

SMALL BUSINESS GUIDE TO THE COMPANIES ACT

Contents

- Abstract
- What registration means
- The company structure for small business
- Setting up a new company
- Continuing obligations after the company is set up
- Company directors
- Shares and shareholders
- Company decisions
- Funding the company's operations
- Returns to shareholders
- Annual financial reports and audit
- Disagreements within the company
- Companies in financial trouble

Abstract

This guide summarises the main rules in the Companies Act (the Companies Act 1997) that apply to companies commonly used by small business. The guide gives a general overview of the Companies Act as it applies to those companies and directs readers to the detailed provisions in the Companies Act. Other laws also impose obligations on companies and their operators.

What registration means

1.1 Separate legal entity that has its own powers

As far as the law is concerned, a company has a separate legal existence that is distinct from that of its owners, managers, operators, employees and agents. A company has its own property, its own rights and its own obligations. A company's money and other assets belong to the company and must be used for the company's purposes.

A company has the powers of an individual, including the powers to:

- * own and dispose of property and other assets
- * enter into contracts
- * sue and be sued.
- * It can be convicted of a criminal offence.

Once a company is registered, its separate legal status, property, rights and liabilities continue until it is dissolved by special procedures and is removed from the register.

[section 16]

1.2 Limited liability of shareholders

Shareholders of a company are not liable (in their capacity as shareholders) for the company's debts. As shareholders, their only obligation is to pay the company any amount unpaid on their shares if they are called upon to do so. There are some qualifications to this statement. If a shareholder is also a director, this limitation may be affected by other laws and the commercial practices discussed in 1.3 and 1.4.

[section 54, 55, 79, 82, 83]

1.3 Director's liability for company's debts

A director of a company may be liable for debts incurred by the company at a time when the company itself is unable to pay those debts as they fall due, or the company is insolvent at the time.

A director of a company may be liable to compensate the company for any losses the company suffers from a breach of some of the director's duties to the company (see 5.3).

In addition to having liability for the company's debts or to pay compensation to the company, a director may also be subject to a penalty.
[section 348, Part XXII]

1.4 Director's liability as guarantor/security over personal assets

As a matter of commercial practice, a bank, trade creditor or anyone else providing finance or credit to a company may ask a director of the company:

- * for a personal guarantee of the company's liabilities; and
- * for some form of security over their house or personal assets to secure the performance by the company of its obligations.

The director of a company may, for example, be asked by a bank to give a mortgage over his or her house to secure the company's repayment of a loan. If the company does not repay the loan as agreed with the bank, the director may lose the house.

1.5 Continuous existence

A company continues to exist even if 1 or more of its shareholders or directors sell their shares, die or leave the company. If a company has only 1 shareholder who is also the only director of the company and that person dies, their personal representative is able to ensure that the company continues to operate.

[sections 11, 16]

1.6 Rules for the internal management of a company

The Act contains a basic set of rules for the internal management of a company (appointment of directors, meetings etc.).

A company does not need to have a separate constitution of its own; it can simply take advantage of the rules set out in the Act. The company will need a constitution only if it wants to cancel, change or add to the rules set out in the Act.

The Memorandum and Articles of Association of companies formed before the Companies Act 1997 are obsolete and of no effect. If the company has not adopted a new constitution, it's rules will be those set out in the Companies Act.

[sections 27, 29, 443]

1.7 How a company acts

A company does not have a physical existence. It must act through other people. It normally acts by collective decision, that is, by the decision of a meeting. However individual directors or company employees or others may be appointed as an agent to enter into contracts that bind the company (see 7.5).

1.8 Directors

The directors of a company are responsible for managing the company's business. The board of directors may exercise all the powers of the company except a power that the Act requires the company to exercise in general meeting.

[sections 11, 109]

1.9 Shareholders

The shareholders of a company own the company, but the company has a separate legal existence and the company's assets belong to the company, not to individual shareholders.

Having appointed directors to manage the company's business, the shareholders themselves must not interfere in that management. But they must approve 'major transactions' (see 7.4)

[sections 2, 78, 87, 88, 109]

1.10 What others can assume about the company

Anyone who does any business with the company is entitled to assume that the company has a legal right to conduct that business unless the person knows, or suspects, otherwise. So, an outsider dealing with the company is entitled to assume:

- * that a person who is shown in a notice lodged with the Registrar as being a director of a company has been properly appointed and is authorised to act as a director of the company; and
- * that a person who is held out by the company to be a director or agent of the company has been properly appointed and is authorised to act for the company.

