditor.

(3) A statement made by an auditor in an application to the Registrar under subsection (1)(a) or in answer to an inquiry by the Registrar relating to the reasons for the application —

- (a) is not admissible in evidence in any civil or criminal proceedings against the auditor; and
- (b) subject to subsection (4), may not be made the ground of a prosecution, an action or a suit against the auditor,

and a certificate by the Registrar that the statement was made in the application or in the answer to the inquiry by the Registrar is conclusive evidence that the statement was so made.

(4) Notwithstanding subsection (3), the statement referred to therein may be used in any disciplinary proceedings commenced under the Accountants Act (Cap. 2) against the auditor.

(5) The resignation of an auditor of a public interest S-VACC, or subsidiary company of a public interest S-VACC, takes effect —

- (a) on the day (if any) specified for the purpose in the notice of resignation;
- (b) on the day on which the Registrar notifies the auditor and the S-VACC of his consent to the resignation; or
- (c) on the day (if any) fixed by the Registrar for the purpose,

whichever last occurs.

Written statement to be disseminated unless application to court made

210. (1) Where an auditor of a public interest S-VACC, or a subsidiary company of a public interest S-VACC, gives the S-VACC a notice of resignation under section 209, the S-VACC must within 14 days after receiving the notice of resignation and the written statement of the auditor's reasons for his resignation (referred to in this section and sections 211 and 212 as the written statement) send a copy of the written statement to every member of the S-VACC.

(2) Copies of the written statement need not be sent out if an application is made to the court within 14 days, beginning on the date on which the S-VACC received the written statement, by either the S-VACC or any other person who claims to be aggrieved by the written statement, for a determination that the auditor has abused the use of the written statement or is using the provisions of this section to secure needless publicity for defamatory matter.

(3) In the case where an application is made under subsection (2) by —

- (a) the S-VACC, the S-VACC must give notice of the application to the auditor of the S-VACC; or
- (b) any other person, that person must give notice of the application to the S-VACC and the auditor of the S-VACC.

(4) If default is made in complying with subsection (1), the S-VACC and every director of the S-VACC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

Court may order written statement not to be sent out

211. (1) This section applies if an application has been made under section 210(2) in relation to a written statement given by an auditor.

(2) If the Court is satisfied that the auditor has abused the use of the written statement or is using the written statement to secure needless publicity for any defamatory matter, the Court —

- (a) must direct that copies of the written statement are not to be sent under section 210(1); and
 - (b) may order the auditor, though not a party to the application, to pay the applicant's costs on the application in whole or in part.
- (3) If the Court gives directions under subsection (2)(a), the S-VACC must, within 14 days beginning on the date on which the directions are given send a notice setting out the effect of the directions to —
- (a) every member of the S-VACC; and
 - (b) unless already named as a party to the proceedings, the auditor who gave the written statement.
- (4) If the Court decides not to grant the application, the S-VACC must, within 14 days beginning on the date on which the decision is made or on which the proceedings are discontinued for any reasons —
- (a) give notice of the decision to the auditor who has given the written statement; and
 - (b) send a copy of the written statement to every member of the S-VACC and to that auditor.
- (5) If default is made in complying with subsection (3) or (4), the S-VACC and every director of the S-VACC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

Privilege against defamation

- 212.** A person is not liable to any action for defamation at the suit of any person —
- (a) in the absence of malice, in respect of the publication of the written statement to the member of the S-VACC pursuant to section 210(1); or
 - (b) in respect of the publication of the written statement to the member of the S-VACC pursuant to section 211(4)(b).

Appointment of new auditor in place of resigning auditor

- 213.** (1) Subject to subsection (3), if —
- (a) an auditor of a S-VACC (other than a subsidiary company of a public interest S-VACC) gives notice of resignation under section 208(1); or
 - (b) an auditor of a public interest S-VACC, or a subsidiary company of a public interest S-VACC, gives notice of resignation under section 209(1), and the

Registrar approves the resignation of the auditor under section 209(2),
the directors of the S-VACC in question —

- (i) shall call a general meeting of the S-VACC as soon as is practicable, and in any case not more than 3 months after the date of the auditor's resignation, for the purpose of appointing an auditor in place of the auditor who desires to resign or has resigned; and
 - (ii) upon appointment of the new auditor, shall lodge with the Registrar a notification of such appointment within 14 days of the appointment.
- (2) If the directors of a S-VACC fail to appoint an auditor in place of the auditor who desires to resign or has resigned, the Registrar may, on the application in writing of any member of the S-VACC, make the appointment.
- (3) Subsections (1) and (2) shall not apply where the resigning auditor is not the sole auditor of the S-VACC.
- (4) An auditor appointed pursuant to subsection (1) or (2) shall, unless he is removed or resigns, hold office until the conclusion of the next annual general meeting of the S-VACC.
- (5) If default is made in complying with subsection (1), the S-VACC and every director of the S-VACC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

Auditors' remuneration

214. (1) If a S-VACC is served with a notice sent by or on behalf of —

- (a) at least 5% of the total number of members of the S-VACC; or
- (b) the holders in aggregate of not less than 5% of the total number of issued shares of the S-VACC ,

requiring particulars of all emoluments paid to or receivable by the auditor of the S-VACC or any person who is a partner or employer or employee of the auditor, by or from the S-VACC or any subsidiary corporation in respect of services other than auditing services rendered to the S-VACC, the S-VACC shall immediately —

- (c) prepare or cause to be prepared a statement showing particulars of all emoluments paid to the auditor or other person and of the services in respect of which the payments have been made for the financial year immediately preceding the service of such notice;
- (d) forward a copy of the statement to all persons entitled to receive notice of general meetings of the S-VACC; and

(e) lay such statement before the S-VACC in general meeting.

(2) Without prejudice to subsection (1), a S-VACC shall, under prescribed circumstances, undertake a review of the fees, expenses and emoluments of its auditor to determine whether the independence of the auditor has been compromised, and the outcome of the review shall be sent to all persons entitled to receive notice of general meetings of the S-VACC.

(3) If default is made in complying with this section, the S-VACC and every director of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

Powers and duties of auditors as to reports on financial statements

215. (1) An auditor of a S-VACC shall report to the members —

- (a) on the financial statements required to be laid before the S-VACC in general meeting and on the S-VACC's and its Sub-Funds' accounting and other records relating to those financial statements; and
- (b) where the S-VACC is a parent company for which consolidated financial statements are prepared, on the consolidated financial statements.

(2) A report by an auditor of a S-VACC under subsection (1) shall be furnished by the auditor to the directors of the S-VACC in sufficient time to enable the S-VACC to comply with the requirements of section 204(1) in relation to that report but no offence shall be committed by an auditor under this subsection if the directors have not submitted the financial statements for audit as required under this Part in sufficient time, having regard to the complexity of the financial statements, for the auditor to make his report.

(3) An auditor shall, in a report under this section, state —

- (a) whether the financial statements and, if the S-VACC is a parent company for which consolidated financial statements are prepared, the consolidated financial statements are in his opinion —
 - (i) in the case of a S-VACC with Sub-Funds, in compliance with the requirement to contain separate accounts in respect of each Sub-Fund prepared in accordance with the same Accounting Standard used to prepare the financial statements of the S-VACC;
 - (ii) in compliance with the requirements of the Accounting Standards; and
 - (iii) give a true and fair view of —
 - (A) the financial position and performance of the S-VACC and each of its Sub-Funds (if any); and

(B) if consolidated financial statements are required, the financial position and performance of the group;

- (b) if the financial statements or consolidated financial statements do not comply with any requirement of the Accounting Standards and the approval of the Registrar under section 200(9) to such non-compliance has not been obtained, whether such non-compliance is, in the opinion of the auditor, necessary for the financial statements or consolidated financial statements to give a true and fair view of any matter required by section 200 to be dealt with in them;
 - (c) whether the accounting and other records required by this Act to be kept by the S-VACC and, if it is a parent company, by the subsidiary corporations other than those of which he has not acted as auditor have been, in his opinion, properly kept in accordance with this Act;
 - (d) any defect or irregularity in the financial statements or consolidated financial statements and any matter not set out in the financial statements or consolidated financial statements without regard to which a true and fair view of the matters dealt with by the financial statements or consolidated financial statements would not be obtained; and
 - (e) if he is not satisfied as to any matter referred to in paragraph (a), (b) or (c), his reasons for not being so satisfied.
- (4) It is the duty of an auditor of a S-VACC to form an opinion as to each of the following matters:
- (a) whether he has obtained all the information and explanations that he required;
 - (b) whether proper accounting and other records, excluding registers, required to be kept under section 199(1) and (2), have been kept by the S-VACC as required by this Act;
 - (c) whether the returns received from branch offices of the S-VACC are adequate;
 - (d) where consolidated financial statements are prepared otherwise than as one set of consolidated financial statements for the group, whether he agrees with the reasons for preparing them in the form in which they are prepared, as given by the directors in the financial statements,
- and he shall state in his report particulars of any deficiency, failure or short-coming in respect of any matter referred to in this subsection.
- (5) An auditor shall not be required to form an opinion in his report as to whether the accounting and other records of subsidiary corporations (which are not incorporated in Singapore) of a Singapore parent company have been kept in accordance with this Act.

(6) An auditor of a S-VACC has a right of access at all times to the accounting and other records, including registers, of the S-VACC, and is entitled to require from any officer of the S-VACC and any auditor of a related company such information and explanations as he desires for the purposes of audit.

(7) An auditor of a parent company for which consolidated financial statements are required has a right of access at all times to the accounting and other records, including registers, of any subsidiary corporation, and is entitled to require from any officer or auditor of any subsidiary corporation, at the expense of the parent company, such information and explanations in relation to the affairs of the subsidiary corporation as he requires for the purpose of reporting on the consolidated financial statements.

(8) The auditor's report shall be attached to or endorsed on the financial statements or consolidated financial statements and shall, if any member so requires, be read before the S-VACC in general meeting and shall be open to inspection by any member at any reasonable time.

(9) An auditor of a S-VACC or his agent authorised by him in writing for the purpose is entitled to attend any general meeting of the S-VACC and to receive all notices of, and other communications relating to, any general meeting which a member is entitled to receive, and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns the auditor in his capacity as auditor.

(10) If an auditor, in the course of the performance of his duties as auditor of a S-VACC, is satisfied that —

- (a) there has been a breach or non-observance of any of the provisions of this Act; and
- (b) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by comment in his report on the financial statements or consolidated financial statements or by bringing the matter to the notice of the directors of the S-VACC or, if the S-VACC is a subsidiary company, of the directors of the parent company,

he shall immediately report the matter in writing to the Registrar.

(11) Notwithstanding subsection (10), if an auditor of a S-VACC or a subsidiary corporation of a S-VACC, in the course of the performance of his duties as auditor, has reason to believe that a serious offence involving fraud or dishonesty is being or has been committed against the S-VACC by officers, fund manager, approved custodians, or employees of the S-VACC, he shall immediately report the matter to the Minister.

(12) For the purpose of subsection (11), an employee includes a person employed by the S-VACC under a contract for service.

(13) No duty to which an auditor of a S-VACC may be subject shall be regarded as having been contravened by reason of his reporting the matter referred to in subsection (11) in good faith to the Minister.

(14) In subsection (11), “a serious offence involving fraud or dishonesty” means —

- (a) an offence that is punishable by imprisonment for a term that is not less than 2 years; and
- (b) the value of the property obtained or likely to be obtained from the commission of such an offence is not less than \$100,000.

(15) An officer of a corporation who refuses or fails without lawful excuse to allow an auditor of the corporation or an auditor of a corporation who refuses or fails without lawful excuse to allow an auditor of its parent company access, in accordance with this section, to any accounting and other records, including registers, of the corporation in his custody or control, or to give any information or explanation as and when required under this section, or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000.

Auditors and other persons to enjoy qualified privilege in certain circumstances

216. (1) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement which he makes in the course of his duties as auditor, whether the statement is made orally or in writing.

(2) A person shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of the publication of any document prepared by an auditor in the course of his duties and required by this Act to be lodged with the Registrar.

(3) This section does not limit or affect any other right, privilege or immunity that an auditor or other person has as defendant in an action for defamation.

Provisions indemnifying auditors

217. (1) Any provision, whether in the constitution or in any contract with a S-VACC or otherwise, for exempting any auditor of the S-VACC from, or indemnifying him or it against, any liability which by law would otherwise attach to him or it in respect of any negligence, default, breach of duty or breach of trust of which he or it may be guilty in relation to the S-VACC shall be void.

(2) This section does not prevent a S-VACC from indemnifying such auditor against any liability incurred or that will be incurred by him or it —

- (a) in defending any proceedings (whether civil or criminal) in which judgment is

given in his or its favour or in which he or it is acquitted; or

- (b) in connection with any application under section 371 or any other provision of this Act, in which relief is granted to him or it by the court.

Duties of auditors to trustee for debenture holders

218. (1) The auditor of a borrowing S-VACC shall within 7 days after furnishing the S-VACC with any financial statements or any report, certificate or other document which he is required by this Act or by the debentures or trust deed to give to the S-VACC, send by post to every trustee for the holders of debentures of the borrowing S-VACC a copy thereof.

(2) Where, in the performance of his duties as auditor of a borrowing S-VACC, the auditor becomes aware of any matter which is in his opinion relevant to the exercise and performance of the powers and duties imposed by this Act or by any trust deed upon any trustee for the holders of debentures of the S-VACC, he shall, within 7 days after so becoming aware of the matter, send by post a report in writing on such matter to the borrowing S-VACC and a copy thereof to the trustee.

(3) If any person fails to comply with subsection (2), he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Interpretation of this Part

219. In this Part, unless the contrary intention appears —

“balance-sheet”, in relation to a S-VACC, means the balance-sheet, by whatever name called, prepared in accordance with the Accounting Standards;

“consolidated financial statements” has the same meaning as in the Accounting Standards;

“consolidated total assets” —

- (a) in the case where consolidated financial statements are prepared in relation to a group, shall be determined in accordance with the accounting standards applicable to the group; or
- (b) in the case where consolidated financial statements are not prepared in relation to a group, means the aggregate total assets of all the members of the group;

“directors’ statement” means the statement of the directors referred to in section 200(13);

“entity” means an entity that is referred to in the Accounting Standards in relation to the preparation of financial statements and the requirements for the preparation of financial statements;

“financial statements” means the financial statements of a S-VACC required to be prepared by the Accounting Standards;

“group” has the same meaning as in the Accounting Standards;

“parent company” means a company that is required under the Accounting Standards to prepare financial statements in relation to a group;

“subsidiary company” means a company that is a subsidiary as defined in the Accounting Standards;

“subsidiary corporation” means a corporation that is a subsidiary as defined in the Accounting Standards;

“ultimate parent corporation” means a corporation which is a parent but is not a subsidiary, within the meaning of the Accounting Standards.

PART 10 INVESTIGATIONS

Interpretation

220. In this Part, unless the contrary intention appears —

“declared S-VACC” means a S-VACC which the Minister has by order declared to be a S-VACC to which this Part applies;

“officer or agent”, in relation to a S-VACC, includes —

- (a) a director, fund manager, approved custodian, banker, solicitor or auditor of the S-VACC;
- (b) a person who at any time —
 - (i) has been a person referred to in paragraph (a); or
 - (ii) has been otherwise employed or appointed by the S-VACC;
- (c) a person who —
 - (i) has in his possession any property of the S-VACC;
 - (ii) is indebted to the S-VACC; or
 - (iii) is capable of giving information concerning the promotion, formation, trading, dealings, affairs or property of the S-VACC; and
- (d) where there are reasonable grounds for suspecting or believing that a person is a person referred to in paragraph (c) — that person.

Power to declare S-VACC

221. The Minister may by order declare that a S-VACC is a S-VACC to which this Part applies if he is satisfied —

- (a) that a prima facie case has been established that, for the protection of the public or the shareholders or creditors of the S-VACC, it is desirable that the affairs of the S-VACC should be investigated under this Part;
- (b) that it is in the public interest that allegations of fraud, misfeasance or other misconduct by persons who are or have been concerned with the formation or management of the S-VACC should be investigated under this Part;
- (c) that for any other reason it is in the public interest that the affairs of the S-VACC should be investigated under this Part.

Appointment of inspectors for declared S-VACCs

222. (1) Where a S-VACC has been declared to be a S-VACC to which this Part applies, the Minister shall appoint one or more inspectors to investigate the affairs of that S-VACC, and to report his opinion thereon to the Minister.

(2) An inspector appointed under subsection (1) may, at any time in the course of his investigation, without the necessity of making an interim report, inform the Minister of matters coming to his knowledge as a result of the investigation which tend to show that an offence has been committed; and the Minister may thereafter take such steps as he may consider fit.

(3) The expenses of and incidental to an investigation of a declared S-VACC shall be defrayed in the first instance out of moneys provided by Parliament.

(4) Where the Minister is of the opinion that the whole or any part of the expenses of and incidental to the investigation should be paid by the S-VACC or by any person who is convicted on a prosecution brought under section 224(7) or who is ordered to pay damages or restore property in proceedings under section 224(8) the Minister may by notification in the Gazette direct that the expenses be so paid.

(5) A notification under subsection (4) may specify the time or times and the manner in which the payment of the expenses shall be made.

(6) Where a notification has been published by the Minister under subsection (5) the persons named in the notification to the extent therein specified shall be liable to reimburse the Minister in respect of such expenses.

(7) Action to recover any such expenses may be taken in the name of the Government in any court of competent jurisdiction.

(8) Where a notification under subsection (4) has been published for the payment of the whole or part of the expenses by a S-VACC and the S-VACC is in liquidation or subsequently goes into liquidation the expenses so ordered to be paid by the S-VACC shall be deemed to be part of the costs and expenses of the winding up for the purposes of section 331(1)(a).

(9) Where an investigation of a declared S-VACC relates specifically to the affairs of any particular Sub-Fund of the S-VACC, subsections (4) and (8) shall apply with the following modifications –

- (a) any expenses to be paid by the S-VACC shall be paid from the assets of that Sub-Fund; and
- (b) where that Sub-Fund is in liquidation or subsequently goes into liquidation, the expenses so ordered to be paid by it shall be deemed to be part of the costs and expenses of its winding up.

(10) The report of the inspector may if he thinks fit, and shall, if the Minister so directs, include a recommendation as to the terms of the notification which he thinks proper in the light of his investigation to be given by the Minister under subsection (4).

Investigation of affairs of S-VACC by inspectors at direction of Minister

223. (1) The Minister may appoint one or more inspectors to investigate the affairs of a S-VACC or such aspects of the affairs of a S-VACC as are specified in the instrument of appointment and to report thereon in such manner as the Minister directs —

- (a) on the application of —
 - (i) not less than 200 members (excluding the S-VACC itself if it is registered as a member) or of members holding not less than 10% of the shares issued; or
 - (ii) holders of debentures holding not less than 20% in nominal value of debentures issued; or
- (b) in any case on the application of a S-VACC in pursuance of a special resolution.

(2) Where the investigation under subsection (1) relates specifically to the affairs of any particular Sub-Fund or such aspects of the affairs of a Sub-Fund as are specified in the instrument of appointment, the Minister may appoint one or more inspectors to conduct the investigation and to report thereon in such manner as the Minister directs –

- (a) on the application of –
 - (i) not less than 200 members holding shares relating to that Sub-Fund, or of members holding not less than 10% of the shares issued relating to that Sub-Fund; or

- (ii) holders of debentures holding not less than 20% in nominal value of debentures issued in respect of that Sub-Fund; or
 - (b) in any case on the application of the S-VACC in pursuance of a special resolution passed by such members holding shares in relation to that Sub-Fund as are entitled to vote.
- (3) Sections 161 and 162, insofar as they relate to the passing of special resolutions, shall apply with the necessary modifications to a special resolution passed under subsection (2)(b).
- (4) An application under this section shall be supported by such evidence as the Minister requires as to the reasons for the application and the motives of the applicants in requiring the investigation, and the Minister may before appointing an inspector require the applicants to give security for such amount as he thinks fit for payment of the cost of the investigation.

As to reports of inspectors

- 224.** (1) An inspector appointed by the Minister may, and if so directed by the Minister shall, make interim reports to the Minister and on the conclusion of the investigation the inspector shall report his opinion on or in relation to the affairs that he has been appointed to investigate together with the facts upon which his opinion is based to the Minister, and a copy of the report shall, subject to subsection (3), be forwarded by the Minister to the registered office of the S-VACC, and a further copy shall, subject to that subsection, at the request of the applicants be delivered to them.
- (2) Subject to subsections (3) and (4), the Minister shall give a copy of a report made under this Part to each person to whom in the opinion of the Minister the report ought to be given by reason that it relates to the affairs of that person to a material extent.
- (3) The Minister is not bound to furnish a S-VACC, an applicant or any other person with a copy of the report or any part thereof if he is of the opinion that there is good reason for not divulging the contents of the report or any part thereof.
- (4) Subject to subsection (5), the Minister shall not give a copy of a report made under this Part to a person under subsection (2) if he believes that legal proceedings that have been or, in his opinion, might be instituted, might be unduly prejudiced by giving the report to that person.
- (5) A court before which legal proceedings are brought against a person for or in respect of matters dealt with in a report under this Part may order that a copy of the report or part thereof shall be given to that person.
- (6) The Minister may, if he is of the opinion that it is necessary in the public interest to do so, cause the report to be printed and published but shall refrain from so doing if

the Attorney-General has certified in writing that publication of the report would be prejudicial to the administration of justice.

(7) If from any report of an inspector appointed by the Minister it appears to the Minister that the case is one in which a prosecution ought to be instituted, he shall cause a prosecution to be instituted accordingly and all officers and agents of the S-VACC (other than the defendant in the proceedings) shall on being required by the Minister to do so give all assistance in connection with the prosecution which they are reasonably able to give.

(8) If from any report of an inspector appointed by the Minister it appears to the Minister that proceedings ought in the public interest to be brought by any S-VACC dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that S-VACC or in the management of its affairs or for the recovery of any property of the S-VACC which has been misapplied or wrongfully retained, he may himself bring proceedings for that purpose in the name of the S-VACC.

Investigation of affairs of related corporation

225. Where an inspector thinks it necessary for the purposes of the investigation of the affairs of a S-VACC to investigate the affairs of a corporation which is or has at any relevant time been a related corporation of the S-VACC, he may, with the consent in writing of the Minister, investigate the affairs of that corporation.

Procedure and powers of inspector

226. (1) If an inspector appointed to investigate the affairs of a S-VACC thinks it necessary for the purposes of the investigation to investigate also the affairs of any other corporation which is or has at any relevant time been deemed to be or to have been a related corporation of that S-VACC, he shall have power to do so, and he shall report on the affairs of the other corporation so far as he thinks the results of the investigation thereof are relevant to the investigation of the affairs of the S-VACC.

(2) Every officer and agent of a corporation the affairs of which are being investigated under this Part shall, if required by an inspector appointed under this Part, produce to the inspector all books and documents in his custody or power and shall give to the inspector all assistance in connection with the investigation which he is reasonably able to give.

(3) An inspector may, by notice in the prescribed form, require any officer or agent of any corporation whose affairs are being investigated pursuant to this Part to appear for examination on oath or affirmation (which he is hereby authorised to administer) in relation to its business; and the notice may require the production of all books and documents in the custody or under the control of that officer or agent.

(4) An inspector who, pursuant to this section, requires the production of all books and documents in the custody or power or under the control of an officer or agent of any corporation whose affairs are being investigated under or pursuant to this Part —

- (a) may take possession of all such books and documents;
- (b) may retain all such books and documents for such time as he considers to be necessary for the purpose of the investigation; and
- (c) shall permit such corporation to have access at all reasonable times to all such books and documents so long as they are in his possession.

(5) If an inspector has reasonable grounds for believing that a director, fund manager, approved custodian, or a person who was formerly such a person (collectively referred to in this subsection as a relevant person) of the S-VACC or of a corporation which is or has at any time been deemed to be or to have been a related corporation of that S-VACC whose affairs the inspector is investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in Singapore or elsewhere, into or out of which there has been paid any money which has been in any way connected with any act or omission or series of acts or omissions, which on the part of that relevant person constituted misconduct (whether fraudulent or not towards that S-VACC or that related corporation or its members), an inspector may require the relevant person to produce to him all documents in the relevant person's possession or under his control relating to that bank account.

(6) If any officer or agent of any corporation, the affairs of which are being investigated pursuant to this Part, fails to comply with the requirements of any notice issued under subsection (3) or fails or refuses to answer any question which is put to him by an inspector with respect to the affairs of the corporation or that officer or agent is a relevant person to whom subsection (5) applies, if he fails to comply with a requirement of an inspector under that subsection, the inspector may certify the failure or refusal under his hand to the Court, which may thereupon inquire into the case and, after hearing any witnesses against or on behalf of the alleged offender and any statement offered in defence, punish the offender in like manner as if he had been guilty of contempt of the Court.

(7) No person, who is or has formerly been an officer or agent of a corporation the affairs of which are being investigated under this Part, shall be entitled to refuse to answer any question which is relevant or material to the investigation on the ground that his answer might tend to incriminate him but if he claims that the answer to any question, might incriminate him and but for this subsection he would have been entitled to refuse to answer the question, the answer to the question shall not be used in any subsequent criminal proceedings except in the case of a charge against him for making a false statement in answer to that question.

(8) Subject to subsection (7), any person shall be entitled to refuse to answer a question on the ground that the answer might tend to incriminate him.

(9) An inspector may cause notes of any examination under this Part to be recorded and reduced to writing and to be read to or by and signed by the person examined and any such signed notes may except in the case of any answer which that person would not have been required to give but for subsection (7) thereafter be used in evidence in any legal proceedings against that person.

As to costs of investigations

227. (1) The expenses of and incidental to an investigation by an inspector appointed pursuant to sections 223 and 233 (including the costs of any proceedings brought by the Minister in the name of the S-VACC), shall be paid by the S-VACC investigated or if the Minister so directs by the applicants or in part by the S-VACC and in part by the applicants.

(2) Notwithstanding subsection (1) —

(a) if the S-VACC fails to pay the whole or any part of the sum which it is so liable to pay, the applicants shall make good the deficiency up to the amount by which the security given by them under this Part exceeds the amount, if any, which they have under subsection (1) been directed by the Minister to pay; and

(b) any balance of the expenses not paid either by the S-VACC or the applicants shall be paid out of moneys provided by Parliament.

(3) Where an investigation by an inspector appointed pursuant to sections 223 and 233 relates specifically to the affairs of any particular Sub-Fund of the S-VACC, the expenses to be paid by the S-VACC under this section shall be paid from the assets of that Sub-Fund.

Report of inspector to be admissible in evidence

228. A copy of the report of any inspector appointed under this Part, certified as correct by the Minister, shall be admissible in any legal proceedings as evidence of the opinion of the inspector and of the facts upon which his opinion is based in relation to any matter contained in the report.

Powers of inspector in relation to a declared S-VACC

229. (1) An inspector of a declared S-VACC may employ such persons as he considers necessary and in writing authorise any such person to do anything he could himself do, except to examine on oath or affirmation.

(2) Any officer or agent of a corporation who —

- (a) refuses or fails to produce any book or document to any person who produces a written authority of an inspector given pursuant to subsection (1); or
- (b) refuses or fails to answer any question lawfully put to him by any such person,

shall be liable to be dealt with in the same manner as is provided in section 226(6) for refusing or failing to comply with the request of an inspector.

Suspension of actions and proceedings by declared S-VACC

230. (1) On and after the appointment of an inspector in respect of any declared S-VACC until the expiration of 3 months after the inspector has presented his final report to the Minister, no action or proceeding shall without the consent of the Minister (which may be given generally or in a particular case and which may be given subject to such conditions and limitations as he thinks fit) be commenced or proceeded with in any Court —

- (a) by the S-VACC upon or in respect of any contract, bill of exchange or promissory note; or
- (b) by the holder or any other person in respect of any bill of exchange or promissory note made, drawn or accepted by or issued, transferred, negotiated or endorsed by or to the S-VACC unless the holder or other person —
 - (i) at the time of the negotiation, transfer, issue, endorsement or delivery thereof to him gave therefor adequate pecuniary consideration; and
 - (ii) was not at the time of the negotiation, transfer, issue, endorsement or delivery thereof to him or at any time within 3 years before that time a member, officer, agent or employee of the S-VACC or the wife or husband of any member, officer, agent or employee of the S-VACC.

(2) Any action or proceeding which is commenced or proceeded with in contravention of this section shall be void and of no effect.

(3) Where the inspector has been appointed in respect of an investigation of a declared S-VACC relating specifically to the affairs of any particular Sub-Fund of the S-VACC, this section shall apply only to the actions and proceedings relating to the property of that Sub-Fund.

Winding up of S-VACC

231. (1) An application to the Court for the winding up of the S-VACC may be made by the Minister at any time after a report has been made in respect of a declared S-VACC by an inspector whereupon the provisions of this Act shall with such adaptations as are necessary, apply as if a winding up application had been duly made to the Court by the S-VACC.

(2) Where a report has been made specifically in respect of any particular Sub-Fund of any declared S-VACC, subsection (1) shall apply to that Sub-Fund as if it were a S-VACC.

Penalties

232. (1) Any person who, with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part —

- (a) destroys, conceals or alters any book, document or record of or relating to a declared S-VACC; or
- (b) sends or attempts to send or conspires with any other person to send out of Singapore any such book, document or record or any property of any description belonging to or in the disposition or under the control of such a S-VACC,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

(2) If in any prosecution for an offence under this section it is proved that the person charged with the offence —

- (a) has destroyed, concealed or altered any book, document or record of or relating to the S-VACC; or
- (b) has sent or attempted to send or conspired to send out of Singapore any book, document or record or any property of any description belonging to or in the disposition or under the control of the S-VACC,

the onus of proving that in so doing he had not acted with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part shall lie on him.

Appointment and powers of inspectors to investigate ownership of S-VACC

233. (1) Where it appears to the Minister that there is good reason to do so, he may appoint one or more inspectors to investigate and report on the membership of any S-VACC, whether or not it is a declared S-VACC, and otherwise with respect to the S-VACC for the purpose of determining the true persons who are or have been financially interested in the success or failure, real or apparent, of the S-VACC or able to control or materially to influence the policy of the S-VACC.

(2) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a S-VACC is made to the Minister by members of the S-VACC, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section 223, the Minister shall appoint an inspector to conduct the investigation unless he is satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to have included therein, except in so far as the Minister is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) For the purposes of any investigation under this section, the provisions of this Part with respect to the investigation of declared S-VACCs shall apply with the necessary modifications of references to the affairs of the S-VACC or to those of any other corporation, but so that —

- (a) this Part shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or to have been financially interested in the success or failure or the apparent success or failure of the S-VACC or any other corporation the membership of which is investigated with that of the S-VACC, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the S-VACC or of the other corporation, as the case may be; and
- (b) the Minister shall not be bound to furnish the S-VACC or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if he is of opinion that there is good reason for not divulging the contents of the report or of parts thereof, but may, if he thinks fit, cause to be kept by the Registrar a copy of the report or, as the case may be, the parts of the report, as respects which he is not of that opinion.

Power to require information as to persons interested in shares or debentures

234. (1) Where it appears to the Minister that there is good reason to investigate the ownership of any shares in or debentures of a S-VACC and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures to give such information to the Minister.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(4) This section shall apply to a banking corporation but nothing therein shall, subject to the provisions of the Banking Act (Cap. 19), require disclosure by a banking corporation to the Minister of any information as to the affairs of any of its customers other than the corporation of which it is the banker.

(5) The Minister may by notification in the Gazette delegate his powers under this section either generally or in any particular case to a committee of a securities exchange that has been approved by him under any written law relating to the securities industry or to any body, panel or committee that has been established to advise him on matters connected with the securities industry.

(6) A committee of a securities exchange or any body, panel or committee referred to in subsection (5) in the discharge of its powers under that subsection shall keep the Minister informed of any information obtained under this section.

(7) Notwithstanding any delegation of his powers under this section, the Minister may exercise any of the powers conferred upon him under this section.

Power to impose restrictions on shares or debentures

235. (1) Where in connection with an investigation under section 233 or 234 it appears to the Minister that there is difficulty in finding out the relevant facts about any shares, whether issued or to be issued, the Minister may by order published in the Gazette direct that the shares are until further order subject to the following restrictions:

- (a) that any transfer of those shares or any exercise of the right to acquire or dispose of those shares or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void;
- (b) that no voting rights shall be exercisable in respect of those shares;
- (c) that no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; and

(d) that, except in a liquidation, no payment shall be made of any sums due from the S-VACC on those shares, whether in respect of capital or otherwise.

(2) Any order of the Minister directing that shares shall cease to be subject to the restrictions referred to in subsection (1) which is expressed to be made with a view to permitting a transfer of those shares may continue the application of subsection (1)(c) and (d), in relation to those shares, either in whole or in part, so far as those paragraphs relate to any right acquired or offer made before the transfer.

(3) Where any shares are for the time being subject to any restrictions referred to in subsection (1), any person who —

(a) having knowledge that the shares are subject to any such restrictions, exercises or purports to exercise any right to dispose of those shares, or of any right to be issued with the shares;

(b) votes in respect of those shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or

(c) being the holder of any of those shares, fails to notify the fact of their being subject to those restrictions to any person whom he does not know to be aware of that fact but does know to be entitled, apart from those restrictions, to vote in respect of those shares whether as holder or proxy,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(4) Where shares in any S-VACC are issued in contravention of the restrictions imposed pursuant to subsection (1), the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

(5) A prosecution shall not be instituted under this section except with the consent of the Public Prosecutor.

(6) This section shall apply in relation to debentures as it applies in relation to shares.

Inspectors appointed in other countries

236. Where —

(a) under a corresponding law of another country an inspector has been appointed to investigate the affairs of a S-VACC; and

(b) the Minister is of the opinion that, in connection with that investigation, it is expedient that an investigation be made in Singapore,

the Minister may by notice declare that the inspector so appointed shall have the same powers and duties in Singapore in relation to the investigation as if the S-VACC were a declared S-VACC and the inspector had been appointed under section 222 and thereupon the inspector shall have those powers and duties.

PART 11 RECEIVERS AND MANAGERS

Disqualification for appointment as receiver

237. (1) The following shall not be qualified to be appointed and shall not act as receiver of the property of a S-VACC:

- (a) a corporation;
- (b) an undischarged bankrupt;
- (c) a mortgagee of any property of the S-VACC, an auditor of the S-VACC or a director, secretary or employee of the S-VACC or of any corporation which is a mortgagee of the property of the S-VACC;
- (d) a fund manager or approved custodian of the S-VACC, or a director, secretary or employee of the fund manager or approved custodian; and
- (e) any person who is neither an approved liquidator nor the Official Receiver.

(2) Nothing in subsection (1)(a) or (e) shall apply to any corporation authorised by any written law to act as receiver of the property of a S-VACC.

Liability of receiver

238. (1) Any receiver or other authorised person entering into possession of any assets of a S-VACC for the purpose of enforcing any charge shall, notwithstanding any agreement to the contrary, but without prejudice to his rights against the S-VACC or any other person, be liable for debts incurred by him in the course of the receivership or possession for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Subsection (1) shall not be so construed as to constitute the person entitled to the charge a mortgagee in possession.

Application for directions

(3) A receiver or manager of the property of a S-VACC may apply to the Court for directions in relation to any matter arising in connection with the performance of his functions.

(4) Where a receiver or manager has been appointed to enforce any charge for the benefit of holders of debentures of the S-VACC, any such debenture holder may apply to the Court for directions in relation to any matter arising in connection with the performance of the functions of the receiver or manager.

Power of Court to fix remuneration of receivers or managers

239. (1) The Court may, on application by the liquidator of a S-VACC, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the S-VACC.

(2) The Court may, on application by the liquidator of a Sub-Fund, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the Sub-Fund.

(3) The power of the Court shall, where no previous order has been made with respect thereto —

- (a) extend to fixing the remuneration for any period before the making of the order or the application therefor;
- (b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and
- (c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order.

(4) The power conferred by subsection (3)(c) shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the Court there are special circumstances making it proper for the power to be so exercised.

(5) The Court may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under this section.

Appointment of liquidator as receiver

240. Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a S-VACC or Sub-Fund which is being wound up by the Court, the liquidator may be so appointed.

Notification of appointment of receiver

241. (1) If any person obtains an order for the appointment of a receiver or manager of the property of a S-VACC, or appoints such a receiver or manager under any powers

contained in any instrument, he shall within 7 days after he has obtained the order or made the appointment lodge notice of the fact with the Registrar.

(2) Where any person appointed as receiver or manager of the property of a S-VACC under the powers contained in any instrument ceases to act as such, he shall within 7 days thereafter lodge with the Registrar notice to that effect.

(3) Every person who makes default in complying with the requirements of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Statement that receiver appointed

242. (1) Where a receiver or manager of the property of a S-VACC but not a Sub-Fund has been appointed, every invoice order for goods or business letter issued by or on behalf of –

- (a) the S-VACC, any of its Sub-Funds; or
- (b) the receiver or manager or the liquidator of the S-VACC or any of its Sub-Funds,

being a document on or in which the name of the S-VACC or any of its Sub-Funds appears, shall contain a statement immediately following the name of the S-VACC or any of its Sub-Funds that a receiver or manager has been appointed.

(2) Where a receiver or manager in respect of property of a Sub-Fund has been appointed, every invoice order for goods or business letter issued by or on behalf of –

- (a) the S-VACC for the Sub-Fund; or
- (b) the receiver or manager or the liquidator of the Sub-Fund,

being a document on or in which the name of the Sub-Fund appears, shall contain a statement immediately following the name of the Sub-Fund that a receiver or manager has been appointed in respect of the Sub-Fund.

(3) If default is made in complying with this section, the S-VACC and every officer and every liquidator of the S-VACC or Sub-Fund and every receiver or manager who knowingly and wilfully authorises or permits the default shall be guilty of an offence.

Provisions as to information where receiver or manager appointed

243. (1) Where a receiver or manager of the property of a S-VACC (referred to in this section and in section 244 as the receiver) is appointed —

- (a) the receiver shall immediately send notice to the S-VACC of his appointment;
- (b) there shall, within 14 days after receipt of the notice, or such longer period as may be allowed by the Court or by the receiver, be made out and submitted to

the receiver in accordance with section 244 a statement in the prescribed form as to the affairs of the S-VACC or, where the receiver has been appointed only in respect of property of a Sub-Fund, the Sub-Fund; and

- (c) the receiver shall within 30 days after receipt of the statement —
- (i) lodge with the Registrar, a copy of the statement and of any comments he sees fit to make thereon;
 - (ii) send to the S-VACC, a copy of any such comments as aforesaid, or if he does not see fit to make any comment, a notice to that effect; and
 - (iii) where the receiver is appointed by or on behalf of the holders of debentures of the S-VACC, send to the trustees, if any, for those holders, a copy of the statement and his comments thereon.

(2) Subsection (1) shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before that subsection has been fully complied with, the references in paragraphs (b) and (c) thereof to the receiver shall (subject to subsection (3)) include references to his successor and to any continuing receiver or manager.

(3) Where the S-VACC or Sub-Fund is being wound up, this section and section 244 shall apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If any person makes default in complying with any of the requirements of this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

Special provisions as to statement submitted to receiver

244. (1) The statement as to the affairs of a S-VACC or a Sub-Fund (as the case may be) required by section 243 to be submitted to the receiver shall show as at the date of the receiver's appointment the particulars of the S-VACC or Sub-Fund (as the case may be)'s assets, debts and liabilities, the names and addresses of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

(2) The statement shall be submitted by, and be verified by affidavit of, one or more of the persons who were at the date of the receiver's appointment the directors of the S-VACC and by the person who was at that date the secretary of the S-VACC, or by such of the persons, hereafter in this subsection mentioned, as the receiver may require to submit and verify the statement, that is to say —

- (a) persons who are or have been officers;
 - (b) persons who have taken part in the formation of the S-VACC at any time within one year before the date of the receiver's appointment;
 - (c) persons who are in the employment of the S-VACC, or have been in the employment of the S-VACC within that year, and are in the opinion of the receiver capable of giving the information required;
 - (d) persons who are or have been, within that year, officers of, or in the employment of, a corporation which is, or within that year was, an officer of the S-VACC to which the statement relates.
- (3) For the purposes of subsection (2), references to –
- (a) an officer of a S-VACC includes the fund manager and approved custodian of the S-VACC; and
 - (b) persons in the employment of the S-VACC include persons employed by the S-VACC under a contract for service.
- (4) Any person making the statement and affidavit shall be allowed and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the Court.
- (5) If any person makes default in complying with the requirements of this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.
- (6) References in this section to the receiver's successor shall include a continuing receiver or manager.