[section 19]

The company structure for small business

2.1 Companies for small business

Regardless of the number of shareholders or the size of the company's operations, all companies are regarded by the Act in the same way. Some smaller companies are exempt from some procedural responsibilities (see 10.4). A company limited by shares is the form of company for use by small business. Such a company must have a least 1 shareholder. It may have 1 or more directors.

[section 11]

Setting up a new company

The operators of small businesses can either buy a "shelf" company or set up a new company themselves.

3.1 "Shelf" companies

The operator of a small business may find it more convenient to buy a "shelf" company (a company that has already been registered but has not traded) from businesses which set up companies for this purpose or from some legal or accounting firms.

3.2 Setting up a company

To set up a new company themselves, the operators must first apply to the Registrar to reserve a name.

To obtain registration, a person must then lodge a properly completed application form with the Registrar. The form must set out certain information including details of every person who has consented to be a shareholder or director of the company. Appropriate forms are contained in the Companies Regulation 1998 and are available on this site.

The company comes into existence when the Registrar registers it.

[sections 12, 13, 14, 15, 21, 23]

3.3 Name

In practice, a new company must have a name that is different from the name of a company that is already registered. It must not be offensive. A company limited by shares must have the word " Limited" as part of its name. This can be abbreviated to " Ltd".

[sections 21, 22, 26]

3.4 Contracts entered into before the company is registered

A company can ratify a contract entered into by someone on its behalf or for its benefit before it was registered. If the company does not ratify the contract, the person who entered into the contract may be personally liable.

[sections 157, 158, 159 and *Securities Act 1997*, section 81]

3.5 First shareholders and directors

A person listed with their consent as a shareholder or director in the application for registration of the company becomes a shareholder or director of the company on its registration.

There is no requirement to have a company secretary.
(see 5.1 for directors; see 6.1 for shareholders)
[section 42, 78, 131]

3.6 Issuing shares

A company may issue shares at the price determined by the board of directors to be fair and reasonable.

There are special provisions for later issues of shares (see 6.6)
[sections 43, 46]

3.7 Registered office and address for service

A company must have both a registered office and an address for service in Papua New Guinea and must advise the Registrar their location.

A post office box cannot be the registered office or address for service. The purpose of the address for service is to have a place where all communications and notices to the company may be sent.

The registered office does not have to be company's main place of business. For example, it may be at the office of an accountant or lawyer.

The company must notify the Registrar of any change of address of its registered office or address for service.

[sections 161, 162, 163, 167]

3.8 Records and registers kept by the company

A company must keep the records listed in section 164.

A company must keep registers, including

- * a register of shareholders,
- * an interests register and
- * a register of charges.

Larger companies may have to keep other registers.

If a register is kept on computer, its contents must be capable of being printed out in hard copy.

[sections 67, 164, 216, 225, Securities Act 1997 sections 75, 120]

3.9 Register of shareholders

A company must keep in its register of shareholders such information as:

- * the names and addresses of its shareholders; and
- * details of shares held by individual shareholders.

Failure to maintain the register may make the directors personally liable to a shareholder.

[sections 67-71]

3.10 Interests Register

This register must list, in respect of each director:

- * transactions with the company in which he has an interest;
- * use of company information;
- * dealings in shares issued by the company; and
- * remuneration and other benefits received from the company.

Failure to maintain the register may make the directors personally liable to a shareholder.

[sections 118,123,126,139,147,216]

3.11 Register of charges

A company must keep a register of charges if the company gives a bank, trade creditor or anybody else a charge over company assets.

[section 2, 222, Form 24]

Continuing obligations after the company is set up

4.1 Use of company name

The name of a company must be shown at all the company's business premises (including its registered office) that are open to the public. The company's name must appear correctly:

- * on all written communications of the company;
- * on its cheques and negotiable instruments;
- * on all documents which create a legal obligation on the company;
- * on all documents lodged with the Registrar; and
- * if it has one, on its common seal.

[section 26]

4.2 Annual return

A company must lodge with the Registrar an annual return which contains information required by the form, including:

- * names and addresses of each director;
- * issued shares;
- * details of its shareholders;
- * address of its registered office;
- * date of the last Annual General Meeting;
- * details of registered charges; and
- * a statement that the company satisfies the solvency test.