Lodging of accounts of receivers and managers

- 245.** (1) Every receiver or manager of the property of a S-VACC shall —
- (a) within 30 days after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months and within 30 days after he ceases to act as receiver or manager, lodge with the Registrar a detailed account in the prescribed form showing —
 - (i) his receipts and his payments during each period of 6 months, or, where he ceases to act as receiver or manager, during the period from the end of the period to which the last preceding account related or from the date of his appointment, as the case may be, up to the date of his so ceasing;

- (ii) the aggregate amount of those receipts and payments during all preceding periods since his appointment; and
 - (iii) where he has been appointed pursuant to the powers contained in any instrument, the amount owing under that instrument at the time of his appointment, in the case of the first account, and at the expiration of every 6 months after his appointment and, where he has ceased to act as receiver or manager at the date of his so ceasing, and his estimate of the total value of all assets of the S-VACC which are subject to that instrument; and
- (b) before lodging such account, verify by affidavit all accounts and statements referred to therein.
- (2) The Registrar may, of his own motion or on the application of the S-VACC or a creditor, cause the accounts to be audited by a public accountant appointed by the Registrar and for the purpose of the audit the receiver or manager shall furnish the auditor with such vouchers and information as he requires and the auditor may at any time require the production of and inspect any books of account kept by the receiver or manager or any document or other records relating thereto.
- (3) Where the Registrar causes the accounts to be audited upon the request of the S-VACC or a creditor, he may require the applicant to give security for the payment of the cost of the audit.
- (4) Where the receiver or manager was appointed only in respect of property of a Sub-Fund, the Registrar may, of his own motion or on the application of the S-VACC (on behalf of the Sub-Fund) or creditor of the Sub-Fund, cause the accounts to be audited by a public accountant appointed by the Registrar and for the purpose of the audit the receiver or manager shall furnish the auditor with such vouchers and information as he requires and the auditor may at any time require the production of and inspect any books of account kept by the receiver or manager or any document or other records relating thereto.
- (5) Where the Registrar causes the accounts to be audited upon the request of a S-VACC (on behalf of a Sub-Fund) or a creditor of the Sub-Fund, he may require the applicant to give security for the payment of the cost of the audit.
- (6) The costs of an audit under subsection (2) or (4) shall be fixed by the Registrar and be paid by the receiver unless the Registrar otherwise determines.
- (7) Every receiver or manager who makes default in complying with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Payments of certain debts out of assets subject to floating charge in priority to claims under charge

246. (1) Where a receiver is appointed on behalf of the holders of any debentures of a S-VACC (but not of a Sub-Fund) secured by a floating charge or possession is taken by or on behalf of debenture holders of any property of the S-VACC (but not of a Sub-Fund) comprised in or subject to a floating charge, then, if the S-VACC is not at the time in the course of being wound up, debts which in every winding up are preferential debts and are due by way of wages, salary, retrenchment benefit or ex gratia payment, vacation leave or superannuation or provident fund payments and any amount which in a winding up is payable in pursuance of section 331(5) or (7) shall be paid out of any assets coming to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures and shall be paid in the same order of priority as is prescribed by that section in respect of those debts and amounts.

(2) Where a receiver is appointed on behalf of the holders of any debentures of a Sub-Fund secured by a floating charge or possession is taken by or on behalf of debenture holders of any property of a Sub-Fund comprised in or subject to a floating charge, then, if the Sub-Fund is not at the time in the course of being wound up, debts which in every winding up are preferential debts and are due by way of wages, salary, retrenchment benefit or ex gratia payment, vacation leave or superannuation or provident fund payments and any amount which in a winding up is payable in pursuance of section 331(5) or (7) shall be paid out of any assets coming to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures and shall be paid in the same order of priority as is prescribed by that section in respect of those debts and amounts.

(3) In subsection (1) and (2), “floating charge” means a charge which, as created, was a floating charge.

(4) For the purposes of subsection (1) and (2), the references in section 331(1), (c), (d), (e), (f) and (g) to the commencement of the winding up shall be read as a reference to the date of the appointment of the receiver or of possession being taken as aforesaid, as the case requires.

(5) Any payments made under this section shall be recouped as far as may be out of the assets of the S-VACC or Sub-Fund (as the case may be) available for payment of general creditors.

Enforcement of duty of receiver, etc., to make returns

247. (1) If any receiver or manager of the property of a S-VACC who has made default in making or lodging any return, account or other document or in giving any notice required by law fails to make good the default within 14 days after the service on him by any member or creditor of the S-VACC or trustee for debenture holders of a notice requiring him to do so, the Court may, on an application made for the purpose

by the person who has given the notice, make an order directing him to make good the default within such time as is specified in the order.

(2) If it appears that any receiver or manager of the property of a S-VACC (but not of a Sub-Fund) has misapplied or retained or become liable or accountable for any money or property of the S-VACC or been guilty of any misfeasance or breach of trust or duty in relation to the S-VACC, the Court may on the application of any creditor or contributory or of the liquidator examine into the conduct of such receiver or manager and compel him to repay or restore the money or property or any part thereof with interest at such rate as the Court thinks just or to contribute such sum to the assets of the S-VACC by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the Court thinks just.

(3) If it appears that any receiver or manager of the property of a Sub-Fund has misapplied or retained or become liable or accountable for any money or property of the Sub-Fund or been guilty of any misfeasance or breach of trust or duty in relation to the Sub-Fund, the Court may on the application of any creditor or contributory or of the liquidator of the Sub-Fund examine into the conduct of such receiver or manager and compel him to repay or restore the money or property or any part thereof with interest at such rate as the Court thinks just or to contribute such sum to the assets of the Sub-Fund by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the Court thinks just.

(4) This section shall have effect notwithstanding that the offence is one for which the offender is criminally liable.

PART 12 WINDING UP

Division 1 — Preliminary

Modes of winding up

248. The winding up of a S-VACC may be either —

- (a) by the Court; or
- (b) voluntary.

Application of this Division

249. Unless inconsistent with the context or subject matter, the provisions of this Act with respect to winding up shall apply to the winding up of a S-VACC in either of those modes.

Government bound by certain provisions

250. The provisions of this Part relating to the remedies against the property of a S-VACC, the priorities of debts and the effect of an arrangement with creditors shall bind the Government.

Liability as contributories of present and past members

251. (1) On a S-VACC being wound up, every present and past member shall be liable to contribute to the assets of the S-VACC to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up and for the adjustments of the rights of the contributories among themselves, subject to the following qualifications:

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the S-VACC contracted after he ceased to be a member;
- (c) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (d) no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
- (e) a sum due to any member in his character of a member by way of dividends, profits or otherwise shall not be a debt of the S-VACC payable to that member in a case of competition between himself and any other creditor not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

Nature of liability of contributory

252. The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced but payable at the times when calls are made for enforcing the liability.

Contributories in case of death of member

253. (1) If a contributory dies, either before or after he has been placed on the list of contributories, his personal representatives shall be liable in due course of administration to contribute to the assets of the S-VACC in discharge of his liability and shall be contributories accordingly, and if they make default in paying any money ordered to be paid by them proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereof of the money due.

Contributories in case of bankruptcy of member

- (2) If a contributory becomes bankrupt or assigns his estate for the benefit of his creditors, either before or after he has been placed on the list of contributories —
- (a) his trustee shall represent him for all the purposes of the winding up and shall be a contributory accordingly; and
 - (b) there may be proved against his estate the estimated value of his liability to future calls as well as calls already made.

Division 2 – Winding Up by Court

Subdivision 1 — General

Interpretation

254. For the purposes of this Division and Division 3, references to —

- (a) an officer of a S-VACC includes the fund manager and approved custodian of the S-VACC; and
- (b) an employee of a S-VACC includes a person employed by the S-VACC under a contract for service.

Application for winding up

255. (1) A S-VACC, whether or not it is being wound up voluntarily, may be wound up under an order of the Court on the application —

- (a) of the S-VACC;
- (b) of any creditor, including a contingent or prospective creditor, of the S-VACC;
- (c) of a contributory or any person who is the personal representative of a deceased contributory or the Official Assignee of the estate of a bankrupt contributory;
- (d) of the liquidator;
- (e) of the Minister pursuant to section 231 or on the ground specified in section 256(1)(c) or (i);
- (f) of the Minister on the ground specified in section 256(1)(j);
- (g) of the Minister on the ground specified in section 256(1)(k);
- (h) of the Minister on the ground specified in section 256(1)(l); or
- (i) of the AML/CFT Authority on the ground specified in section 256(1)(m),

or of any 2 or more of those parties.

(2) Notwithstanding anything in subsection (1) —

- (a) a person referred to in subsection (1)(c) may not make a winding up application on any of the grounds specified in section 256(1)(a), (b), (d), (h), unless —
 - (i) the S-VACC has no member; or
 - (ii) the shares in respect of which the contributory was a contributory or some of them were originally allotted to the contributory, or have been held by him and registered in his name for at least 6 months during the 18 months before the making of the winding up application or have devolved on him through the death or bankruptcy of a former holder;
- (b) the Court shall not hear the winding up application if made by a contingent or prospective creditors until such security for costs has been given as the Court thinks reasonable and a prima facie case for winding up has been established to the satisfaction of the Court; and
- (c) the Court shall not, where a S-VACC is being wound up voluntarily, make a winding up order unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

Circumstances in which S-VACC may be wound up by Court

256. (1) The Court may order the winding up if —

- (a) the S-VACC has by special resolution resolved that it be wound up by the Court;
- (b) the S-VACC does not commence business within a year from its incorporation or suspends its business for a whole year;
- (c) the S-VACC has no member;
- (d) the S-VACC is unable to pay its debts;
- (e) the directors have acted in the affairs of the S-VACC in their own interests rather than in the interests of the members as a whole, or in any other manner whatever which appears to be unfair or unjust to other members;
- (f) an inspector appointed under Part 10 has reported that he is of opinion —
 - (i) that the S-VACC cannot pay its debts and should be wound up; or
 - (ii) that it is in the interests of the public or of the shareholders or of the creditors that the S-VACC should be wound up;

- (g) when the period, if any, fixed for the duration of the S-VACC by the constitution expires or the event, if any, happens on the occurrence of which the constitution provide that the S-VACC is to be dissolved;
- (h) the Court is of opinion that it is just and equitable that the S-VACC be wound up;
- (i) the S-VACC has carried on multi-level marketing or pyramid selling in contravention of any written law that prohibits multi-level marketing or pyramid selling;
- (j) the S-VACC is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or interest;
- (k) the S-VACC is being used to conduct business outside the scope of its sole object under section 27(1) of this Act; or
- (l) the S-VACC has contravened section 106(1) for such period as may be prescribed by the Minister;
- (m) the S-VACC has contravened section 175 or 176 of this Act.

Definition of inability to pay debts

- (2) A S-VACC shall be deemed to be unable to pay its debts if —
 - (a) a creditor by assignment or otherwise to whom the S-VACC is indebted in a sum exceeding \$10,000 then due has served on the S-VACC by leaving at the registered office a demand under his hand or under the hand of his agent thereunto lawfully authorised requiring the S-VACC to pay the sum so due, and the S-VACC has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
 - (b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the S-VACC is returned unsatisfied in whole or in part; or
 - (c) it is proved to the satisfaction of the Court that the S-VACC is unable to pay its debts; and in determining whether a S-VACC is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the S-VACC.
- (3) On an application for winding up on the ground specified in subsection (1)(e) or (h), instead of making an order for the winding up, the Court may if it is of the opinion that it is just and equitable to do so, make an order for the interests in shares of one or more members to be purchased by the S-VACC or one or more other members on terms to the satisfaction of the Court.

(4) For the purpose of subsection (1)(j), a certificate issued by the Minister charged with the responsibility for internal security stating that he is satisfied that the S-VACC referred to in the certificate is being used for purposes against national security or interest shall be conclusive evidence that the S-VACC is being used for such purposes.

(5) Upon the making of an application by the Minister under section 255(1)(f) for the winding up of a S-VACC under subsection (1)(j) on the ground that it is being used for purposes against national security or interest, the Court, upon the application of the Minister, may, pending the hearing of the winding up application or the making of a winding up order, make —

- (a) an order restraining the S-VACC or its directors, officers or employees from doing any act or from carrying out any activity as may be specified in the order; and
- (b) such other interim orders as the Court thinks fit.

(6) Any person who acts in contravention of an order made by the Court under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Commencement of winding up

257. (1) Where before the making of a winding up application a resolution has been passed by the S-VACC for voluntary winding up, the winding up of the S-VACC shall be deemed to have commenced at the time of the passing of the resolution, and, unless the Court on proof of fraud or mistake thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case the winding up shall be deemed to have commenced at the time of the making of the application for the winding up.

Payment of preliminary costs, etc.

258. (1) The persons, other than the S-VACC itself or the liquidator thereof, on whose application any winding up order is made, shall at their own cost prosecute all proceedings in the winding up until a liquidator has been appointed under this Part.

(2) The liquidator shall, unless the Court orders otherwise, reimburse the applicant out of the assets of the S-VACC the taxed costs incurred by the applicant in any such proceedings.

(3) Where the S-VACC has no assets or has insufficient assets, and in the opinion of the Minister any fraud has been committed by any person in the promotion or formation of the S-VACC or by any officer of the S-VACC in relation to the S-VACC since the formation thereof, the taxed costs or so much of them as is not so reimbursed may, with the approval in writing of the Minister, to an extent specified by the Minister

but not in any case exceeding \$3,000, be reimbursed to the applicant out of moneys provided by Parliament for the purpose.

As to costs when order made on application of S-VACC or liquidator

(4) Where any winding up order is made upon the application of the S-VACC or the liquidator thereof, the costs incurred shall, subject to any order of the Court, be paid out of assets of the S-VACC in like manner as if they were the costs of any other applicant.

Powers of Court on hearing winding up application

259. (1) On hearing a winding up application, the Court may dismiss it with or without costs or adjourn the hearing conditionally or unconditionally or make any interim or other order that it thinks fit, but the Court shall not refuse to make a winding up order on the ground only that the assets of the S-VACC have been mortgaged to an amount equal to or in excess of those assets or that the S-VACC has no assets or in the case of an application by a contributory that there will be no assets available for distribution amongst the contributories.

(2) The Court may on the winding up application coming on for hearing or at any time on the application of the person making the winding up application, the S-VACC, or any person who has given notice that he intends to appear on the hearing of the winding up application —

- (a) direct that any notices be given or any steps taken before or after the hearing of the winding up application;
- (b) dispense with any notices being given or steps being taken which are required by this Act, or by the rules made thereunder, or by any prior order of the Court;
- (c) direct that oral evidence be taken on the winding up application or any matter relating thereto;
- (d) direct a speedy hearing or trial of the winding up application or any issue or matter;
- (e) allow the winding up application to be amended or withdrawn; and
- (f) give such directions as to the proceedings as the Court thinks fit.

Power to stay or restrain proceedings against S-VACC

260. At any time after the making of a winding up application and before a winding up order has been made, the S-VACC or any creditor or contributory may, where any action or proceeding against the S-VACC 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.

Avoidance of dispositions of property, etc.

261. Any disposition of the property of the S-VACC, including things in action, and any transfer of shares or alteration in the status of the members of the S-VACC made after the commencement of the winding up by the Court shall unless the Court otherwise orders be void.

Avoidance of certain attachments, etc.

262. Any attachment, sequestration, distress or execution put in force against the estate or effects of the S-VACC after the commencement of the winding up by the Court shall be void.

Winding up application to be lis pendens

263. Any application for winding up a S-VACC shall constitute a lis pendens within the meaning of any law relating to the effect of a lis pendens upon purchasers or mortgagees.

Copy of order to be lodged, etc.

264. (1) Within 7 days after the making of a winding up order, the applicant for the winding up order shall lodge with the Registrar notice of —

- (a) the order and its date; and
- (b) the name and address of the liquidator.

(2) On the passing and entering of the winding up order, the applicant for the winding up order shall within 7 days —

- (a) lodge an office copy of the order with the Official Receiver and a copy of the order with the Registrar;
- (b) cause a copy to be served upon the secretary of the S-VACC or upon such other person or in such manner as the Court directs; and
- (c) deliver a copy to the liquidator with a statement that the requirements of this subsection have been complied with.

Actions stayed on winding up order

(3) When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the S-VACC except —

- (a) by leave of the Court; and
- (b) in accordance with such terms as the Court imposes.

Effect of order

(4) Subject to section 325, an order for winding up a S-VACC shall operate in favour of all the creditors and contributories of the S-VACC as if made on the joint application of a creditor and of a contributory.

(5) If default is made in complying with subsection (1) or (2), the applicant for the winding up order shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Subdivision 2 — Liquidators

Appointment, style, etc., of liquidators

265. The following provisions with respect to liquidators shall have effect on a winding up order being made:

- (a) if an approved liquidator, other than the Official Receiver, is not appointed to be the liquidator of the S-VACC, the Official Receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;
- (b) if there is no liquidator appointed, the Official Receiver shall summon separate meetings of the creditors and contributories of the S-VACC for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;
- (c) the Court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit;
- (d) in a case where a liquidator is not appointed by the Court, the Official Receiver shall be the liquidator of the S-VACC;
- (e) in a case where a winding up order is made under section 256(1)(j) on the ground that the S-VACC is being used for purposes against national security or interest, the Official Receiver shall be the liquidator of the S-VACC;
- (f) the Official Receiver shall by virtue of his office be the liquidator during any vacancy;
- (g) any vacancy in the office of a liquidator appointed by the Court may be filled by the Court;
- (h) a liquidator shall be described, where a person other than the Official Receiver is liquidator, by the style of “the liquidator”, and, where the Official Receiver is

liquidator, by the style of “the Official Receiver and liquidator”, of the particular S-VACC in respect of which he is appointed, and not by his individual name.

Provisions where person other than Official Receiver is appointed liquidator

266. Where in the winding up of a S-VACC by the Court, a person other than the Official Receiver, is appointed liquidator, that person —

- (a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the prescribed manner to the satisfaction of the Official Receiver; and
- (b) shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the S-VACC, and generally such aid as may be required for enabling that officer to perform his duties under this Act.

Control of unofficial liquidators by Official Receiver

267. (1) Where in the winding up of a S-VACC by the Court, a person, other than the Official Receiver, is the liquidator the Official Receiver shall take cognizance of his conduct and if the liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by any written law or otherwise with respect to the performance of his duties, or if any complaint is made to the Official Receiver by any creditor or contributory in regard thereto, the Official Receiver shall inquire into the matter, and take such action thereon as he may think expedient.

(2) The Official Receiver may at any time require any such liquidator of a S-VACC which is being wound up by the Court to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Official Receiver thinks fit, apply to the Court to examine him or any other person on oath concerning the winding up.

(3) The Official Receiver may also direct a local investigation to be made of the books and vouchers of such liquidator.

Control of Official Receiver by Minister

268. The Minister shall take cognizance of the conduct of the Official Receiver and of all Assistant Official Receivers who are concerned in the liquidation of S-VACCs, and if any such person does not faithfully perform his duties and duly observe all the requirements imposed on him by any written law or otherwise with respect to the performance of his duties, or if any complaint is made to the Minister by any creditor or contributory in regard thereto, the Minister shall inquire into the matter, and take such action thereon as he may think expedient, and may direct a local investigation to be made of the books and vouchers of such person.

Provisional liquidator

269. The Court may appoint the Official Receiver or an approved liquidator provisionally at any time after the making of a winding up application and before the making of a winding up order and the provisional liquidator shall have and may exercise all the functions and powers of a liquidator, subject to such limitations and restrictions as may be prescribed by the Rules or as the Court may specify in the order appointing him.

General provisions as to liquidators

270. (1) A liquidator appointed by the Court may resign or on cause shown be removed by the Court.

(2) A provisional liquidator, other than the Official Receiver, shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined by the Court.

(3) A liquidator, other than the Official Receiver, shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined —

- (a) by agreement between the liquidator and the committee of inspection, if any;
- (b) failing such agreement, or where there is no committee of inspection by a resolution passed at a meeting of creditors by a majority of not less than 75% in value and 50% in number of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted for the purpose of voting, which meeting shall be convened by the liquidator by a notice to each creditor to which notice shall be attached a statement of all receipts and expenditure by the liquidator and the amount of remuneration sought by him; or
- (c) failing a determination in a manner referred to in paragraph (a) or (b), by the Court.

(4) Where the salary or remuneration of a liquidator is determined in the manner specified in subsection (3)(a), the Court may, on the application of a member or members whose shareholding or shareholdings represents or represent in the aggregate not less than 10% of the issued capital of the S-VACC, confirm or vary the determination.

(5) Where the salary or remuneration of a liquidator is determined in the manner specified in subsection (3)(b), the Court may, on the application of the liquidator or a member or members referred to in subsection (4), confirm or vary the determination.

(6) Subject to any order of the Court, the Official Receiver when acting as a liquidator or provisional liquidator of a S-VACC shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed.

(7) If more than one liquidator is appointed by the Court, the Court shall declare whether anything by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(8) Subject to this Act, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody and vesting of S-VACC's property

271. (1) Where a winding up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody or under his control all the property and things in action to which the S-VACC is or appears to be entitled.

(2) The Court may, on the application of the liquidator, by order direct that all or any part of the property of whatever description belonging to the S-VACC or held by trustees on its behalf shall vest in the liquidator and thereupon the property to which the order relates shall vest accordingly and the liquidator may, after giving such indemnity, if any, as the Court directs, bring or defend any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the S-VACC and recovering its property.

(3) Where an order is made under this section, every liquidator of a S-VACC in relation to which the order is made shall lodge within 7 days of the making of the order —

- (a) a copy of the order with the Registrar; and
- (b) where the order relates to land, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land,

and every liquidator who makes default in complying with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

(4) No vesting order referred to in this section shall have any effect or operation in transferring or otherwise vesting land until an appropriate entry or memorandum thereof is made by or with the appropriate authority.

Statement of S-VACC's affairs to be submitted to Official Receiver

272. (1) There shall be made out and verified in the prescribed form and manner and submitted to the Official Receiver or the liquidator, as the case requires, a statement as to the affairs of the S-VACC as at the date of the winding up order showing —

- (a) the particulars of its assets, debts and liabilities;
- (b) the names and addresses of its creditors;

- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further information as is prescribed or as the Official Receiver or the liquidator requires.

(2) The statement shall be submitted by one or more of the persons who are, at the date of the winding up order, directors, and by the secretary of the S-VACC, or by such of the persons hereinafter mentioned as the Official Receiver or the liquidator, subject to the direction of the Court, requires, that is to say, persons —

- (a) who are or have been officers of the S-VACC;
- (b) who have taken part in the formation of the S-VACC at any time within one year before the date of the winding up order; or
- (c) who are or have been within that period officers of or in the employment of a corporation which is, or within that period was, an officer of the S-VACC to which the statement relates.

(3) The statement shall be submitted within 14 days after the date of the winding up order or within such extended time as the Official Receiver or the liquidator or the Court for special reasons specifies, and the Official Receiver or the liquidator shall within 7 days after its receipt cause a copy of the statement to be filed with the Court and lodged with the Registrar and, where the Official Receiver is not the liquidator, shall cause a copy to be lodged with the Official Receiver.

(4) Any person making or concurring in making the statement required by this section may, subject to the rules, be allowed, and be paid, out of the assets of the S-VACC, such costs and expenses incurred in and about the preparation and making of the statement as the Official Receiver or the liquidator considers reasonable subject to an appeal to the Court.

(5) Every person who, without reasonable excuse, makes default in complying with the requirements of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both and also to a default penalty.

Report by liquidator

273. (1) The liquidator shall as soon as practicable after receipt of the statement of affairs submit a preliminary report to the Court or if the liquidator is not the Official Receiver, to the Official Receiver —

- (a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;

- (b) if the S-VACC has failed, as to the causes of the failure; and
- (c) whether, in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation or failure of the S-VACC or the conduct of the business thereof.

(2) The liquidator may also, if he thinks fit, make further reports to the Court or if the liquidator is not the Official Receiver, to the Official Receiver stating the manner in which the S-VACC was formed and whether in his opinion any fraud has been committed or any material fact has been concealed by any person in its promotion or formation or by any officer in relation to the S-VACC since its formation, and whether any officer of the S-VACC has contravened or failed to comply with any of the provisions of this Act, and specifying any other matter which in his opinion it is desirable to bring to the notice of the Court.

Powers of liquidator

274. (1) The liquidator may with the authority either of the Court or of the committee of inspection —

- (a) carry on the business of the S-VACC so far as is necessary for the beneficial winding up thereof, but the authority shall not be necessary to so carry on the business during the 4 weeks next after the date of the winding up order;
- (b) subject to section 331 pay any class of creditors in full;
- (c) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim present or future, certain or contingent, ascertained or sounding only in damages against the S-VACC, or whereby the S-VACC may be rendered liable;
- (d) compromise any calls and liabilities to calls, debts and liabilities capable of resulting in debts and any claims present or future, certain or contingent, ascertained or sounding only in damages subsisting, or supposed to subsist, between the S-VACC and a contributory or other debtor or person apprehending liability to the S-VACC, and all questions in any way relating to or affecting the assets or the winding up of the S-VACC, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof; and
- (e) appoint a solicitor to assist him in his duties.

(2) The liquidator may —

- (a) bring or defend any action or other legal proceeding in the name and on behalf of the S-VACC;

- (b) compromise any debt due to the S-VACC, other than calls and liabilities to calls and other than a debt where the amount claimed by the S-VACC to be due to it exceeds \$1,500;
 - (c) sell the immovable and movable property, things in action of the S-VACC and the business of the S-VACC by public auction, public tender or private contract with power to transfer the whole thereof to any person or company or to sell the same in parcels or parts;
 - (d) do all acts and execute in the name and on behalf of the S-VACC all deeds, receipts and other documents and for that purpose use when necessary the S-VACC's seal, if any;
 - (e) prove, rank and claim in the bankruptcy of any contributory or debtor for any balance against his estate, and receive dividends in the bankruptcy in respect of that balance as a separate debt due from the bankrupt, and rateably with the other separate creditors;
 - (f) draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the S-VACC with the same effect with respect to the liability of the S-VACC as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the S-VACC in the course of its business;
 - (g) raise on the security of the assets of the S-VACC any money required;
 - (h) take out letters of administration of the estate of any deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor or his estate which cannot be conveniently done in the name of the S-VACC, and in all such cases the money due shall, for the purposes of enabling the liquidator to take out the letters of administration or recover the money, be deemed due to the liquidator himself;
 - (i) appoint an agent to do any business which the liquidator is unable to do himself; and
 - (j) do all such other things as are necessary for winding up the affairs of the S-VACC and distributing its assets.
- (3) The exercise by the liquidator of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

Exercise and control of liquidator's powers

275. (1) Subject to this Part, the liquidator shall in the administration of the assets of the S-VACC and in the distribution thereof among its creditors have regard to any directions given by resolution of the creditors or contributories at any general meeting

or by the committee of inspection, and any directions so given by the creditors or contributories shall, in case of conflict, override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and he shall summon meetings at such times as the creditors or contributories by resolution direct or whenever requested in writing to do so by not less than 10% in value of the creditors or contributories.

(3) The liquidator may apply to the Court for directions in relation to any particular matter arising under the winding up.

(4) Subject to this Part, the liquidator shall use his own discretion in the management of the affairs and property of the S-VACC and the distribution of its assets.

Payment by liquidator into bank

276. (1) Every liquidator shall, in the manner and at the times prescribed by the rules, pay the money received by him into such bank account as is prescribed by those rules or as is specified by the Court.

(2) If any liquidator retains for more than 10 days a sum exceeding \$1,000, or such other amount as the Court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess, computed from the expiration of the abovementioned 10 days, until he has complied with subsection (1) at the rate of 20% per annum, and shall be liable —

- (a) to disallowance of all or such part of his remuneration as the Court thinks just;
- (b) to be removed from his office by the Court; and
- (c) to pay any expenses occasioned by reason of his default.

(3) Any liquidator who pays any sums received by him as liquidator into any bank or account other than the bank or account prescribed or specified under subsection (1) shall be guilty of an offence.

Release of liquidators and dissolution of S-VACC

277. When the liquidator —

- (a) has realised all the property of the S-VACC or so much thereof as can in his opinion be realised, without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories among themselves and made a final return, if any, to the contributories; or

(b) has resigned or has been removed from his office,

he may apply to the Court —

(i) for an order that he be released; or

(ii) for an order that he be released and that the S-VACC be dissolved.

As to orders for release or dissolution

278. (1) Where an order is made that the S-VACC be dissolved, the S-VACC shall from the date of the order be dissolved accordingly.

(2) The Court —

(a) may cause a report on the accounts of a liquidator, not being the Official Receiver, to be prepared by the Official Receiver or by a public accountant appointed by the Court;

(b) on the liquidator complying with all the requirements of the Court, shall take into consideration the report and any objection which is urged by the Official Receiver, auditor or any creditor or contributory or other person interested against the release of the liquidator; and

(c) shall either grant or withhold the release accordingly.

(3) Where the release of a liquidator is withheld, the Court may, on the application of any creditor or contributory or person interested, make such order as it thinks just charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(4) An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the S-VACC or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(5) Where the liquidator has not previously resigned or been removed his release shall operate as a removal from office.

(6) Where the Court has made —

(a) an order that the liquidator be released; or

(b) an order that the liquidator be released and that the S-VACC be dissolved,

a copy of the order and an office copy of the order shall, within 14 days after the making thereof, be lodged by the liquidator with the Registrar and with the Official Receiver,

respectively, and a liquidator who makes default in complying with the requirements of this subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

Subdivision 3 — Committees of inspection

Meetings to determine whether committee of inspection to be appointed

279. (1) The liquidator may, and shall, if requested by any creditor or contributory, summon separate meetings of the creditors and contributories for the purpose of determining whether or not the creditors or contributories require the appointment of a committee of inspection to act with the liquidator, and if so who are to be members of the committee.

(2) If there is a difference between the determinations of the meetings of the creditors and contributories the Court shall decide the difference and make such order as it thinks fit.

Constitution and proceedings of committee of inspection

280. (1) The committee of inspection shall consist of creditors and contributories of the S-VACC or persons holding —

- (a) general powers of attorney from creditors or contributories; or
- (b) special authorities from creditors or contributories authorising the persons named therein to act on such a committee,

appointed by the meetings of creditors and contributories in such proportions as are agreed or, in case of difference, as are determined by the Court.

(2) The committee shall meet at such times and places as it may from time to time appoint, and the liquidator or any member of the committee may also call a meeting of the committee as he thinks necessary.

(3) The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the committee is present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or assigns his estate for the benefit of his creditors or makes an arrangement with his creditors pursuant to any written law relating to bankruptcy or is absent from 5 consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents

contributories, of which meeting 7 days' notice has been given stating the object of the meeting.

(7) A vacancy in the committee may be filled by the appointment by the committee of the same or another creditor or contributory or person holding a general power of attorney or special authority as specified in subsection (1).

(8) The liquidator may at any time of his own motion and shall within 7 days after the request in writing of a creditor or contributory summon a meeting of creditors or of contributories, as the case requires, to consider any appointment made pursuant to subsection (7), and the meeting may confirm the appointment or revoke the appointment and appoint another creditor or contributory or person holding a general power of attorney or special authority as specified in subsection (1), as the case requires, in his stead.

(9) The continuing members of the committee if not less than 2 may act notwithstanding any vacancy in the committee.

(10) In this section, "general power of attorney" includes a lasting power of attorney registered under the Mental Capacity Act 2008.

Subdivision 4 — General powers of Court

Power to stay winding up

281. (1) At any time after an order for winding up has been made, the Court may, on the application of the liquidator or of any creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings either altogether or for a limited time on such terms and conditions as the Court thinks fit.

(2) On any such application the Court may, before making an order, require the liquidator to furnish a report with respect to any facts or matters which are in his opinion relevant.

(3) A copy of an order made under this section and an office copy of such an order shall be lodged by the S-VACC with the Registrar and the Official Receiver, respectively, within 14 days after the making of the order.

(4) Any person who fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Settlement of list of contributories and application of assets

282. (1) As soon as possible after making a winding up order, the Court shall settle a list of contributories and may rectify the register of members in all cases where

rectification is required in pursuance of this Part and shall cause the assets of the S-VACC to be collected and applied in discharge of its liabilities.

(2) Notwithstanding subsection (1), where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(3) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

(4) The list of contributories, when settled, shall be prima facie evidence of the liabilities of the persons named therein as contributories.

Payment of debts due by contributory, to S-VACC, and extent to which set-off allowed

283. (1) The Court may make an order directing any contributory for the time being on the list of contributories to pay to the S-VACC, in the manner directed by the order, any money due from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act, when all the creditors are paid in full, any money due on any account whatever to a contributory from the S-VACC may be allowed to him by way of set-off against any subsequent call.

Power of Court to make calls

(2) The Court may either before or after it has ascertained the sufficiency of the assets of the S-VACC —

(a) make calls on all or any of the contributories for the time being on the list of contributories, to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the S-VACC and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves; and

(b) make an order for payment of any calls so made,

and, in making a call, may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Payment into bank of moneys due to S-VACC

(3) The Court may order any contributory, purchaser or other person from whom money is due to the S-VACC to pay the amount due into some bank, named in such order, to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(4) All moneys and securities paid or delivered into any bank pursuant to this Division shall be subject in all respects to orders of the Court.

Order on contributory conclusive evidence

(5) An order made by the Court under this section shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due, and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

Appointment of special manager

284. (1) The liquidator may, if satisfied that the nature of the estate or business of the S-VACC, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the S-VACC other than himself, apply to the Court which may appoint a special manager of the estate or business to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the Court.

(2) The special manager —

- (a) shall give such security and account in such manner as the Court directs;
- (b) shall receive such remuneration as is fixed by the Court; and
- (c) may at any time resign after giving not less than one month's notice in writing to the liquidator of his intention to resign, or on cause shown be removed by the Court.

Claims of creditors and distribution of assets

285. (1) The Court may fix a date on or before which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts or claims are proved.

(2) The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

(3) The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks fit.

Inspection of books and papers by creditors and contributories

286. The Court may make such order for inspection of the books and papers of the S-VACC by creditors and contributories as the Court thinks just, and any books and papers in the possession of the S-VACC may be inspected by creditors or contributories accordingly, but not further or otherwise.

Power to summon persons connected with S-VACC

287. (1) The Court may summon before it any officer of the S-VACC or person known or suspected to have in his possession any property of the S-VACC or supposed to be indebted to the S-VACC, or any person whom the Court considers capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the S-VACC.

(2) The Court may examine him on oath concerning the matters mentioned in subsection (1) either by word of mouth or on written interrogatories and may cause to be made a record of his answers, and any such record may be used in evidence in any legal proceedings against him.

(3) The Court may require him to produce any books and papers in his custody or power relating to the S-VACC, but where he claims any lien on books or papers the production shall be without prejudice to that lien, and the Court shall have jurisdiction to determine all questions relating to that lien.

(4) An examination under this section or section 288 may, if the Court so directs and subject to the Rules, be held before any District Judge named for the purpose by the Court, and the powers of the Court under this section and section 288 may be exercised by that Judge.

(5) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful excuse, made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be apprehended and brought before the Court for examination.

Power to order public examination of promoters, directors, etc.

288. (1) Where the liquidator has made a report under this Part stating that, in his opinion, a fraud has been committed or that any material fact has been concealed by any person in the promotion or formation of the S-VACC or by any officer in relation to the S-VACC since its formation or that any officer of the S-VACC has failed to act honestly or diligently or has been guilty of any impropriety or recklessness in relation to the affairs of the S-VACC, the Court may, after consideration of the report, direct that the person or officer, or any other person who was previously an officer of the S-VACC, including any banker, solicitor or auditor, or who is known or suspected to have in his possession any property of the S-VACC or is supposed to be indebted to the S-VACC or any person whom the Court considers capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the S-VACC, shall attend before the Court on a day appointed and be publicly examined as to the promotion or formation or the conduct of the business of the S-VACC, or in the case of an officer or former officer as to his conduct and dealings as an officer thereof.

(2) The liquidator and any creditor or contributory may take part in the examination either personally or by a solicitor.

- (3) The Court may put or allow to be put such questions to the person examined as the Court thinks fit.
- (4) The person examined shall be examined on oath and shall answer all such questions as the Court puts or allows to be put to him.
- (5) A person ordered to be examined under this section shall before his examination be furnished with a copy of the liquidator's report.
- (6) Where a person directed to attend before the Court under subsection (1) applies to the Court to be exculpated from any charges made or suggested against him, the liquidator shall appear on the hearing of the application and call the attention of the Court to any matters which appear to him to be relevant and if the Court, after hearing any evidence given or witnesses called by the liquidator, grants the application the Court may allow the applicant such costs as the Court in its discretion thinks fit.
- (7) The record of the examination —
- (a) may be used in evidence in any legal proceedings against the person examined; and
 - (b) shall, at all reasonable times, be made available to any creditor or contributory for review at the court premises.
- (8) The Court may if it thinks fit adjourn the examination from time to time.

Power to arrest absconding contributory, director or former director

289. The Court, at any time before or after making a winding up order, on proof of probable cause for believing that —

- (a) a contributory of the S-VACC;
- (b) a director or former director of the S-VACC; or
- (c) a director or former director of a corporation which is, or has been, an officer of a S-VACC

is about to leave Singapore or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the S-VACC, may cause the contributory, director or former director to be arrested and his books and papers and movable personal property to be seized and safely kept until such time as the Court orders.

Delegation to liquidator of certain powers of Court

290. Provision may be made by rules enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Part in respect of —

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories, the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (d) the making of calls and the adjusting of the rights of contributories; and
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court, but the liquidator shall not, without the special leave of the Court, rectify the register of members and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

Powers of Court cumulative

291. (1) Any powers by this Act conferred on the Court shall be in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the S-VACC or the estate of any contributory or debtor for the recovery of any call or other sums.

(2) Subject to the Rules, an appeal from any order or decision made or given in the winding up of a S-VACC shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Court in cases within its ordinary jurisdiction.

Division 3 — Voluntary Winding Up

Subdivision 1 — Introductory

Circumstances in which S-VACC may be wound up voluntarily

292. (1) A S-VACC may be wound up voluntarily —

- (a) when the period, if any, fixed for the duration of the S-VACC by the constitution expires or the event, if any, happens, on the occurrence of which the constitution provides that the S-VACC is to be dissolved and the S-VACC in general meeting has passed a resolution requiring the S-VACC to be wound up voluntarily; or
- (b) if the S-VACC so resolves by special resolution.

- (2) A S-VACC shall —
- (a) within 7 days after the passing of a resolution for voluntary winding up, lodge a copy of the resolution with the Registrar; and
 - (b) within 10 days after the passing of the resolution, give notice of the resolution in one or more newspapers circulating in Singapore.
- (3) If the S-VACC fails to comply with subsection (2), the S-VACC and every officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Provisional liquidator

293. (1) Where the directors of a S-VACC have made a statutory declaration in the prescribed form which has been lodged with the Official Receiver and have lodged a declaration in the prescribed form with the Registrar —

- (a) that the S-VACC cannot by reason of its liabilities continue its business; and
- (b) that meetings of the S-VACC and of its creditors have been summoned for a date within one month of the date of the declaration,

the directors shall immediately appoint an approved liquidator to be the provisional liquidator.

(2) A provisional liquidator shall have and may exercise all the functions and powers of a liquidator in a creditors' winding up subject to such limitations and restrictions as may be prescribed by the Rules.

(3) The appointment of a provisional liquidator under this section shall continue for one month from the date of his appointment or for such further period as the Official Receiver may allow in any particular case or until the appointment of a liquidator, whichever first occurs.

(4) Notice of the appointment of a provisional liquidator under this section together with a copy of the declaration lodged with the Official Receiver shall be advertised within 14 days of the appointment of the provisional liquidator in at least 4 local daily newspapers, one each published in the English, Malay, Chinese and Tamil languages.

(5) A provisional liquidator shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed.

Commencement of voluntary winding up

(6) A voluntary winding up shall commence —

- (a) where a provisional liquidator has been appointed before the resolution for voluntary winding up was passed, at the time when the declaration referred to in subsection (1) was lodged with the Registrar; and
- (b) in any other case, at the time of the passing of the resolution for voluntary winding up.

Effect of voluntary winding up

294. (1) The S-VACC shall from the commencement of the winding up cease to carry on its business, except so far as is in the opinion of the liquidator required for the beneficial winding up thereof, but the corporate state and corporate powers of the S-VACC shall, notwithstanding anything to the contrary in its constitution, continue until it is dissolved.

(2) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members made after the commencement of the winding up, shall be void.

Declaration of solvency

295. (1) Where it is proposed to wind up a S-VACC voluntarily, the directors of the S-VACC, or in the case of a S-VACC having more than 2 directors, the majority of the directors shall, in the case of a members' voluntary winding up before the date on which the notices of the meeting at which the resolution for the winding up of the S-VACC is to be proposed are sent out, make a declaration to the effect that they have made an inquiry into the affairs of the S-VACC, and that, at a meeting of directors, have formed the opinion that the S-VACC will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding up.

(2) There shall be attached to the declaration a statement of affairs of the S-VACC showing, in the prescribed form —

- (a) the assets of the S-VACC and the total amount expected to be realised therefrom;
- (b) the liabilities of the S-VACC; and
- (c) the estimated expenses of winding up,

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

(3) A declaration so made shall have no effect for the purposes of this Act unless it is —

- (a) made at the meeting of directors referred to in subsection (1);
- (b) made within 5 weeks immediately preceding the passing of the resolution for voluntary winding up; and

(c) lodged with the Registrar before the date on which the notices of the meeting at which the resolution for the winding up of the S-VACC is to be proposed are sent out.

(4) A director, who makes a declaration under this section without having reasonable grounds for the opinion that the S-VACC will be able to pay its debts in full within the period stated in the declaration, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(5) If the S-VACC is wound up in pursuance of a resolution for voluntary winding up passed within a period of 5 weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

Subdivision 2 — Provisions applicable only to members' voluntary winding up

Liquidator

296. (1) The S-VACC in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the S-VACC and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator, all the powers of the directors shall cease except so far as the liquidator or the S-VACC in general meeting with the consent of the liquidator approves the continuance thereof.

(3) The S-VACC may, in general meeting convened by any contributory by special resolution of which special notice has been given to the creditors and the liquidators, remove any liquidator but no such resolution shall be effective to remove a liquidator if the Court, on the application of the liquidator or a creditor, has ordered that the liquidator be not removed.

(4) If a vacancy occurs by death, resignation, removal or otherwise in the office of a liquidator, the S-VACC in general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him, and for that purpose a general meeting may be convened by any contributory, or if there were more liquidators than one, by the continuing liquidators.

(5) The meeting shall be held in the manner provided by this Act or by the constitution or in such manner as is, on application by any contributory or by the continuing liquidators, determined by the Court.

Duty of liquidator to call creditors' meeting in case of insolvency

297. (1) If the liquidator is at any time of the opinion that the S-VACC will not be able to pay or provide for the payment of its debts in full within the period stated in the declaration made under section 295, he shall immediately summon a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the S-VACC and the notice summoning the meeting shall draw the attention of the creditors to the right conferred upon them by subsection (2).