Financial statements must be attached unless the company is exempt from audit requirements (see 10.3)

If the completed annual return is not lodged, each director is liable to a penalty of up to K10,000

[sections 215, Sixth Schedule, Form 22]

4.3 Annual fee

A company must pay an annual fee to the Registrar on lodgement of the annual return.

[Schedule 2, Companies Regulations]

4.4 Notify the Registrar of changes

The company must notify the Registrar if certain basic changes to the company occur. The following table sets out these notification requirements.

Notification requirements				
	If . . .	the company must notify the Registrar of the change . . .	using Form No	see section . . .
1.	A company adopts, changes or revokes its constitution	Within 1 month	9	33(3)
2	a company issues shares	within 1 month after the issue	10	44(1)
3.	A company acquires or redeems its own shares	Immediately	11	56(4)
4.	a company registers a	After entry in share	13	65(6)

	transfer of shares (unless exempted by the section)	register		
5	there is a change in the name or address of any of the company's directors	within 1 month after the change	16	137(1)
6.	a company changes the address of its registered office	within 1 month after the change	17	162(2)
7.	A company changes its address for service	The change is not effective until after registration	19	168(2)
8.	a company creates certain kinds of charges	within 2 months after the charge is created	24	222

These forms can be found on this site as part of the Companies Regulation 1998

Company directors

5.1 Who can be a director

Only an individual who is at least 18 years old can be a director. At least 1 of the directors must ordinarily reside in Papua New Guinea.

A director must consent in writing to holding the position of director. The company must keep the consent and must notify the Registrar of the appointment.

In some circumstances, the Act imposes the duties and obligations of a director on a person who, although not formally appointed as a director of a company, nevertheless:

- * acts as a director; or
- * gives instructions to the formally appointed directors as to how they should act; or
- * has been delegated powers by the board.

Certain persons may be prohibited from being a director or from otherwise being involved in the management of a company if, for example, the person has been convicted for a breach of the Act.

Generally, a director may resign by giving notice of the resignation to the company. The company must notify the Registrar of a director's resignation. A director who resigns may also notify the Registrar of the resignation.

[sections 107, 128, 129, 130, 135]

5.2 Appointment of directors

The first directors who are named in the application for registration of the company take office on registration (see 3.5). They remain directors until their appointment comes to an end (see 5.8). Subsequent directors are appointed by shareholders by resolution at a general meeting (unless the constitution provides otherwise).

[sections 131, 133]

5.3 Decisions by directors

The Act sets out rules dealing with the calling and conduct of directors' meetings. Directors must keep a written record (minutes) of their resolutions and meetings.

There are 2 ways that directors may pass resolutions:

- * at a meeting; or
- * by having all of the directors record and sign their decision.

If there is only 1 director of a company who is also the only shareholder, he is responsible for managing the company's business and may exercise all of the company's powers.

[sections 11, 108, 109, Schedule 4]

In some circumstances directors must sign a certificate that the decision is fair to the company and/or that the company will still be solvent after the transaction.

[sections 47, 139, 140; 50, 234, 293]

5.4 Duties and liabilities of directors

In managing the business of a company (see 1.7), each of its directors is subject to a wide range of duties. Some of these arise under the general law; some are detailed in the Act. They include duty:

- * to comply with the Act and the constitution
- * to act in good faith
- * to act in the best interests of the company
- * to act honestly
- * not to disclose or make use of company information or position in the company for improper purposes
- * to avoid conflicts between the interests of the company and the director's interests
- * to make sure the share register is properly kept
- * to disclose an interest in a transaction or proposed transaction of the company
- * to disclose any dealing in shares or securities of the company
- * to disclose any use of company information
- * to disclose all payments and benefits received from the company
- * to exercise care, diligence and skill
- * to prevent the company trading while it is unable to pay its debts
- * if the company is being wound up—to report to the liquidator on the affairs of the company and to assist the liquidator

A director who fails to perform his or her duties:

- * may be guilty of a criminal offence. The Act creates about 100 offences, in almost all cases criminal liability is imposed on directors. Penalties range from K5,000 to K200,000 or imprisonment for up to 5 years.
- * may be liable to a shareholder or shareholders individually in the case of failure to supervise the share register; to disclose interests or to disclose share dealings
- * may be personally liable to compensate the company or creditors (in some cases) for loss or damage they suffer; and
- * may be prohibited from managing a company.

A director's obligations may continue even after the company has been deregistered. Note that in the 3 cases mentioned, directors may be liable to shareholders individually.