(2) The creditors may, at the meeting summoned under subsection (1), appoint some other person to be the liquidator for the purpose of winding up the affairs and distributing the assets of the S-VACC instead of the liquidator appointed by the S-VACC.

(3) If the creditors appoint some other person under subsection (2), the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up.

(4) Within 7 days after a meeting has been held pursuant to subsection (1), the liquidator or if some other person has been appointed by the creditors to be the liquidator, the person so appointed shall lodge with the Registrar and with the Official Receiver a notice in the prescribed form and if default is made in complying with this subsection the liquidator or the person so appointed, as the case requires, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$800 and also to a default penalty.

Alternative provisions as to annual meetings in case of insolvency

(5) Where the liquidator has convened a meeting under subsection (1) and the creditors do not appoint a liquidator instead of the liquidator appointed by the S-VACC, the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up; but the liquidator shall not be required to summon an annual meeting of creditors at the end of the first year from the commencement of the winding up if the meeting held under subsection (1) was held less than 3 months before the end of that year.

Subdivision 3 — Provisions applicable only to creditors' voluntary winding up

Meeting of creditors

298. (1) The S-VACC shall cause a meeting of the creditors of the S-VACC to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the S-VACC.

(2) The S-VACC shall convene the meeting at a time and place convenient to the majority in value of the creditors and shall —

- (a) give to the creditors at least 7 clear days' notice by post of the meeting; and
 - (b) send to each creditor with the notice, a statement showing the names of all creditors and the amounts of their claims.
- (3) The S-VACC shall cause notice of the meeting of the creditors to be advertised at least 7 days before the date of the meeting in a newspaper circulating in Singapore.
- (4) The directors of the S-VACC shall —
- (a) cause a full statement of the S-VACC's affairs showing in respect of assets the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims to be laid before the meeting of creditors; and
 - (b) appoint one of their number to attend the meeting.
- (5) The director so appointed and the secretary shall attend the meeting and disclose to the meeting the S-VACC's affairs and the circumstances leading up to the proposed winding up.
- (6) The creditors may appoint one of their number or the director appointed under subsection (4)(b) to preside at the meeting.
- (7) The chairman shall at the meeting determine whether the meeting has been held at a time and place convenient to the majority in value of the creditors and his decision shall be final.
- (8) If the chairman decides that the meeting has not been held at a time and place convenient to that majority, the meeting shall lapse and a further meeting shall be summoned by the S-VACC as soon as is practicable.
- (9) If the meeting of the S-VACC is adjourned and the resolution for winding up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors shall have effect as if it had been passed immediately after the passing of the resolution for winding up.
- (10) If default is made in complying with this section, the S-VACC and any officer of the S-VACC who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

Liquidator

299. (1) The S-VACC shall, and the creditors may at their respective meetings, nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the S-VACC, and if the creditors and the S-VACC nominate different persons the person nominated by the creditors shall be liquidator, and if no

person is nominated by the creditors the person nominated by the S-VACC shall be liquidator.

(2) Notwithstanding subsection (1), where different persons are nominated any director, member or creditor may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the S-VACC shall be liquidator instead of or jointly with the person nominated by the creditors.

(3) The committee of inspection, or if there is no such committee the creditors, may fix the remuneration to be paid to the liquidator.

(4) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the committee of inspection, or, if there is no such committee, the creditors, approve the continuance thereof.

(5) If a liquidator, other than a liquidator appointed by or by the direction of the Court, dies, resigns or otherwise vacates the office, the creditors may fill the vacancy and for the purpose of so doing a meeting of the creditors may be summoned by any 2 of their number.

Committee of inspection

300. (1) The creditors at the meeting summoned pursuant to section 297 or 298 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than 5 persons, whether creditors or not and, if such a committee is appointed, the S-VACC may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons but not more than 5 as it thinks fit to act as members of the committee.

(2) Notwithstanding subsection (1), the creditors may, if they think fit, resolve that all or any of the persons so appointed by the S-VACC ought not to be members of the committee of inspection and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this subsection the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(3) Subject to this section and the rules made under this Act, the provisions of Subdivision (3) of Division 2 relating to the proceedings of and vacancies in committees of inspection shall apply with respect to a committee of inspection appointed under this section.

Property and proceedings

301. (1) Any attachment, sequestration, distress or execution put in force against the estate or effects of the S-VACC after the commencement of a creditors' voluntary winding up shall be void.

(2) After the commencement of the winding up no action or proceeding shall be proceeded with or commenced against the S-VACC except by leave of the Court and subject to such terms as the Court imposes.

Subdivision 4 — Provisions applicable to every voluntary winding up

Distribution of property of -S-VACC

302. Subject to the provisions of this Act as to preferential payments, the property of a S-VACC shall, on its winding up, be applied *pari passu* in satisfaction of its liabilities, and, subject to that application, shall, unless the constitution otherwise provides, be distributed among the members according to their rights and interests in the S-VACC.

Appointment of liquidator

303. If from any cause there is no liquidator acting, the Court may appoint a liquidator.

Removal of liquidator

304. The Court may, on cause shown, remove a liquidator and appoint another liquidator.

Review of liquidator's remuneration

305. Any member or creditor or the liquidator may at any time before the dissolution of the S-VACC apply to the Court to review the amount of the remuneration of the liquidator, and the decision of the Court shall be final and conclusive.

Act of liquidator valid, etc.

306. (1) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of a S-VACC's property made by a liquidator shall, notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator be valid in favour of any person taking such property *bona fide* and for value and without notice of such defect or irregularity.

(3) Every person making or permitting any disposition of property to any liquidator shall be protected and indemnified in so doing notwithstanding any defect or irregularity

affecting the validity of the winding up or the appointment of the liquidator not then known to that person.

(4) For the purposes of this section, a disposition of property shall be taken as including a payment of money.

Powers and duties of liquidator

307. (1) The liquidator may —

- (a) in the case of a members' voluntary winding up, with the approval of a special resolution of the S-VACC and, in the case of a creditors' voluntary winding up, with the approval of the Court or the committee of inspection, exercise any of the powers given by section 274(1)(b), (c), (d) and (e) to a liquidator in a winding up by the Court;
- (b) exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;
- (c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories;
- (d) exercise the power of the Court of making calls; or
- (e) summon general meetings of the S-VACC for the purpose of obtaining the sanction of the S-VACC by special resolution in respect of any matter or for any other purpose he thinks fit.

(2) The liquidator shall pay the debts of the S-VACC and adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as is determined at the time of their appointment, or in default of such determination by any number not less than 2.

Power of liquidator to accept shares, etc., as consideration for sale of property of S-VACC

308. (1) Where it is proposed that the whole or part of the business or property of a S-VACC be transferred or sold to another corporation (referred to in this section as the corporation), the liquidator of the S-VACC may, with the sanction of a special resolution of the S-VACC conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale shares, debentures, policies or other like interests in the corporation for distribution among the members of the S-VACC, or may enter into any other arrangement whereby the members of the S-VACC may, in lieu of receiving cash, shares, debentures, policies or other like interests or in addition thereto,

participate in the profits of or receive any other benefit from the corporation and any such transfer, sale or arrangement shall be binding on the members of the S-VACC.

(2) If any member of the S-VACC expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the liquidator within 7 days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in the manner provided by this section.

(3) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the S-VACC is dissolved and be raised by the liquidator in such manner as is determined by special resolution.

(4) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order for winding up the S-VACC by the Court is made within a year after the passing of the resolution the resolution shall not be valid unless sanctioned by the Court.

(5) For the purposes of an arbitration under this section, the Arbitration Act (Cap. 10) shall apply as if there were a submission for reference to 2 arbitrators, one to be appointed by each party; and the appointment of an arbitrator may be made under the hand of the liquidator, or if there is more than one liquidator then under the hands of any 2 or more of the liquidators; and the Court may give any directions necessary for the initiation and conduct of the arbitration and such direction shall be binding on the parties.

(6) In the case of a creditors' voluntary winding up, the powers of the liquidator under this section shall not be exercised except with the approval of the Court or the committee of inspection.

Annual meeting of members and creditors

309. (1) If the winding up continues for more than one year, the liquidator shall summon a general meeting of the S-VACC in the case of a members' voluntary winding up, and of the S-VACC and the creditors in the case of a creditors' voluntary winding up, at the end of the first year from the commencement of the winding up and of each succeeding year or not more than 3 months thereafter, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) The liquidator shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the S-VACC.

(3) Every liquidator who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

Final meeting and dissolution

310. (1) As soon as the affairs of the S-VACC are fully wound up, the liquidator shall make up an account showing how the winding up has been conducted and the property of the S-VACC has been disposed of, and thereupon shall call a general meeting of the S-VACC, or in the case of a creditors' voluntary winding up a meeting of the S-VACC and the creditors, for the purpose of laying before it the account and giving any explanation thereof.

(2) The meeting shall be called by advertisement published in at least 4 local daily newspapers, one each in the English, Malay, Chinese and Tamil languages which advertisement shall specify the time, place and object of the meeting and shall be published at least one month before the meeting, except that when a declaration is made by the liquidator and filed with the Official Receiver that neither at the date of commencement of the winding up nor since that date has the S-VACC had trade creditors, the advertisement referred to in this subsection need only be published in a newspaper circulating generally throughout Singapore.

(3) The liquidator shall within 7 days after the meeting lodge with the Registrar and the Official Receiver a return of the holding of the meeting and of its date with a copy of the account attached to such return, and if the return or copy of the account is not so lodged the liquidator shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(4) The quorum at a meeting of the S-VACC shall be 2 and at a meeting of the S-VACC and the creditors shall be 2 members and 2 creditors and if a quorum is not present at the meeting, the liquidator shall in lieu of the return mentioned in subsection (3) lodge a return (with account attached) that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being lodged subsection (3) as to the lodging of the return shall be deemed to have been complied with.

(5) On the expiration of 3 months after the lodging of the return with the Registrar and with the Official Receiver, the S-VACC shall be dissolved.

(6) Notwithstanding subsection (5), the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the S-VACC is to take effect for such time as the Court thinks fit.

(7) The person on whose application an order of the Court under this section is made shall, within 14 days after the making of the order, lodge with the Registrar and with the Official Receiver a copy of the order and an office copy of the order, respectively,

and if he fails to do so he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(8) If the liquidator fails to call a meeting as required by this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

Arrangement when binding on creditors

311. (1) Any arrangement entered into between a S-VACC about to be or in the course of being wound up and its creditors shall, subject to the right of appeal under this section, be binding on the S-VACC if sanctioned by a special resolution, and on the creditors if acceded to by 75% in value and 50% in number of the creditors, every creditor for under \$50 being reckoned in value only.

(2) A creditor shall be accounted a creditor for value for such sum as upon an account fairly stated, after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the debtor, appears to be the balance due to him.

(3) Any dispute with regard to the value of any such security or lien or the amount of such debt or set-off may be settled by the Court on the application of the S-VACC, the liquidator or the creditor.

(4) Any creditor or contributory may within 3 weeks from the completion of the arrangement appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

Application to Court to have questions determined or powers exercised

312. (1) The liquidator or any contributory or creditor may apply to the Court —

- (a) to determine any question arising in the winding up of a S-VACC; or
- (b) to exercise all or any of the powers which the Court might exercise if the S-VACC were being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the exercise of power will be just and beneficial, may accede wholly or partially to any such application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

Costs

313. All proper costs, charges and expenses of and incidental to the winding up including the remuneration of the liquidator shall be payable out of the assets of the S-VACC in priority to all other claims.

Limitation on right to wind up voluntarily

314. Where an application has been made to the Court to wind up a S-VACC on the ground that it is unable to pay its debts the S-VACC shall not, without the leave of the Court, resolve that it be wound up voluntarily.

Division 4 — Provisions Applicable to Every Mode of Winding Up

Subdivision 1 — General

Books to be kept by liquidator

315. (1) Every liquidator shall keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as are prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect them.

Control of Court over liquidators

(2) The Court shall take cognizance of the conduct of liquidators, and if a liquidator does not faithfully perform his duties and observe the prescribed requirements or the requirements of the Court or if any complaint is made to the Court by any creditor or contributory or by the Official Receiver in regard thereto, the Court shall inquire into the matter and take such action as it thinks fit.

(3) The Registrar or the Official Receiver may report to the Court any matter which in his opinion is a misfeasance, neglect or omission on the part of the liquidator and the Court may order the liquidator to make good any loss which the estate of the S-VACC has sustained thereby and make such other order as it thinks fit.

(4) The Court may at any time require any liquidator to answer any inquiry in relation to the winding up and may examine him or any other person on oath concerning the winding up and may direct an investigation to be made of the books and vouchers of the liquidator.

Delivery of property to liquidator

(5) The Court may require any contributory, trustee, receiver, banker, agent or officer of the S-VACC to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator immediately or within such time as the Court directs any money, property, books and papers in his hands to which the S-VACC is prima facie entitled.

(6) For the purposes of subsection (5) –

- (a) “officer” includes the fund manager and approved custodian of the S-VACC; and
- (b) “agent” includes a person engaged by the S-VACC under a contract for services.

Powers of Official Receiver where no committee of inspection

316. (1) Where a person other than the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

(2) Where the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may in his discretion do any act or thing which is by this Act required to be done by, or subject to any direction or permission given by, the committee.

Appeal against decision of liquidator

317. Any person aggrieved by any act or decision of the liquidator may apply to the Court which may confirm, reverse or modify the act or decision complained of and make such order as it thinks just.

Notice of appointment and address of liquidator

318. (1) A liquidator shall, within 14 days after his appointment, lodge with the Registrar and with the Official Receiver notice in the prescribed form of his appointment and of the situation of his office and in the event of any change in the situation of his office shall within 14 days after the change lodge with the Registrar and with the Official Receiver notice in the prescribed form of the change.

(2) Service made by leaving any document at or sending it by post addressed to the address of the office of the liquidator given in any such notice lodged with the Registrar shall be deemed to be good service upon the liquidator and upon the S-VACC.

(3) A liquidator shall, within 14 days after his resignation or removal from office, lodge with the Registrar and with the Official Receiver notice thereof in the prescribed form.

(4) If a liquidator fails to comply with this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Liquidator's accounts

319. (1) Every liquidator shall, within one month after the expiration of a period of 6 months from the date of his appointment and of every subsequent period of 6 months and in any case within one month after he ceases to act as liquidator and immediately after obtaining an order of release, lodge with the Official Receiver in the prescribed form and verified by statutory declaration an account of his receipts and payments and a statement of the position in the winding up, and any liquidator who fails to do so shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(2) The liquidator referred to in subsection (1) shall also lodge with the Registrar a notice in the prescribed form of the matters referred to in that subsection and, if he fails to do so, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(3) The Official Receiver may cause the account of any liquidation to be audited by a public accountant, and for the purpose of the audit the liquidator shall furnish the public accountant with such vouchers and information as he requires, and the public accountant may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) A copy of the account or, if audited, a copy of the audited account shall be kept by the liquidator and the copy shall be open to the inspection of any creditor or of any person interested at the office of the liquidator.

(5) The liquidator shall —

(a) give notice that the account has been made up to every creditor and contributory when next forwarding any report, notice of meeting, notice of call or dividend; and

(b) in such notice inform the creditors and contributories at what address and between what hours the account may be inspected.

(6) The costs of an audit under this section shall be fixed by the Official Receiver and shall be part of the expenses of winding up.

Liquidator to make good defaults

320. (1) If any liquidator who has made any default in lodging or making any application, return, account or other document, or in giving any notice which he is by law required to lodge, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the Court may, on the application of any contributory or creditor of the S-VACC or the Official Receiver, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2) Any order made under subsection (1) may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in subsection (1) shall prejudice the operation of any written law imposing penalties on a liquidator in respect of any such default.

Notification that a S-VACC is in liquidation

321. (1) Where a S-VACC is being wound up every invoice, order for goods or business letter issued by or on behalf of the S-VACC or a liquidator of the S-VACC or a receiver or manager of the property of the S-VACC, being a document on or in which

the name of the S-VACC appears, shall have the words “in liquidation” added after the name of the S-VACC where it first appears therein.

(2) If default is made in complying with this section, the S-VACC, and every officer of the S-VACC or liquidator and every receiver or manager who knowingly and wilfully authorises or permits the default, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$400.

Books and papers of S-VACC and liquidator

322. (1) Where a S-VACC is being wound up, all books and papers of the S-VACC and of the liquidator that are relevant to the affairs of the S-VACC at or subsequent to the commencement of the winding up of the S-VACC shall, as between the contributories of the S-VACC, be prima facie evidence of the truth of all matters purporting to be therein recorded.

(2) When a S-VACC has been wound up the liquidator shall retain the books and papers referred to in subsection (1) for a period of 5 years from the date of dissolution of the S-VACC and at the expiration of that period may destroy them.

(3) Notwithstanding subsection (2), when a S-VACC has been wound up the books and papers referred to in subsection (1) may be destroyed within a period of 5 years after the dissolution of the S-VACC in the case of a winding up by the Court, in accordance with the directions of the Court.

(4) No responsibility shall rest on the S-VACC or the liquidator by reason of any such book or paper not being forthcoming to any person claiming to be interested therein if such book or paper has been destroyed in accordance with this section.

(5) Any person who fails to comply with subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

Investment of surplus funds on general account

323. (1) Whenever the cash balance standing to the credit of any S-VACC in liquidation is in excess of the amount which, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, is required for the time being to answer demands in respect of the estate of the S-VACC, the liquidator, if so directed in writing by the committee of inspection, or, if there is no committee of inspection, the liquidator himself, may, unless the Court on application by any creditor thinks fit to direct otherwise and so orders, invest the sum or any part thereof in securities issued by the Government of Singapore or of Malaysia or place it on deposit at interest with any bank, and any interest received in respect thereof shall form part of the assets of the S-VACC.

(2) Whenever any part of the money so invested is, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, required to

answer any demands in respect of the S-VACC's estate, the committee of inspection may direct, or, if there is no committee of inspection, the liquidator may arrange for the sale or realisation of such part of those securities as is necessary.

Unclaimed assets to be paid to Official Receiver

324. (1) Where a liquidator has in his hands or under his control —

- (a) any unclaimed dividend or other moneys which have remained unclaimed for more than 6 months from the date when the dividend or other moneys became payable; or
- (b) after making final distribution, any unclaimed or undistributed moneys arising from the property of the S-VACC,

he shall immediately pay those moneys to the Official Receiver to be placed to the credit of the S-VACC Liquidation Account and shall be entitled to the prescribed certificate of receipt for the moneys so paid and that certificate shall be an effectual discharge to him in respect thereof.

(2) The Court may, at any time on the application of the Official Receiver, order any liquidator to submit to it an account of any unclaimed or undistributed funds, dividends or other moneys in his hands or under his control verified by affidavit and may direct an audit thereof and may direct him to pay those moneys to the Official Receiver to be placed to the credit of the S-VACC Liquidation Account.

(3) The interest arising from the investment of the moneys standing to the credit of the S-VACC Liquidation Account shall be paid into the Consolidated Fund.

(4) For the purposes of this section, the Court may exercise all the powers conferred by this Act with respect to the discovery and realisation of the property of the S-VACC and the provisions of this Act with respect thereto shall with such adaptations as are prescribed apply to proceedings under this section.

(5) This section shall not, except as expressly declared in this Act, deprive any person of any other right or remedy to which he is entitled against the liquidator or any other person.

(6) If any claimant makes any demand for any money placed to the credit of the S-VACC Liquidation Account, the Official Receiver upon being satisfied that the claimant is the owner of the money shall authorise payment thereof to be made to him out of that Account or, if it has been paid into the Consolidated Fund, may authorise payment of a like amount to be made to him out of moneys made available by Parliament for the purpose.

(7) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made in pursuance of subsection (6) may appeal to the Court which may confirm, disallow or vary the decision.

(8) Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person, that other person shall not be entitled to any payment out of the S-VACC Liquidation Account or out of the Consolidated Fund but such person may have recourse against the claimant to whom the unclaimed moneys have been paid.

(9) Any unclaimed moneys paid to the credit of the S-VACC Liquidation Account to the extent to which the unclaimed moneys have not been under this section paid out of that Account shall, on the lapse of 7 years from the date of the payment of the moneys to the credit of that Account, be paid into the Consolidated Fund.

Outstanding assets of S-VACC wound up on grounds of national security or interest

325. Notwithstanding any written law or rule of law to the contrary, upon a S-VACC being wound up under section 256(1)(j) on the ground that it is being used for purposes against national security or interest, the Court may, on the application of the Minister, order that any assets of the S-VACC remaining after payment of its debts and liabilities and the costs, charges and expenses of the winding up shall be paid into the Consolidated Fund.

Expenses of winding up where assets insufficient

326. (1) Unless expressly directed to do so by the Official Receiver, a liquidator shall not be liable to incur any expense in relation to the winding up of a S-VACC unless there are sufficient available assets.

(2) The Official Receiver may, on the application of a creditor or a contributory, direct a liquidator to incur a particular expense on condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and, if the Official Receiver so directs, gives such security to secure the amount of the indemnity as the Official Receiver thinks reasonable.

Resolutions passed at adjourned meetings of creditors and contributories

327. Subject to section 298(9), where a resolution is passed at an adjourned meeting of any creditors or contributories of a S-VACC, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

Meetings to ascertain wishes of creditors or contributories

328. (1) The Court may, as to all matters relating to the winding up of a S-VACC, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may if it thinks fit for the purpose of ascertaining those wishes

direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the constitution.

Special commission for receiving evidence

329. (1) District Judges shall be commissioners for the purpose of taking evidence under this Part, and the Court may refer the whole or any part of the examination of any witnesses under this Part to any person hereby appointed commissioner.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a District Judge, have in the matter so referred to him the same powers as the Court of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses and of allowing costs and expenses to witnesses.

(3) Unless otherwise ordered by the Court the taking of evidence by commissioners shall be in open court and shall be open to the public.

(4) The examination so taken shall be returned or reported to the Court in such manner as the Court directs.

Subdivision 2 — Proof and ranking of claims

Proof of debts

330. (1) In every winding up (subject in the case of insolvent S-VACCs to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the S-VACC, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the S-VACC, a just estimate being made, so far as possible, of the value of such debts or claims as are subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

(2) Subject to section 331, in the winding up of an insolvent S-VACC the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and debts provable and the valuation of annuities and future and contingent liabilities as are in force for the time being under the law relating to bankruptcy in relation to the estates of bankrupt persons, and all persons, who in any such case would be entitled to prove for and receive dividends out of the assets of the S-VACC, may come in under the winding up and make such claims against the S-VACC as they respectively are entitled to by virtue of this section.

Priorities

331. (1) Subject to the provisions of this Act, in a winding up there shall be paid in priority to all other unsecured debts —

- (a) firstly, the costs and expenses of the winding up including the taxed costs of the applicant for the winding up order payable under section 258, the remuneration of the liquidator and the costs of any audit carried out pursuant to section 319;
- (b) secondly, subject to subsection (2), all wages or salary (whether or not earned wholly or in part by way of commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment of any employee;
- (c) thirdly, subject to subsection (2), the amount due to an employee as a retrenchment benefit or ex gratia payment under any contract of employment or award or agreement that regulates conditions of employment whether such amount becomes payable before, on or after the commencement of the winding up;
- (d) fourthly, all amounts due in respect of work injury compensation under the Work Injury Compensation Act (Cap. 354) accrued before, on or after the commencement of the winding up;
- (e) fifthly, all amounts due in respect of contributions payable during the 12 months next before, on or after the commencement of the winding up by the S-VACC as the employer of any person under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation which is an approved scheme under the law relating to income tax;
- (f) sixthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, accrued in respect of any period before, on or after the commencement of the winding up; and
- (g) seventhly, the amount of all tax assessed and all goods and services tax due under any written law before the commencement of the winding up or assessed at any time before the time fixed for the proving of debts has expired.

(2) The amount payable under subsection (1)(b) and (c) shall not exceed such amount as may be prescribed by the Minister by order published in the Gazette.

(3) For the purposes of —

- (a) subsection (1)(b) and (c) —

“employee” means a person who has entered into or works under a contract of service with an employer and includes a subcontractor of labour;

“wages or salary” shall be deemed to include —

- (i) all arrears of money due to a subcontractor of labour;
 - (ii) any amount payable to an employee on account of wages or salary during a period of notice of termination of employment or in lieu of notice of such termination, as the case may be, whether such amount becomes payable before, on or after the commencement of the winding up; and
 - (iii) any amount payable to an employee, on termination of his employment, as a gratuity under any contract of employment, or under any award or agreement that regulates conditions of employment whether such amount becomes payable before, on or after the commencement of the winding up;
- (b) subsection (1)(c) —

“ex gratia payment” means the amount payable to an employee on the winding up of a S-VACC or on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and “the amount payable to an employee” for these purposes means the amount stipulated in any contract of employment, award or agreement, as the case may be;

“retrenchment benefit” means the amount payable to an employee on the winding up of a S-VACC or on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and “the amount payable to an employee” for these purposes means the amount stipulated in any contract of employment, award or agreement, as the case may be, or if no amount is stipulated therein, such amount as is stipulated by the Commissioner for Labour.

(4) The debts in each class, specified in subsection (1), shall rank in the order therein specified but as between debts of the same class shall rank equally between themselves, and shall be paid in full, unless the property of the S-VACC is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(5) Where any payment has been made to any employee of the S-VACC on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding up has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(6) So far as the assets of the S-VACC available for payment of general creditors are insufficient to meet any preferential debts specified in subsection (1)(a), (b), (c), (e)

and (f) and any amount payable in priority by virtue of subsection (5), those debts shall have priority over the claims of the holders of debentures under any floating charge created by the S-VACC (which charge, as created, was a floating charge), and shall be paid accordingly out of any property comprised in or subject to that charge.

(7) Where the S-VACC is under a contract of insurance (entered into before the commencement of the winding up) insured against liability to third parties, then if any such liability is incurred by the S-VACC (either before or after the commencement of the winding up) and an amount in respect of that liability is or has been received by the S-VACC or the liquidator from the insurer the amount shall, after deducting any expenses of or incidental to getting in such amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability or any part of that liability remaining undischarged in priority to all payments in respect of the debts referred to in subsection (1).

(8) If the liability of the insurer to the S-VACC is less than the liability of the S-VACC to the third party, nothing in subsection (7) shall limit the rights of the third party in respect of the balance.

(9) Notwithstanding anything in subsection (1) —

(a) paragraph (d) of that subsection shall not apply in relation to the winding up of a S-VACC in any case where the S-VACC is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another S-VACC and the right to the compensation has on the reconstruction or amalgamation been preserved to the person entitled thereto, or where the S-VACC has entered into a contract with an insurer in respect of any liability under any law relating to work injury compensation; and

(b) where a S-VACC has given security for the payment or repayment of any amount to which paragraph (g) of that subsection relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting therefrom the net amount realised from such security.

(10) Where in any winding up assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator have been recovered, the Court may make such order as it thinks just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risks run by them in so doing.

Subdivision 3 — Effect on other transactions

Undue preference

332. (1) Subject to this Act and such modifications as may be prescribed, any transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a S-VACC which, had it been made or done by or against an individual, would in his bankruptcy be void or voidable under section 98, 99 or 103 of the Bankruptcy Act (Cap. 20) (read with sections 100, 101 and 102 thereof) shall in the event of the S-VACC being wound up be void or voidable in like manner.

(2) For the purposes of this section, the date which corresponds with the date of making of the application for a bankruptcy order in the case of an individual shall be —

(a) in the case of a winding up by the Court —

(i) the date of the making of the winding up application; or

(ii) where before the making of the winding up application a resolution has been passed by the S-VACC for voluntary winding up, the date upon which the resolution to wind up the S-VACC voluntarily is passed,

whichever is the earlier; and

(b) in the case of a voluntary winding up, the date upon which the winding up is deemed by this Act to have commenced.

(3) Any transfer or assignment by a S-VACC of all its property to trustees for the benefit of all its creditors shall be void.

Effect of floating charge

333. A floating charge on the undertaking or property of the S-VACC created within 6 months of the commencement of the winding up shall, unless it is proved that the S-VACC immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the S-VACC at the time of or subsequently to the creation of and in consideration for the charge together with interest on that amount at the rate of 5% per annum.

Liquidator's right to recover in respect of certain sales to or by S-VACC

334. (1) Where any property, business or undertaking has been acquired by a S-VACC for a cash consideration within a period of 2 years before the commencement of the winding up of the S-VACC —

(a) from a person who was at the time of the acquisition a director of the S-VACC;
or

(b) from a company of which, at the time of the acquisition, a person was a director who was also a director of the S-VACC,

the liquidator may recover from the person or company from which the property, business or undertaking was acquired any amount by which the cash consideration for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition.

(2) Where any property, business or undertaking has been sold by a S-VACC for a cash consideration within a period of 2 years before the commencement of the winding up of the S-VACC —

- (a) to a person who was at the time of the sale a director of the S-VACC; or
- (b) to a company of which at the time of the sale a person was a director who was also a director of the S-VACC in this subsection,

the liquidator may recover from the person or company to which the property, business or undertaking was sold any amount by which the value of the property, business or undertaking at the time of the sale exceeded the cash consideration.

(3) For the purposes of this section, the value of the property, business or undertaking includes the value of any goodwill or profits which might have been made from the business or undertaking or similar considerations.

(4) In this section “cash consideration”, in relation to an acquisition or sale by a company, means consideration for such acquisition or sale payable otherwise than by the issue of shares in the company.

Disclaimer of onerous property

335. (1) Where any part of the property of a S-VACC consists of —

- (a) any estate or interest in land which is burdened with onerous covenants;
- (b) shares in corporations;
- (c) unprofitable contracts; or
- (d) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money,

the liquidator of the S-VACC, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the Court or the committee of inspection and, subject to this section, by writing signed by him, at any time within 12 months after the commencement of the winding up or such extended period as is allowed by the Court, disclaim the property; but where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power of disclaiming may be exercised at any time within 12 months after he has become aware thereof or such extended period as is allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the S-VACC and the property of the S-VACC in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the S-VACC and the property of the S-VACC from liability, affect the rights or liabilities of any other person.

(3) The Court or the committee before or on granting leave to disclaim may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court or committee thinks just.

(4) The liquidator shall not be entitled to disclaim if an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of 28 days after the receipt of the application or such further period as is allowed by the Court or the committee, given notice to the applicant that he intends to apply to the Court or the committee for leave to disclaim, and, in the case of a contract, if the liquidator after such an application in writing does not within that period or further period disclaim the contract the liquidator shall be deemed to have adopted it.

(5) The Court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the S-VACC, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to that person may be proved by him as a debt in the winding up.

(6) The Court may, on the application of a person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it seems just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made and a copy thereof and an office copy thereof being lodged with the Registrar and the Official Receiver, respectively, and if the order relates to land with the appropriate authority concerned with the recording or registration of dealings in that land, as the case requires, the property comprised therein shall vest accordingly in the person therein named in that behalf without any further conveyance, transfer or assignment.

(7) Notwithstanding anything in subsection (6), where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the S-VACC, whether as under-lessee or as mortgagee, except upon the terms of making that person —

- (a) subject to the same liabilities and obligations as those to which the S-VACC was subject under the lease in respect of the property at the commencement of the

winding up; or

- (b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any under-lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the S-VACC who is willing to accept an order upon such terms, the Court may vest the estate and interest of the S-VACC in the property in any person liable personally or in a representative character and either alone or jointly with the S-VACC to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the S-VACC.

(8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the S-VACC to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

Interpretation

336. For the purposes of sections 337 and 338 —

“goods” includes all chattels personal;

“bailiff” includes any officer charged with the execution of a writ or other process.

Restriction of rights of creditor as to execution or attachment

337. (1) Where a creditor has issued execution against the goods or land of a S-VACC or has attached any debt due to the S-VACC and the S-VACC is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment before the date of the commencement of the winding up, but —

- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of this section be substituted for the date of the commencement of the winding up;
- (b) a person who purchases in good faith under a sale by the bailiff any goods of a S-VACC on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and
- (c) the rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

(2) For the purposes of this section —

- (a) an execution against goods is completed by seizure and sale;
- (b) an attachment of a debt is completed by receipt of the debt; and
- (c) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver.

Duties of bailiff as to goods taken in execution

338. (1) Subject to subsection (3), where any goods of a S-VACC are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a provisional liquidator has been appointed or that a winding up order has been made or that a resolution for voluntary winding up has been passed, the bailiff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or moneys so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to subsection (3), where under an execution in respect of a judgment for a sum exceeding \$100 the goods of a S-VACC are sold or money is paid in order to avoid sale, the bailiff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance of 14 days; and if within that time notice is served on him of an application for the winding up of the S-VACC having been made or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up and an order is made or a resolution is passed for the winding up, the bailiff shall pay the balance to the liquidator who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

Subdivision 4 — Offences

Interpretation

339. Save for sections 343(1) and (2), references to an officer of a S-VACC in this Subdivision includes the fund manager and approved custodian of the S-VACC.

Offences by officers of S-VACCs in liquidation

340. (1) Every person who, being a past or present officer or a contributory of a S-VACC which is being wound up —

- (a) does not to the best of his knowledge and belief fully and truly disclose to the liquidator all the property movable and immovable of the S-VACC, and how and to whom and for what consideration and when the S-VACC disposed of any part

thereof, except such part as has been disposed of in the ordinary way of the business of the S-VACC;

- (b) does not deliver up to the liquidator, or as he directs —
 - (i) all the movable and immovable property of the S-VACC in his custody or under his control and which he is required by law to deliver up; or
 - (ii) all books and papers in his custody or under his control belonging to the S-VACC and which he is required by law to deliver up;
- (c) within 12 months next before the commencement of the winding up or at any time thereafter —
 - (i) has concealed any part of the property of the S-VACC to the value of \$200 or upwards, or has concealed any debt due to or from the S-VACC;
 - (ii) has fraudulently removed any part of the property of the S-VACC to the value of \$200 or upwards;
 - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the S-VACC;
 - (iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the S-VACC;
 - (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the S-VACC;
 - (vi) by any false representation or other fraud, has obtained any property for or on behalf of the S-VACC on credit which the S-VACC has not subsequently paid for;
 - (vii) has obtained on credit, for or on behalf of the S-VACC, under the false pretence that the S-VACC is carrying on its business, any property which the S-VACC has not subsequently paid for; or
 - (viii) has pawned, pledged or disposed of any property of the S-VACC which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary way of the business of the S-VACC;
- (d) makes any material omission in any statement relating to the affairs of the S-VACC;
- (e) knowing or believing that a false debt has been proved by any person fails for a period of one month to inform the liquidator thereof;
- (f) prevents the production of any book or paper affecting or relating to the property

or affairs of the S-VACC;

- (g) within 12 months next before the commencement of the winding up or at any time thereafter, has attempted to account for any part of the property of the S-VACC by fictitious losses or expenses; or
- (h) within 12 months next before the commencement of the winding up or at any time thereafter, has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the S-VACC or any of them to an agreement with reference to the affairs of the S-VACC or to the winding up,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

(2) It shall be a good defence to a charge under subsection (1)(a), (b), (d) or subsection (1)(c)(i), (vii) or (viii) if the accused proves that he had no intent to defraud, and to a charge under subsection (1)(f) or subsection (1)(c)(iii) or (iv) if he proves that he had no intent to conceal the state of affairs of the S-VACC or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(c)(viii), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

Inducement to be appointed liquidator

341. Any person who gives or agrees or offers to give to any member or creditor of a S-VACC any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the S-VACC's liquidator shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months.

Penalty for destruction, falsification, etc., of books

342. (1) Every officer or contributory of any S-VACC being wound up who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register or book of account or document belonging to the S-VACC with intent to defraud or deceive any person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

Liability where proper accounts not kept

343. (1) If, on an investigation under any other Part or where a S-VACC is wound up, it is shown that proper books of account were not kept by the S-VACC throughout

the period of 2 years immediately preceding the commencement of the investigation or winding up or the period between the incorporation of the S-VACC and the commencement of the investigation or winding up (whichever is the lesser) every officer who is in default shall, unless he acted honestly and shows that, in the circumstances in which the business of the S-VACC was carried on, the default was excusable, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any S-VACC if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the S-VACC, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified or if such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the S-VACC has appointed an auditor.

(3) If, in the course of the winding up of a S-VACC or in any proceedings against a S-VACC, it appears that an officer of the S-VACC who was knowingly a party to the contracting of a debt had, at the time the debt was contracted, no reasonable or probable ground of expectation, after taking into consideration the other liabilities, if any, of the S-VACC at the time of the S-VACC being able to pay the debt, the officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months.

Responsibility for fraudulent trading

344. (1) If, in the course of the winding up of a S-VACC or in any proceedings against a S-VACC, it appears that any business of the S-VACC has been carried on with intent to defraud creditors of the S-VACC or creditors of any other person or for any fraudulent purpose, the Court, on the application of the liquidator or any creditor or contributory of the S-VACC, may, if it thinks proper to do so, declare that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the S-VACC as the Court directs.

(2) Where a person has been convicted of an offence under section 343(3) in relation to the contracting of such a debt as is referred to in that subsection, the Court, on the application of the liquidator or any creditor or contributory of the S-VACC, may, if it thinks proper to do so, declare that the person shall be personally responsible without any limitation of liability for the payment of the whole or any part of that debt.

(3) Where the Court makes any declaration pursuant to subsection (1) or (2), it may give such further directions as it thinks proper for the purpose of giving effect to that

declaration, and in particular may make provision for making the liability of any person under the declaration a charge on any debt or obligation due from the S-VACC to him, or on any charge or any interest in any charge on any assets of the S-VACC held by or vested in him or any corporation or person on his behalf, or any person claiming as assignee from or through the person liable or any corporation or person acting on his behalf, and may from time to time make such further order as is necessary for the purpose of enforcing any charge imposed under this subsection.

(4) For the purpose of subsection (3), “assignee” includes any person to whom or in whose favour by the directions of the person liable the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(5) Where any business of a S-VACC is carried on with the intent or for the purpose mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business with that intent or purpose shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 7 years or to both.

(6) Subsection (5) shall apply to a S-VACC whether or not it has been, or is in the course of being, wound up.

(7) This section shall have effect notwithstanding that the person concerned is criminally liable apart from this section in respect of the matters on the ground of which the declaration is made.

(8) On the hearing of an application under subsection (1) or (2), the liquidator may himself give evidence or call witnesses.

Power of Court to assess damages against delinquent officers, etc.

345. (1) If, in the course of winding up, it appears that any person who has taken part in the formation or promotion of the S-VACC or any past or present liquidator or officer has misapplied or retained or become liable or accountable for any money or property of the S-VACC or been guilty of any misfeasance or breach of trust or duty in relation to the S-VACC, the Court may on the application of the liquidator or of any creditor or contributory examine into the conduct of such person, liquidator or officer and compel him to repay or restore the money or property or any part thereof with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the S-VACC by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the Court thinks just.

(2) This section shall extend and apply to and in respect of the receipt of any money or property by any officer of the S-VACC during the 2 years preceding the commencement of the winding up whether by way of salary or otherwise appearing to

the Court to be unfair or unjust to other members of the S-VACC.

(3) This section shall have effect notwithstanding that the offence is one for which the offender is criminally liable.

Prosecution of delinquent officers and members of S-VACC

346. (1) If it appears to the Court, in the course of a winding up by the Court, that any past or present officer, or any member, of the S-VACC has been guilty of an offence in relation to the S-VACC for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator to prosecute the offender or to refer the matter to the Minister.

(2) If it appears to the liquidator, in the course of a voluntary winding up, that any past or present officer, or any member, of the S-VACC has been guilty of any offence in relation to the S-VACC for which he is criminally liable, he shall immediately report the matter to the Minister and shall, in respect of information or documents in his possession or under his control which relate to the matter in question, furnish the Minister with such information and give to him such access to and facilities for inspecting and taking copies of any document as he may require.

(3) If it appears to the liquidator, in the course of any winding up, that the S-VACC which is being wound up will be unable to pay its unsecured creditors more than 50 cents in the dollar, the liquidator shall immediately report the matter in writing to the Official Receiver and shall furnish the Official Receiver with such information and give to him such access to and facilities for inspecting and taking copies of any document as the Official Receiver may require.

(4) Where any report is made under subsection (2) or (3), the Minister may, if he thinks fit, investigate the matter and for the purposes of such an investigation shall have all such powers of investigating the affairs of the S-VACC as are provided by this Act in the case of a winding up by the Court, but if it appears to him that the case is not one in which proceedings ought to be taken by him he shall inform the liquidator accordingly, and thereupon, subject to the previous approval of the Court the liquidator may himself take proceedings against the offender.

(5) If it appears to the Court, in the course of a voluntary winding up, that any past or present officer, or any member, of the S-VACC has been guilty as aforesaid and that no report with respect to the matter has been made by the liquidator to the Minister, the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly this section shall have effect as though the report has been made in pursuance of subsection (2).

(6) If, where any matter is reported or referred to the Minister or the Official Receiver under this section, he considers that the case is one in which a prosecution ought to be instituted, he may institute proceedings accordingly, and the liquidator and

every officer and agent of the S-VACC past and present, other than the defendant in the proceedings, shall give the Minister or the Official Receiver all assistance in connection with the prosecution which he is reasonably able to give.

(7) For the purposes of subsection (6), “agent”, in relation to a S-VACC, includes any banker or solicitor of the S-VACC, any person employed by the S-VACC as auditor, whether or not an officer of the S-VACC, and any person engaged by the S-VACC under a contract for services.

(8) If any person fails or neglects to give assistance in the manner required by subsection (6), the Court may, on the application of the Minister or the Official Receiver, direct that person to comply with the requirements of that subsection, and where any application is made under this subsection with respect to a liquidator the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the S-VACC to enable him to do so, direct that the costs of the application shall be borne by the liquidator personally.