[Sections 112-116, 118-120, 123, 126, 127, 147, 348, 413-416, 419, Schedule 13]

5.5 Remuneration of directors

The only benefits a director is allowed to receive are those which are approved by the board of directors or (for some benefits) by the shareholders. Subject to the constitution, it is the board which determines the benefit(s).

Where the benefit is authorised by the board, directors must sign a certificate that the benefit is fair to the company.

Particulars must be entered in the Interests Register.

The recipient of an unauthorised loan or payment is personally liable to refund the amount to the company

[section 139]

5.6 Share dealings by directors

Directors buying or selling shares in the company must:

- * disclose the transactions and enter them in the Interests Register; and
 - * ensure the price is the fair value or be liable to the other person for the difference.
- [sections 126,127]

5.7 Indemnity of directors

The general rule is that a company may not indemnify the directors for a breach of duty or pay for insurance to protect directors. There are exceptions to this general rule however for certain situations, if allowed by the constitution.

[section 140]

5.8 Ceasing to be a director

A director may be removed from office by resolution at a members' meeting. A director ceases to hold office if he dies, resigns, is removed, becomes disqualified or a special provision of the constitution applies.

[section 134, 135]

Shares and shareholders

6.1 Shareholders

A company limited by shares must have at least 1 shareholder.

Subject to the Constitution, a share in a company gives its holder the right:

- * to vote at properly called meetings;
- * to an equal share in dividends determined by the directors;
- * to an equal share in distributions of surplus assets on winding-up the company.

Regardless of when the company was formed or when the shares were issued, no shares have a fixed value or 'par' value, or 'face' value or 'nominal' value.

[sections 11, 37, 39]

6.2 Becoming a shareholder and ceasing to be a shareholder

A person may become a shareholder of a company in several ways, including:

- * the person being listed as a shareholder of the company in the application for registration of the company
- * the company issuing shares to the person
- * the person buying shares in the company from an existing shareholder and the company registering the transfer.

Some of the ways in which a person ceases to be a shareholder are:

- * the person sells all of their shares in the company and the company registers the transfer of the shares
- * the company is wound up and the Registrar cancels the company's registration.
- * in special circumstances, the company buys back all the person's shares

[sections 40, 42, 43, 49, 56, 65]

6.3 Classes of shares

A company may have different classes of shares. The rights and restrictions attached to the shares in a class distinguish it from other classes of shares.

[section 38]

6.4 Meetings of shareholders

The directors have the power to call meetings of all shareholders or meetings of only those shareholders who hold a particular class of shares.

Shareholders who hold at least 5% of the votes which may be cast at a general meeting of a company may require the directors to call and hold a meeting. If the directors do not do so, the shareholders cannot hold the meeting themselves – their proper remedy is to go to the Court to organise the meeting.

There must be an annual meeting at least once each calendar year.

The Act sets out rules dealing with shareholders' meetings.

There are 3 ways that shareholders may pass a resolution:

- * at a meeting;
- * by unanimous agreement of all shareholders, subject to the solvency tests (see 9.5); or
- * by having the required majority of shareholders record and sign their decision – this requires 75% in number of shareholders and 75% of eligible votes.

If a meeting is held, an "ordinary resolution" must be passed by 50% or more of the votes cast by shareholders entitled to vote on the resolution at the meeting in person or by proxy (if proxies are allowed). A "special resolution" usually involves more important questions affecting the company as a whole or the rights of some or all of its shareholders and must be passed by at least 75% of the votes.

The sole shareholder of a company may pass a resolution by recording and signing their decision.

A company must keep a written record (minutes) of the members' resolutions and meetings.

[sections 2, 86-88, 102-104, 148, Schedule 2]

6.5 Voting rights

Generally, each shareholder has 1 vote when voting is done by voice or on a show of hands. But if voting is done by poll, each shareholder has 1 vote for each share held. There is no provision for postal votes.

Different rights to vote at meetings of shareholders may attach to different classes of shares.

[Second Schedule, clause 5]

6.6 Issue of extra shares

Unless the constitution provides differently, new shares must be issued to existing shareholders in the same proportion as they already hold shares.

[section 45]

6.7 Buying and selling shares

A shareholder may sell their shares. It is common for small companies to impose some restrictions on transferability or to give directors a discretion to refuse to register a transfer of shares.