(9) The Minister may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings brought under this section shall be defrayed out of moneys provided by Parliament.

(10) Subject to any direction given under subsection (9) and to any charges on the assets of the S-VACC and any debts to which priority is given by this Act, all such costs and expenses shall be payable out of those assets as part of the costs of winding up.

Subdivision 5 — Dissolution

Power of Court to declare dissolution of S-VACC void

347. (1) Where a S-VACC has been dissolved, the Court may at any time within 2 years after the date of dissolution, on application of the liquidator of the S-VACC or of any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the S-VACC had not been dissolved.

(2) The person on whose application the order was made shall, within 7 days after the making of the order or such further time as the Court allows, lodge with the Registrar and with the Official Receiver a copy of the order and an office copy of the order, respectively, and if he fails to do so shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000.

Power of Registrar to strike defunct S-VACC off register

348. (1) Where the Registrar has reasonable cause to believe that a S-VACC is not carrying on business or is not in operation, the Registrar may send to the S-VACC, and its directors, secretaries and members, a letter to that effect and stating that, if an answer showing cause to the contrary is not received within 30 days after the date of the letter, a notice will be published in the Gazette with a view to striking the name of the S-VACC off the register.

(2) Without prejudice to the generality of subsection (1), in determining whether there is reasonable ground to believe that a S-VACC is not carrying on business, the Registrar may have regard to such circumstances as may be prescribed.

(3) Unless the Registrar receives an answer within one month from the date of the letter to the effect that the S-VACC is carrying on business or is in operation, he may publish in the Gazette and send to the S-VACC by registered post a notice that at the expiration of 60 days after the date of that notice the name of the S-VACC mentioned in that notice will unless cause is, in the form and manner specified in section 351, shown to the contrary be struck off the register and the S-VACC will be dissolved.

(4) If in any case where a S-VACC is being wound up the Registrar has reasonable cause to believe that —

- (a) no liquidator is acting;
- (b) the affairs of the S-VACC are fully wound up and for a period of 6 months the liquidator has been in default in lodging any return required to be made by him; or
- (c) the affairs of the S-VACC have been fully wound up under Division 2 and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the S-VACC,

he may publish in the Gazette and send to the S-VACC or the liquidator, if any, a notice to the same effect as that referred to in subsection (3).

(5) At the expiration of the time mentioned in the notice, the Registrar may, unless cause to the contrary is previously shown, strike the name of the S-VACC off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of the notice the S-VACC shall be dissolved; but —

- (a) the liability, if any, of every officer and member of the S-VACC shall continue and may be enforced as if the S-VACC had not been dissolved; and
- (b) nothing in this subsection shall affect the power of the Court to wind up a S-VACC the name of which has been struck off the register.

(6) For the purposes of subsection (5)(a), an officer includes the fund manager and approved custodian of the S-VACC.

(7) If any person feels aggrieved by the name of the S-VACC having been struck off the register, the Court, on an application made by the person at any time within 6 years after the name of the S-VACC has been so struck off may, if satisfied that the S-VACC was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the name of the S-VACC be restored to the register, order the name of the S-VACC to be restored to the register, and upon a copy of the order being lodged with the Registrar the S-VACC shall be deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the S-VACC and all other persons in the same position as nearly as may be as if the name of the S-VACC had not been struck off.

(8) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a S-VACC may be addressed to the S-VACC at its registered office or, if no office has been registered, to the care of some officer of the S-VACC, or, if there is no officer of the S-VACC whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the constitution of the S-VACC addressed to him at the address mentioned in the constitution.

(9) The Registrar shall ensure that —

(a) such particulars of the S-VACC referred to in subsection (1) and of his belief that the S-VACC is not carrying on business or is not in operation, as he may determine, is sent to —

(i) the Inland Revenue Authority of Singapore established under the Inland Revenue Authority of Singapore Act (Cap. 138A); and

(ii) the Central Provident Fund Board established under the Central Provident Fund Act (Cap. 36); and

(b) the substance of the notices to be published in the Gazette referred to in subsections (3), (4) and (5) is also published on the Authority's website.

Striking off on application by S-VACC

349. (1) The Registrar may, on the application by a S-VACC, strike the S-VACC's name off the register on such grounds and subject to such conditions as may be prescribed.

(2) An application under subsection (1) shall be made on the S-VACC's behalf by its directors or by a majority of them.

(3) Upon receipt of the application, the Registrar shall, if satisfied that the grounds and conditions (if any) referred to in subsection (1) have been satisfied, send to the S-VACC and its directors, secretaries and members a letter informing them of the application and stating that if an answer showing cause to the contrary (in the form and

manner referred to in section 351) is not received within 30 days after the date thereof a notice, details of which are set out in subsection (4), will be published in the Gazette with a view to striking the name of the S-VACC off the register.

(4) The Registrar may not strike a S-VACC's name off the register under this section until after the expiration of 60 days after the publication by the Registrar in the Gazette of a notice —

(a) stating that the Registrar intends to exercise the power under this section in relation to the S-VACC; and

(b) inviting any person to show cause why that should not be done within such period as may be prescribed.

(5) If no person shows cause or sufficient cause within the period referred to in subsection (4)(b) as to why the name of the S-VACC should not be struck off the register, the Registrar shall strike off the name of the S-VACC from the register and publish a notice in the Gazette of the S-VACC's name having been so struck off.

(6) On the publication of the notice in the Gazette under subsection (5), the S-VACC is dissolved.

(7) Notwithstanding the dissolution of the S-VACC under subsection (6) —

(a) the liability, if any, of every officer and member of the S-VACC shall continue and may be enforced as if the S-VACC had not been dissolved; and

(b) nothing in this section shall affect the power of the Court to wind up a S-VACC the name of which has been struck off the register.

(8) For the purposes of subsection (7)(a), an officer includes the fund manager and approved custodian of the S-VACC.

(9) The Registrar shall ensure that —

(a) such particulars of the S-VACC and of the application referred to in subsection (1), as he may determine, is sent to —

(i) the Inland Revenue Authority of Singapore established under the Inland Revenue Authority of Singapore Act (Cap. 138A); and

(ii) the Central Provident Fund Board established under the Central Provident Fund Act (Cap. 36); and

(b) the substance of the notices to be published in the Gazette referred to in subsections (4) and (5) is also published on the Authority's website.

(10) The Registrar may, for the purposes of this section, send notices to the S-VACC by ordinary post or in such other prescribed manner.

Withdrawal of application

350. (1) The applicant or applicants may, by written notice to the Registrar, withdraw an application to strike a S-VACC's name off the register under section 349 at any time before the name of the S-VACC has been struck off the register.

- (2) Upon receipt of the notice referred to in subsection (1), the Registrar shall —
- (a) send to the S-VACC by ordinary post a notice that the application to strike the S-VACC's name off the register has been withdrawn; and
 - (b) publish a notice on the Authority's website that the application to strike the S-VACC's name off the register has been withdrawn.

Objections to striking off

351. (1) Where a notice is given or published by the Registrar under section 348(3) or 349(4) of the Registrar's intention to strike the S-VACC's name off the register, any person may deliver, not later than the date specified in the notice, an objection to the striking off of the name of the S-VACC from the register on the ground that there is reasonable cause why the name of the S-VACC should not be so struck off, including that the S-VACC does not satisfy any of the prescribed grounds for striking off referred to in section 348(1) or 349(1).

(2) An objection to the striking the name of the S-VACC off the register referred to in subsection (1) shall be given to the Registrar by notice in the prescribed form and manner.

(3) Upon receipt of a notice of objection, which is made in the prescribed form and manner, within the time referred to in subsection (1), the Registrar —

- (a) shall where applicable, give the applicant or applicants for striking the name of the S-VACC off the register notice of the objection; and
- (b) shall, in deciding whether to allow the objection, take into account such considerations as may be prescribed.

Application for administrative restoration to register

352. (1) Subject to such conditions as may be prescribed, an application may be made to the Registrar to restore to the register the name of a S-VACC whose name has been struck off the register by the Registrar under section 348, if no application has been or is being made to the Court to restore the name of the S-VACC to the register under section 348(7).

(2) An application under this section may be made whether or not the S-VACC has in consequence been dissolved.

(3) An application under this section may only be made by a former director or

former member of the S-VACC.

(4) An application under this section is not valid unless the application is received by the Registrar within 6 years after the date on which the S-VACC is dissolved.

Registrar's decision on application for administrative restoration

353. (1) The Registrar shall give notice to the applicant of the decision on an application under section 352.

(2) If the Registrar's decision is that the name of the S-VACC should be restored to the register —

(a) the restoration takes effect as from the date that notice is sent; and

(b) the Registrar shall —

(i) enter in the register a note of the date on which the restoration takes effect; and

(ii) cause notice of the restoration to be published in the Gazette and on the Authority's website.

(3) The notice under subsection (2)(b)(ii) shall state —

(a) the name of the S-VACC or, if the S-VACC is restored to the register under a different name, that name and its former name;

(b) the S-VACC's registration number; and

(c) the date as on which the restoration of the name of the S-VACC to the register takes effect.

(4) If the Registrar's decision is that the name of the S-VACC should not be restored to the register, the person who made the application under section 352 or any other person aggrieved by the decision of the Registrar may appeal to the Court.

(5) On an appeal made under subsection (4), the Court may —

(a) confirm the Registrar's decision; or

(b) restore the name of the S-VACC to the register and give such directions and make such orders as the Court is empowered to give and make under section 355(3).

Registrar may restore S-VACC deregistered by mistake

354. (1) The Registrar may, on his own initiative, restore the name of a S-VACC to the register if he is satisfied that the name of the S-VACC has been struck off the register and the S-VACC is dissolved under section 348 or 349 as a result of a mistake of the Registrar.

(2) In subsection (1), a reference to a mistake of the Registrar excludes a mistake that is made on the basis of wrong, false or misleading information given by the applicant in connection with the application for striking the name of the S-VACC off the register under section 349.

(3) The Registrar may restore the name of a S-VACC to the register by publishing in the Gazette and on the Authority's website a notice declaring the restoration, and the restoration takes effect on the date of publication of the notice.

Effect of restoration

355. (1) If the name of a S-VACC is restored to the register under section 353(2) or 354, or on appeal to the Court under section 353(5), the S-VACC is to be regarded as having continued in existence as if its name had not been struck off the register.

(2) The S-VACC and its directors are not liable to a penalty under section 206 for a financial year in relation to which the period for filing its financial statements and other related statements ended —

(a) after the date of dissolution or striking off; and

(b) before the restoration of the name of the S-VACC to the register.

(3) On the application by any person, the Court may give such directions and make such orders, as it seems just for placing the S-VACC and all other persons in the same position (as nearly as may be) as if the S-VACC had not been dissolved or its name had not been struck off the register.

(4) An application to the Court for such directions or orders may be made any time within 3 years after the date of restoration of the name of the S-VACC to the register.

Retention of books and papers upon striking off

356. (1) Where the name of a S-VACC has been struck off and the S-VACC dissolved under section 348 or 349, a person who was an officer of the S-VACC immediately before the S-VACC was dissolved must ensure that all books and papers of the S-VACC are retained for a period of at least 5 years after the date on which the S-VACC was dissolved.

(2) An officer of a S-VACC who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

Official Receiver to act as representative of defunct S-VACC in certain events

357. (1) Where, after a S-VACC has been dissolved, it is proved to the satisfaction of the Official Receiver —

(a) that the S-VACC, if still existing, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and

- (b) that in order to carry out, complete or give effect thereto some purely administrative act, not discretionary, should have been done by or on behalf of the S-VACC, or should be done by or on behalf of the S-VACC, if still existing,

the Official Receiver may, as representing the S-VACC or its liquidator under this section, do or cause to be done any such act.

- (2) The Official Receiver may execute or sign any relevant instrument or document adding a memorandum stating that he has done so in pursuance of this section, and such execution or signature shall have the same force, validity and effect as if the S-VACC if existing had duly executed such instrument or document.

Outstanding assets of defunct S-VACC to vest in Official Receiver

358. (1) Where, after a S-VACC has been dissolved, there remains any outstanding property, movable or immovable, including things in action and whether in or outside Singapore which was vested in the S-VACC or to which it was entitled, or over which it had a disposing power at the time it was so dissolved, but which was not got in, realised upon or otherwise disposed of or dealt with by the S-VACC or its liquidator, such property except called and uncalled capital, shall, for the purposes of the following sections of this Subdivision and notwithstanding any written law or rule of law to the contrary, by the operation of this section, be and become vested in the Official Receiver for all the estate and interest therein legal or equitable of the S-VACC or its liquidator at the date the S-VACC was dissolved, together with all claims, rights and remedies which the S-VACC or its liquidator then had in respect thereof.

- (2) Where any claim, right or remedy of the liquidator may under this Act be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Official Receiver may for the purposes of this section make, exercise or avail himself of that claim, right or remedy without such approval or concurrence.

Disposal of outstanding interests in property

359. (1) Upon proof to the satisfaction of the Official Receiver that there is vested in him by operation of section 358 any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Official Receiver may sell or otherwise dispose of or deal with such estate or interest or any part thereof as he sees fit.

- (2) The Official Receiver may sell or otherwise dispose of or deal with such property either solely or in concurrence with any other person in such manner for such consideration by public auction, public tender or private contract upon such terms and conditions as he thinks fit, with power to rescind any contract and resell or otherwise dispose of or deal with such property as he thinks expedient, and may make, execute, sign and give such contracts, instruments and documents as he thinks necessary.

- (3) The Official Receiver shall be remunerated by such commission, whether by way of percentage or otherwise, as is prescribed in respect of the exercise of the powers

conferred upon him by subsection (1).

(4) The moneys received by the Official Receiver in the exercise of any of the powers conferred on him by this Subdivision shall be applied in defraying all costs, expenses, commission and fees incidental thereto and thereafter to any payment authorised by this Subdivision and the surplus, if any, shall be dealt with as if they were unclaimed moneys paid to the Official Receiver in pursuance of section 324.

Liability of Official Receiver and Government as to property vested in Official Receiver

360. Property vested in the Official Receiver by operation of this Subdivision shall be liable and subject to all charges, claims and liabilities imposed thereon or affecting such property by reason of any statutory provision as to rates, taxes, charges or any other matter or thing to which such property would have been liable or subject had such property continued in the possession, ownership or occupation of the S-VACC; but there shall not be imposed on the Official Receiver or the Government any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the assets of the S-VACC so far as they are in the opinion of the Official Receiver properly available for and applicable to such payment.

Accounts and audit

361. (1) The Official Receiver shall —

- (a) record in a register a statement of any property coming to his hand or under his control or to his knowledge vested in him by operation of this Subdivision and of his dealings therewith;
- (b) keep accounts of all moneys arising therefrom and of how they have been disposed of; and
- (c) keep all accounts, vouchers, receipts and papers relating to such property and moneys.

(2) The Auditor-General shall have all the powers in respect of such accounts as are conferred upon him by any Act relating to audit of public accounts.

Division 5 – Winding up of Sub-Funds

Winding up of Sub-Funds

362. (1) Subject to this Division, a Sub-Fund may be wound up under this Part, which shall apply to a Sub-Fund as if it were a S-VACC, with the following adaptations –

- (a) notwithstanding section 55(1) of this Act, a Sub-Fund shall be treated as if it

- were a separate legal person for the purposes of winding up;
- (b) references to a S-VACC shall be read as referring to the Sub-Fund;
 - (c) references to members shall be read as referring to the holders of the shares relating to the Sub-Fund;
 - (d) references to creditors shall be read as referring to the creditors of the Sub-Fund;
 - (e) the appointment of the liquidator or any provisional liquidator and the powers, rights, duties and responsibilities of the liquidator or any provisional liquidator shall be confined to the Sub-Fund;
 - (f) without prejudice to section 274, the liquidator may sell the immovable property and movable property, things in action of the Sub-Fund and the business of the Sub-Fund by public auction, public tender or private contract with power to transfer the whole thereof to any Sub-Fund, person or company or to sell the same in parcels or parts;
 - (g) without prejudice to section 256, the Court may order a winding up of a Sub-Fund where its S-VACC has been or is in the course of being wound up.

PART 13 GENERAL

Division 1 — Miscellaneous

Interpretation

363. In this section and sections 366, 367, 378 and 383, unless the contrary intention appears —

“consolidated financial statements” and “parent company” have the same meanings as in section 219;

“financial statements” means the financial statements of a company required to be prepared by the Accounting Standards and, in the case of a parent company, means the consolidated financial statements.

Service of documents on S-VACC

364. A document may be served on a S-VACC by leaving it at or sending it by registered post to the registered office of the S-VACC.

Electronic transmission of notices of meetings

365. (1) Where any notice of a meeting is required or permitted to be given, sent or served under this Act or under the constitution of a S-VACC by the S-VACC or the directors of the S-VACC to —

- (a) a member of the S-VACC; or
- (b) an officer or auditor of the S-VACC,

that notice may be given, sent or served using electronic communications to the current address of that person.

(2) For the purposes of this section, a notice of a meeting shall also be treated as given or sent to, or served on a person where —

- (a) the S-VACC and that person have agreed in writing that notices of meetings required to be given to that person may instead be accessed by him on a website;
- (b) the meeting is a meeting to which that agreement applies;
- (c) the notice is published on the website such that it is or can be made legible;
- (d) that person is notified, in a manner for the time being agreed between him and the S-VACC for the purpose, of —
 - (i) the publication of the notice on that website;
 - (ii) the address of that website; and
 - (iii) the place on that website where the notice may be accessed, and how it may be accessed; and
- (e) the notice continues to be published on and remains accessible to that person from that website throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting.

(3) For the purposes of this Act, a notice of a meeting treated in accordance with subsection (2) as given or sent to or served on any person shall be treated as so given, sent or served at the time of the notification mentioned in subsection (2)(d).

(4) A notice of a meeting given for the purposes of subsection (2)(d) shall specify such matters or information as may be required for a notice of that type under any other provision of this Act or the constitution of that S-VACC.

(5) Nothing in subsection (2) shall invalidate the proceedings of a meeting where —

- (a) any notice of a meeting that is required to be published and remain accessible as mentioned in paragraph (e) of that subsection is published and remains accessible for a part, but not all, of the period mentioned in that paragraph; and

- (b) the failure to publish and make accessible that notice throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the S-VACC to prevent or avoid.

(6) A S-VACC may, notwithstanding any provision to the contrary in its constitution, take advantage of subsection (1), (2), (3), (4) or (5).

(7) For the purposes of this section and section 366, the current address of a person of a S-VACC, in relation to any notice or document, is a number or address used for electronic communication which —

- (a) has been notified by the person in writing to the S-VACC as one at which that notice or document may be sent to him; and
- (b) the S-VACC has no reason to believe that that notice or document sent to the person at that address will not reach him.

Electronic transmission of documents

366. (1) Where any accounts, balance-sheet, financial statements, report or other document is required or permitted to be given, sent or served under this Act or under the constitution of a S-VACC by the S-VACC or the directors of the S-VACC to —

- (a) a member of the S-VACC; or
- (b) an officer or auditor of the S-VACC,

that document may be given, sent or served using electronic communications to the current address of that person.

(2) For the purposes of this section, a document shall also be treated as given or sent to, or served on a person where —

- (a) the S-VACC and that person have agreed in writing to his having access to documents on a website (instead of their being sent to him);
- (b) the document is a document to which that agreement applies;
- (c) the document is published on the website such that it is or can be made legible; and
- (d) that person is notified, in a manner for the time being agreed for that purpose between him and the S-VACC, of —
 - (i) the publication of the document on that website;
 - (ii) the address of that website; and
 - (iii) the place on that website where the document may be accessed, and how it may be accessed.

(3) Where any provision of this Act or of the constitution of the S-VACC requires any document to be given or sent to, or served on a person not less than a specified number of days before a meeting, that document, if treated in accordance with subsection (2) as given or sent to, or served on any person, shall be treated as given or sent to, or served on the person not less than the specified number of days before the date of a meeting if, and only if —

(a) the document is published on and remains accessible to that person from the website throughout a period beginning before the specified number of days before the date of the meeting and ending with the conclusion of the meeting; and

(b) the notification given for the purposes of subsection (2)(d) is given not less than the specified number of days before the date of the meeting.

(4) Nothing in subsection (3) shall invalidate the proceedings of a meeting where —

(a) any document that is required to be published and remain accessible as mentioned in paragraph (a) of that subsection is published and remains accessible for a part, but not all, of the period mentioned in that paragraph; and

(b) the failure to publish and make accessible that document throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the S-VACC to prevent or avoid.

(5) A S-VACC may, notwithstanding any provision to the contrary in its constitution, take advantage of subsection (1), (2), (3) or (4).

Electronic transmission in accordance with constitution, etc.

367. (1) Notwithstanding sections 365 and 366, where a notice of meeting or any accounts, balance-sheet, financial statements, report or other document is required or permitted to be given, sent or served under this Act or under the constitution of a S-VACC by the S-VACC or the directors of the S-VACC to a member of the S-VACC, that notice or document may be given, sent or served using electronic communications with the express, implied or deemed consent of the member in accordance with the constitution of the S-VACC.