There are special provisions for share dealings by directors (see 5.6)

[sections 40, 65-67]

Company decisions

7.1 Decisions by a company

Decisions of a company are normally collective decisions. They are made at a meeting either of members or of directors of the company. They are recorded in minutes of the meeting.

The powers of the company are divided between the directors (acting as a board of directors) and the shareholders (in general meeting). The two areas do not overlap.

[section 105, 109, Second Schedule]

7.2 Some decisions made by directors

The Act provides that the business affairs of the company must be managed by or under the supervision of the board of directors. They have all the power necessary for this purpose (except for 'major transactions' (see 7.4). Decisions they make include:

- * business and trading decisions
- * financial decisions – borrowing, lending, financing
- * employment of staff

[section 109]

7.3 Some decisions made by members

Having appointed directors to do so, shareholders themselves cannot interfere in the management of the company. Their decisions include:

- * appointment (and removal) of directors
- * approval of annual accounts, reports and selection of auditor
- * payment of directors
- * changes to the constitution
- * major transactions (see 7.4)

[section 109]

7.4 Major transactions

Some business decisions are so important they must be made by the members in general meeting, and must be approved by special resolution (75%) Major transactions are:

- * acquiring assets with a value of more than half of the company's assets;
- * disposing of assets with a value of more than half of the company's assets;
- * acquiring rights or obligations with a value of more than half of the company's assets.

[section 110]

7.5 Other ways a company may make decisions

Neither the chairman nor any director nor any other person may make decisions on behalf of the company unless authorised by a proper meeting. But a meeting may:

- * appoint an agent to act for the company. A director may be appointed agent.
- * delegate some of its powers (if authorised by its constitution).

[sections 19, 156, Schedule 1]

7.6 Signing company documents

A company may have a common seal. This is equivalent to the company's signature and may be used on important company documents; it must be used on some formal documents. If the seal is used, it is normally countersigned:

- * by two or more directors;
- * if there is a secretary, by the secretary and at least one director; or
- * if there is only one director and no secretary, by the director, whose signature should be witnessed

If the company does not have a seal, documents (other than formal deeds) may be signed in the same way.

Documents of lesser importance may be entered into on behalf of the company by any person acting with the express or implied authority of the company.

[sections 19, 155]

Funding the company's operations

8.1 Finance

The shareholders may fund the company's operations by lending money to the company or by taking up other shares in the company.

Unless it is raising funds from its own employees or shareholders, a company must not engage in any fundraising activity that would breach the *Securities Act 1997*.

The company may also borrow money from banks and other financial organisations.

[section 17]

8.2 Registration of Charges

Anyone who has lent money, or provided credit, to the company may ask for a charge over the company's assets to secure the performance by the company of its obligations.

Certain charges must be registered with the Registrar and the company must keep a Register of Charges.

[sections 2, 222]

8.3 Trading while insolvent

Directors will be personally liable if they allow the company to trade while it is insolvent (see 9.5)

[section 348]

Returns to shareholders

9.1 Returns to shareholders

The company can give returns to shareholders in a number of ways, but only if:

- * it complies with its constitution (if any), the Act and all other relevant laws, and
- * the company continues to meet the solvency tests. (see 9.5).

If a company pays out money in a way that results in the company being unable to pass the solvency tests (see 9.5), its directors may be liable:

- * to pay compensation; and
- * for criminal and civil penalties,

and the distributions may be recovered from the shareholders.

[sections 50, 51, 54]

9.2 Dividends

Dividends are payments to shareholders out of the company's after-tax profits. The directors decide whether the company should pay a dividend, and the amount. The solvency tests (see 9.5) must be satisfied.

[section 50, 51]

9.3 Distribution of surplus assets on winding up

If a company is wound up and there are any assets left over after all the company's debts have been paid, the surplus is distributed to shareholders in accordance with the rights attaching to their shares.

9.4 Buy-back of shares

A company can buy back shares from shareholders, but only in defined circumstances. It can redeem shares and give financial assistance to acquire shares in the company, but again in special circumstances and subject to the solvency tests (see 9.5)

[section 56, 57, 60, 63, 91-93]

9.5 The solvency tests

This is very important because there are two tests of solvency, and both must be satisfied:

- * 'trading solvency' – the company must be able to pay its debts as they fall due in the ordinary course of business; and
- * 'balance sheet solvency' – the value of the company's assets must be greater than the value of its liabilities, including contingent liabilities.

Before certain transactions, the directors are required to sign a statement that the company satisfies the solvency tests.

[section 4]

Annual financial reports and audit

10.1 Financial records

Under the Act, all companies must keep sufficient financial records to

- * record and explain their transactions, and
- * enable the financial position to be determined at any time, and
- * enable directors to ensure financial statements comply with the Act, and
- * be capable of being easily and properly audited.

'Financial record' means some kind of systematic record of the company's financial transactions—not merely a collection of receipts, invoices, bank statements and cheque butts. Financial records may be kept on computer.
[section 188]

10.2 Preparing annual financial statements

In addition to keeping the records, the company must prepare annual financial statements (an annual profit and loss statement, a balance sheet and a statement of cash flows).

The statements must comply with standards set by the Accounting Standards Board, and additional information must be provided if necessary so that they give a "true and fair view" of the company's affairs

[sections 177, 179, 180]

10.3 Audit

Unless exempted (see 10.4) all companies must appoint an auditor. The auditor must prepare a report for the members.

[section 190]

10.4 Exempt companies

Some smaller companies have reduced obligations. They are called "exempt companies" (all others are called 'reporting entities'). They are companies that, at all times during the year:

- * have assets less than K5 million, less than 25 shareholders, and less than 100 employees; or

- * have 1 or 2 of the above but all shareholders have agreed not to appoint an auditor;

and have not invited money from the public by prospectus.

These companies are exempt from:

- * appointing an auditor;

- * preparing cash flow statements (although they may wish to do so for management purposes)

- * complying with some other accounting standards,

- * preparing an annual report if every shareholder has agreed in writing, and

- * lodging accounts with the Registrar

[sections 171, 177, 190, 215]

10.5 Annual report; annual return

The directors must prepare and give to all shareholders an annual report (about the company's operations, dividends paid or recommended, etc.). It must include a copy of the financial statements and auditor's report (if any).

An annual return, in the appropriate form, must be given to the Registrar.

If not done, every director is liable for a penalty of up to K10,000.

[sections 183, 209-212, 214, 215, Sixth Schedule]

Disagreements within the company

11.1 Resolving disagreements

Dissatisfied shareholders have remedies which fall into these categories:

- * remedies outside courts;

- * remedies which involve going to court; and

- * opportunities to leave the company

11.2 Remedies outside courts

Shareholders rights without court action:

- * to inspect certain records of the company

- * to require certain information to be provided by the company

* to require directors to call a general meeting (see 6.4)
[sections 102, 216, 219]

11.3 Court proceedings which may be taken

Include:

- * action against directors personally for breach of certain duties owed to them as shareholders, namely: to supervise the share register; to disclose interests and to disclose share dealings (section 147)
- * action against directors personally for breach of duties owed to the company (sections 112 – 116)
- * when acts or conduct of the company is oppressive, unfairly prejudicial or unfairly discriminatory (section 152)
- * for other remedies including injunction (section 142), compliance orders (sections 142, 148, 150) or derivative action (sections 143-146).

11.4 Leaving the company

A shareholder may:

- * sell his shares to a buyer; or
 - * require the company to purchase his shares if certain conditions apply.
- [sections 40, 91-96]

Companies in financial trouble

12.1 Receivers

A creditor who has a charge or security over a company asset may, or the Court may, appoint a receiver to protect the interests of that creditor. Generally this would occur if the company is in financial difficulty. A receiver may be appointed, for example, because an amount owed to a secured creditor is overdue.
[Part XVII]

12.3 Winding up and distribution

A company may be wound up by order of a Court, or voluntarily if the shareholders of the company decide to do so.

A liquidator is appointed to achieve the winding-up:

- * when a Court orders a company to be wound up, for example when it cannot pay its debts; or
- * the shareholders of a company pass a resolution to wind up the company.

[section 291, 335, 337]

12.4 Liquidators

A liquidator is appointed to administer the winding up of a company. The liquidator's main functions are:

- * to take possession of the company's assets; and
- * to determine debts owed by the company and pay the company's creditors; and
- * to distribute to shareholders any assets of the company left over after paying creditors (any distribution to shareholders is made according to the rights attaching to their shares); and
- * finally, to have the company deregistered.

[Part XVIII]

12.5 Cancellation of registration

If a company has ceased trading or has been wound up, it remains on the register until the Registrar cancels the company's registration. Once a company is deregistered, it ceases to exist. [sections 16, 365, 366, Form 45]