(2) For the purposes of this section, a member has given implied consent if the constitution of the S-VACC —

(a) provides for the use of electronic communications;

(b) specifies the manner in which electronic communications is to be used; and

(c) provides that the member shall agree to receive such notice or document by way of such electronic communications and shall not have a right to elect to receive a physical copy of such notice or document.

- (3) For the purposes of this section, but subject to regulations mentioned in subsection (4), a member is deemed to have consented if —
- (a) the member was by notice in writing given an opportunity to elect, within such period of time specified in the notice, whether to receive the notice or document by way of electronic communications or as a physical copy; and
 - (b) the member failed to make an election within the time so specified.
- (4) The Minister may make regulations under section 26 —
- (a) to exclude any notice or document or any class of notices or documents from the application of this section;
 - (b) to provide for safeguards for the use of electronic communications under this section; and
 - (c) without prejudice to the generality of paragraph (b), to provide that a member who is deemed to have consented to receive notices or documents by way of electronic communications may make a fresh election to receive such notice or document as a physical copy and the manner in which the fresh election may be made.

Security for costs

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

Costs

(2) The costs of any proceeding before a court under this Act (except Part 8 save for sections 177(3) and 177(4)) shall be borne by such party to the proceeding as the court may, in its discretion, direct.

As to rights of witnesses to legal representation

369. Any person summoned for examination under Part 10 or under section 287 or 288 may, at his own cost, employ a solicitor who shall be at liberty to put to him such questions as the inspector, Court or District Judge considers just for the purpose of enabling him to explain or qualify any answers given by him.

Disposal of shares of shareholder whose whereabouts unknown

370. (1) Where by the exercise of reasonable diligence a S-VACC is unable to discover the whereabouts of a shareholder for a period of not less than 10 years, the S-VACC may cause an advertisement to be published in a newspaper circulating in the place shown in the register of members as the address of the shareholder stating that the

S-VACC after the expiration of one month from the date of the advertisement intends to transfer the shares to the Official Receiver.

(2) If, after the expiration of one month from the date of the advertisement, the whereabouts of the shareholder remain unknown, the S-VACC may transfer the shares held by the shareholder in the S-VACC to the Official Receiver and for that purpose may execute for and on behalf of the owner a transfer of those shares to the Official Receiver.

(3) The Official Receiver shall sell or dispose of any shares so received in such manner and at such time as he thinks fit and shall deal with proceeds of the sale or disposal as if they were moneys paid to him pursuant to section 324.

Power to grant relief

371. (1) If in any proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies it appears to the court before which the proceedings are taken that he is or may be liable in respect thereof but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach the court may relieve him either wholly or partly from his liability on such terms as the court thinks fit.

(2) For the avoidance of doubt and without prejudice to the generality of subsection (1), “liability” includes the liability of a person to whom this section applies to account for profits made or received.

(3) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust he may apply to the Court for relief, and the Court shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought.

(4) The persons to whom this section applies are —

- (a) officers of a S-VACC;
- (b) fund managers and approved custodians of a S-VACC;
- (c) persons employed by a S-VACC under a contract for service;
- (d) persons employed by a S-VACC as auditors, whether they are or are not officers of the S-VACC;
- (e) experts within the meaning of this Act; and
- (f) persons who are receivers, receivers and managers or liquidators appointed or directed by the Court to carry out any duty under this Act in relation to a S-

VACC and all other persons so appointed or so directed.

Irregularities

372. (1) In this section, unless the contrary intention appears a reference to a procedural irregularity includes a reference to —

- (a) the absence of a quorum at a meeting of a S-VACC, at a meeting of directors or creditors of a S-VACC or at a joint meeting of creditors and members of a S-VACC; and
- (b) a defect, irregularity or deficiency of notice or time.

(2) A proceeding under this Act is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

(3) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated by reason only of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or the Registrar, declares proceedings at the meeting to be void.

(4) Subject to the following provisions of this section and without limiting the generality of any other provision of this Act, the Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:

- (a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Act or in relation to a S-VACC is not invalid by reason of any contravention of, or failure to comply with, a provision of this Act or a provision of any of the constituent documents of a S-VACC;
- (b) an order directing the rectification of any register kept by the Registrar under this Act;
- (c) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (a);
- (d) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Act or in relation to a S-VACC (including an order extending a period where the period concerned expired before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding,

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

- (5) An order may be made under subsection (4)(a) or (b) notwithstanding that the contravention or failure referred to in the paragraph concerned resulted in the commission of an offence.
- (6) The Court shall not make an order under this section unless it is satisfied —
- (a) in the case of an order referred to in subsection (4)(a) —
 - (i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature;
 - (ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or
 - (iii) that it is in the public interest that the order be made;
 - (b) in the case of an order referred to in subsection (4)(c), that the person subject to the civil liability concerned acted honestly; and
 - (c) in every case, that no substantial injustice has been or is likely to be caused to any person.

Privileged communications

373. (1) Subject to subsection (2), no inspector appointed under this Act shall require disclosure by a solicitor of any privileged communication made to him in that capacity, except as respects the name and address of his client.

(2) Subsection (1) shall not apply to inspections conducted pursuant to sections 177 and 189 of this Act.

Production and inspection of books or papers where offence suspected

374. (1) If, on an application made to a judge of the Court in chambers by or on behalf of the Minister, there is shown to be reasonable cause to believe that any person has, while an officer of a S-VACC, committed an offence in connection with the management of the S-VACC's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the S-VACC, an order may be made —

- (a) authorising any person named therein to inspect such books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or
- (b) requiring the secretary or such other officer as is named in the order to produce such books or papers or any of them to a person named in the order at a place so named.

(2) For the purposes of subsection (1), an officer of a S-VACC includes a fund manager and approved custodian of a S-VACC.

(3) No appeal shall lie against any order or decision of a judge on or in relation to an application under this section.

Form of S-VACC records

375. (1) A S-VACC shall adequately record for future reference the information required to be contained in any S-VACC records.

(2) Subject to subsection (1), S-VACC records may be —

- (a) kept in hard copy form or in electronic form; and
- (b) arranged in the manner that the directors of the S-VACC think fit.

(3) If S-VACC records are kept in electronic form, the S-VACC shall ensure that they are capable of being reproduced in hard copy form.

(4) In this section and sections 376 and 377 —

“S-VACC” includes a corporation which is required to keep S-VACC records under this Act;

“S-VACC record” means any register, index, minute book, accounting record, minute or other document required by this Act (except Part 8) to be kept by a S-VACC;

“in electronic form” means in the form of an electronic record as defined in section 2(1) of the Electronic Transactions Act (Cap. 88);

“in hard copy form” means in a paper form or similar form capable of being read.

Duty to take precautions against falsification

376. (1) Where S-VACC records are kept otherwise than in hard copy form, reasonable precautions shall be taken for —

- (a) ensuring the proper maintenance and authenticity of the S-VACC records;
- (b) guarding against falsification; and
- (c) facilitating the discovery of any falsifications.

(2) In the case where S-VACC records are kept in electronic form, the S-VACC shall provide for the manner by which the records are to be authenticated and verified

(3) Where default is made in complying with subsection (1) or (2), the S-VACC and every officer of the S-VACC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Inspection of records

377. (1) Any S-VACC record which is by this Act required to be available for inspection shall, subject to and in accordance with this Act, be available for inspection at the place where in accordance with this Act it is kept during the hours in which the registered office of the S-VACC is accessible to the public.

(2) If S-VACC records are kept by the S-VACC by recording the information in question in electronic form, any duty imposed on the S-VACC under subsection (1) or any other provision of this Act to allow inspection of the S-VACC records is to be regarded as a duty to allow inspection of —

(a) a reproduction of the recording, or the relevant part of the recording, in hard copy form; or

(b) if requested by the person inspecting the recording, the recording, or the relevant part of the recording, by electronic means.

(3) Any person permitted by this Act to inspect any S-VACC records may make copies of or take extracts from it.

(4) Where S-VACC records are kept by the S-VACC by recording the information in question in electronic form, the S-VACC shall ensure that proper facilities shall be provided to enable the S-VACC records to be inspected, and where default is made in complying with this subsection, the S-VACC and every officer of the S-VACC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Translations of instruments, etc.

378. (1) Where under this Act a S-VACC is required to lodge with the Registrar any instrument, certificate, contract or document or a certified copy thereof and the same is not written in the English language, the S-VACC shall lodge at the same time with the Registrar a certified translation thereof in the English language.

(2) Where under this Act a S-VACC is required to make available for public inspection any instrument, certificate, contract or document and the same is not written in the English language, the S-VACC shall keep at its registered office in Singapore a certified translation thereof in the English language.

(3) Where any accounts, financial statements, minute books or other records of a S-VACC required by this Act to be kept are not kept in the English language, the directors of the S-VACC shall cause a true translation of such accounts, financial statements, minute books and other records to be made from time to time at intervals of not more than 7 days and shall cause such translations to be kept with the original accounts, financial statements, minute books and other records for so long as the original accounts, financial statements, minute books and other records are required by this Act to be kept.

Certificate of incorporation conclusive evidence

379. A notice of incorporation issued by the Registrar under this Act and a certificate of confirmation of incorporation of the Registrar issued under this Act shall each be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the S-VACC referred to therein is duly incorporated under this Act.

Court may compel compliance

380. (1) If any person in contravention of this Act (except Part 8) refuses or fails to permit the inspection of any register, minute book or document or to supply a copy of any register, minute book or document the Court may by order compel an immediate inspection of the register, minute book or document or order the copy to be supplied.

(2) If any officer or former officer of a S-VACC has failed or omitted to do any act, matter or thing which under this Act (except Part 8) he is or was required or directed to do, the Court on the application of the Registrar or any member of the S-VACC or the Official Receiver or liquidator may, by order, require that officer or former officer to do such act, matter or thing immediately or within such time as is allowed by the order, and for the purpose of complying with any such order a former officer shall be deemed to have the same status, powers and duties as he had at the time the act, matter or thing should have been done.

Disclosure of information

381. (1) Despite the provisions of this Act or any requirement imposed under written law, rule of law, contract or rule of professional conduct —

- (a) the Authority or any person authorised by the Authority may furnish any information, report or document obtained in the performance of their duties or in the exercise of their functions under this Act to the AML/CFT Authority or any person authorised by the AML/CFT Authority, for the purpose of enabling the performance or discharge by the AML/CFT Authority of its functions or duties under Part 8 of this Act and any other written law; and
- (b) the AML/CFT Authority or any person authorised by the AML/CFT Authority may furnish any information, report or document obtained in the performance of their duties or in the exercise of their functions under this Act and any other written law to the Authority or any person authorised by the Authority, for the purpose of enabling the performance or discharge of the Authority's functions or duties under the relevant provisions of this Act.

(2) A reference to “relevant provisions” under subsection (1)(b) refers to the following provisions under this Act —

- (a) section 27;
- (b) section 30(1), (2)(a) and (2)(b);

- (c) section 55 and 56;
- (d) section 106;
- (e) section 107(2)(b) and 383(3);
- (f) section 108(1)(b);
- (g) section 118(1)(c), (1)(d), (3), (5) and (7); and
- (h) the fit and proper provisions as defined under section 174(1).

Division 2 — Offences (except Part 8)

Preliminary

382. The provisions under Division 2 shall not apply to Part 8 of this Act.

False and misleading statement

383. (1) Every S-VACC which advertises, circulates or publishes any statement of the amount of its capital which is misleading, or in which the amount of capital or subscribed capital is stated but the amount of paid-up capital or the amount of any charge on uncalled capital is not stated as prominently as the amount of subscribed capital is stated, and every officer of the S-VACC who knowingly authorises, directs or consents to such advertising, circulation or publication shall be guilty of an offence.

(2) Every person who in any return, report, certificate, balance-sheet, financial statements or other document required by or for the purposes of this Act wilfully makes or authorises the making of a statement false or misleading in any material particular knowing it to be false or misleading or wilfully omits or authorises the omission of any matter or thing without which the document is misleading in a material respect shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) Any person who, for any purpose under this Act —

- (a) lodges or files with or submits to the Registrar any document; or
- (b) authorises another person to lodge or file with or submit to the Registrar any document,

knowing that document to be false or misleading in a material respect, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) For the purposes of subsection (2), where a person at a meeting votes in favour of the making of a statement referred to in that subsection, he shall be deemed to have authorised the making of that statement.

False statements or reports

384. (1) An officer of a S-VACC who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to —

- (a) a director, auditor, member, debenture holder or trustee for debenture holders of the S-VACC; or
- (b) in the case of a S-VACC that is a subsidiary, an auditor of the holding company,

relating to the affairs of the S-VACC, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) In subsection (1), “officer” includes a fund manager, approved custodian and any person who at any time has been an officer of the S-VACC.

Obtaining payment of moneys, etc., to S-VACC by false promise of officer or agent of S-VACC

(3) Whoever, being an officer or agent of any S-VACC, by any deceitful means or false promise and with intent to defraud, causes or procures any money to be paid or any chattel or marketable security to be delivered to that S-VACC or to himself or any other person for the use or benefit or on account of that S-VACC shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 5 years or to both.

Evidence of financial position of S-VACC

(4) Upon the trial of a charge of an offence under this section, the opinion of any registered or public accountant as to the financial position of any S-VACC at any time or during any period in respect of which he has made an audit or examination of the affairs of the S-VACC according to recognised audit practice shall be admissible either for the prosecution or for the defence as evidence of the financial position of the S-VACC at that time or during that period, notwithstanding that the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons.

Frauds by officers

385. (1) Every person who, while an officer of a S-VACC —

- (a) has by deceitful or fraudulent or dishonest means or by means of any other fraud induced any person to give credit to the S-VACC;
- (b) with intent to defraud creditors of the S-VACC, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the S-VACC; or

- (c) with intent to defraud creditors of the S-VACC, has concealed or removed any part of the property of the S-VACC since or within 2 months before the date of any unsatisfied judgment or order for payment of money obtained against the S-VACC,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years or to both.

- (2) For the purpose of subsection (1), an “officer” includes a fund manager and approved custodian.

General penalty provisions

386. (1) A person who —

- (a) does that which under this Act he is forbidden to do;
- (b) does not do that which under this Act he is required or directed to do; or
- (c) otherwise contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence.

- (2) A person who is guilty of an offence under this Act shall be liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence, or if a penalty or punishment is not so mentioned, to a fine not exceeding \$1,000.

- (3) Every summons issued for an offence committed by an officer of a S-VACC or other person under this Act or any regulations may, notwithstanding anything in this Act, be served —

- (a) by delivering it to him;
- (b) by delivering it to any adult person residing at his last known place of abode or employed at his last known place of business; or
- (c) by forwarding it by registered post in a cover addressed to him at his last known place of abode or business or at any address furnished by him.

- (4) In proving service by registered post, it shall be sufficient to prove that the registered cover containing the summons was duly addressed and posted.

Default penalties

387. (1) Where a default penalty is provided in any section of this Act, any person who is convicted of an offence under this Act or who has been dealt with under section

390 for an offence under this Act in relation to that section shall be guilty of a further offence under this Act if the offence continues after he is so convicted or after he has been so dealt with and liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section as the amount of the default penalty or, if an amount is not so expressed, of not more than \$200.

(2) Where any offence is committed by a person by reason of his failure to comply with any provision of this Act under which he is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1), shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that such period has elapsed.

(3) For the purposes of any provision of this Act which provides that an officer of a S-VACC or corporation who is in default is guilty of an offence under this Act or is liable to a penalty or punishment, the phrase “officer who is in default” or any like phrase means any officer of the S-VACC or corporation who knowingly and wilfully —

(a) is guilty of the offence; or

(b) authorises or permits the commission of the offence.

Proceedings how and when taken

388. (1) Except where provision is otherwise made in this Act, proceedings for any offence under this Act may, with the authorisation of the Public Prosecutor, be taken by the Registrar or with the written consent of the Minister by any person.

(2) Proceedings for any offence under this Act, other than an offence punishable with imprisonment for a term exceeding 6 months, may be prosecuted in a Magistrate’s Court and in the case of an offence punishable with imprisonment for a term of 6 months or more may be prosecuted in a District Court.

(3) Any punishment authorised by this Act may be imposed by a District Court, notwithstanding that it is a greater punishment than that Court is otherwise empowered to impose.

(4) The Registrar and any officer authorised by him in writing shall have the right to appear and be heard before a Magistrate’s Court or a District Court in any proceedings for an offence under this Act.

Injunctions

389. (1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of this Act, the Court may, on the application of —

(a) the Registrar; or

(b) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that he is required by this Act to do, the Court may, on the application of —

(a) the Registrar; or

(b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

grant an injunction requiring the first-mentioned person to do that act or thing.

(3) Where an application is made to the Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.

(4) The Court may rescind or vary an injunction granted under subsection (1), (2) or (3).

(5) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised —

(a) if the Court is satisfied that the person has engaged in conduct of that kind — whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will engage in conduct of that kind — whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(6) Where an application is made to the Court for a grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised —

- (a) if the Court is satisfied that the person has refused or failed to do that act or thing — whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will refuse or fail to do that act or thing — whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(7) Where the Registrar makes an application to the Court for the grant of an injunction under this section, the Court shall not require the Registrar or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

(8) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

Composition of offences

390. (1) The Registrar may, in his discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the lower of the following:

- (a) one half of the amount of the maximum fine that is prescribed for the offence;
- (b) \$5,000.

(2) The Registrar may, in his discretion, compound any offence under this Act (including an offence under a provision that has been repealed) which —

- (a) was compoundable under this Act at the time the offence was committed; but
- (b) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the lower of the following:

- (i) one half of the amount of the maximum fine that is prescribed for the offence at the time it was committed;
- (ii) \$5,000.

(3) On payment of such sum of money referred to in subsection (1) or (2), no further proceedings shall be taken against that person in respect of the offence.

(4) The Minister may prescribe the offences which may be compounded.

FIRST SCHEDULE

Section 200(13)

CONTENTS OF DIRECTORS' STATEMENT

1. A statement as to whether in the opinion of the directors —
 - (a) the financial statements and, where applicable, the consolidated financial statements are drawn up so as to give a true and fair view of the financial position and performance of the S-VACC and its Sub-Funds (if any) and, if applicable, of the financial position and performance of the group for the period covered by the financial statements or consolidated financial statements; and
 - (b) at the date of the statement there are reasonable grounds to believe that the S-VACC will be able to pay its debts as and when they fall due.
2. Where any option has been granted by a S-VACC, other than a parent company for which consolidated financial statements are required, during the period covered by the financial statements to take up unissued shares of a S-VACC —
 - (a) the number and class of shares in respect of which the option has been granted;
 - (b) the date of expiration of the option;
 - (c) the basis upon which the option may be exercised; and
 - (d) whether the person to whom the option has been granted has any right to participate by virtue of the option in any share issue of any other company.
3. Where any of the particulars required by paragraph 2 have been stated in a previous directors' statement, they may be stated by reference to that statement.
4. Where a parent company or any of its subsidiary corporations has at any time granted to a person an option to have shares issued to him in the company or subsidiary corporation, the directors' statement of the parent company must state the name of the corporation in respect of the shares in which the option was granted and the other particulars required under paragraphs 2, 5 and 6.
5. The particulars of shares issued during the period to which the statement relates by virtue of the exercise of options to take up unissued shares of the S-VACC, whether granted before or during that period.
6. The number and class of unissued shares of the S-VACC under option as at the end of the period to which the statement relates, the price, or method of fixing the price, of issue of those shares, the date of expiration of the option and the rights, if any, of the persons to whom the options have been granted to participate by virtue of the options in any share issue of any other company.
7. The names of the persons who are the directors in office at the date of the

statement.

8. Whether at the end of the financial year to which the financial statements or, where the S-VACC is a parent company, consolidated financial statements relate —

- (a) there subsist arrangements to which the S-VACC is a party, being arrangements whose objects are, or one of whose objects is, to enable directors of the S-VACC to acquire benefits by means of the acquisition of shares in, or debentures of, the S-VACC or any other body corporate; or
- (b) there have, at any time in that year, subsisted such arrangements as aforesaid to which the S-VACC was a party,

and if so, a statement explaining the effect of the arrangements and giving the names of the persons who at any time in that year were directors of the S-VACC and held, or whose nominees held, shares or debentures acquired in pursuance of the arrangements.

9. As respects each person who, at the end of the financial year, was a director of the S-VACC —

- (a) whether or not (according to the register kept by the S-VACC for the purposes of section 134 relating to the obligation of a director of a S-VACC to notify it of his interests in shares in, or debentures of, the S-VACC and of every other body corporate, being the S-VACC's subsidiary or holding company or a subsidiary of the S-VACC's holding company) he was, at the end of that year, interested in shares in, or debentures of, the S-VACC or any other such body corporate; and
- (b) if he was, the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he was then interested and whether or not, according to that register, he was, at the beginning of that year (or, if he was not then a director, when he became a director), interested in shares in, or debentures of, the S-VACC or any other such body corporate and, if he was, the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he was interested at the beginning of that year or, as the case may be, when he became a director.