

VIRGIN ISLANDS

NO. 16 OF 2004

THE BVI BUSINESS COMPANIES ACT, 2004

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No. 16 of 2004

**BVI Business Companies
Act 2004**

Virgin Islands

I Assent

**THOMAS MACAN
Governor
24th December, 2004**

VIRGIN ISLANDS

NO. 16 of 2004

An Act to provide for the incorporation, management and operation of different types of companies, for the relationships between companies and their directors and members and to provide for connected and consequential matters.

[Gazetted 29th December, 2004]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I

PRELIMINARY PROVISIONS

Short title and
commencement.

- 1.** (1) This Act may be cited as the BVI Business Companies Act, 2004.
- (2) The provisions of this Act come into operation on 1st January 2005.

Interpretation.

- 2.** In this Act, unless the context otherwise requires,
 - “approved form” means a form approved by the Commission in accordance with section **241**;
 - “articles” means the original, amended or restated articles of association of a company;

“asset” includes money, goods, things in action, land and every description of property wherever situated and obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

“bearer share” means a share represented by a certificate which states that the bearer of the certificate is the owner of the share and includes a share warrant to bearer;

“board”, in relation to a company, means

- (a) the board of directors, committee of management, council or other governing authority of the company, or
- (b) if the company has only one director, that director;

“class”, in relation to shares, means a class of shares each of which has the rights, privileges, limitations and conditions specified for that class in the memorandum;

“Commission” means the Financial Services Commission established under the Financial Services Commission Act, 2001;

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“company” has the meaning specified in section 3(1);

“company number” means the number allotted to the company by the Registrar

- (a) on its incorporation under section 7(1),
- (b) on its continuation under section 182, or
- (c) on its re-registration under Schedule 2;

Schedule 2

“continued” means continued under section 182;

“Court” means the High Court;

“custodian” has the meaning specified in section 67;

“director”, in relation to a company, a foreign company and any other body corporate, includes a person occupying or acting in the position of director by whatever name called;

“distribution” has the meaning specified in section 56;

“document” means a document in any form and includes

- (a) any writing or printing on any material,
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium or device, including discs and tapes,
- (c) books and drawings, and
- (d) a photograph, film, tape, negative, facsimile or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced,

and without limiting the generality of the foregoing, includes any court application, order and other legal process and any notice;

“dollar” or “\$” means the lawful currency for the time being of the United States of America;

“file”, in relation to a document, means to file the document with the Registrar;

“foreign company” has the meaning specified in section 3(2);

“former Act” means the Companies Act or the International Business Companies Act;

“former Act company” means a company incorporated, continued or registered under a former Act, but excludes a company incorporated outside the Virgin Islands registered under Part IX of the Companies Act;

“guarantee member” has the meaning specified in section 78;

“Insolvency Act liquidator” means a liquidator appointed under the Insolvency Act;

“limited company” means a company of a type specified in section 5(a), (b) or (c);

“member”, in relation to a company, means a person who is

- (a) a shareholder,

Cap. 285
Cap. 291

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(b) a guarantee member, or

(c) a member of an unlimited company who is not a shareholder;

“memorandum” means the original, amended or restated memorandum of association of a company;

“Official Receiver” means the Official Receiver appointed under section 488 of the Insolvency Act;

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“prescribed” means prescribed by the Regulations;

“register”, in relation to an act done by the Registrar, means to register in the Register of Companies, the Register of Foreign Companies or the Register of Charges, as appropriate;

“Register of Charges” means the Register of Charges maintained by the Registrar in accordance with section **230(1)(c)**;

“Register of Companies” means the Register of Companies maintained by the Registrar in accordance with section **230(1)(a)**;

“Register of Foreign Companies” means the Register of Foreign Companies maintained by the Registrar in accordance with section **230(1)(b)**;

“registered agent” means

(a) in relation to a company, the person who is the company’s registered agent in accordance with section **91(2)**, or

(b) in relation to a foreign company, the person who is the company’s registered agent in accordance with section **189(1)**;

“registered office” has the meaning specified in section **90(2)**;

“Registrar” means the Registrar of Corporate Affairs appointed under section **229**, and “Deputy Registrar” and “Assistant Registrar” shall be construed accordingly;

“regulated person” has the meaning specified in the Insolvency Act;

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“Regulations” means the Companies Regulations made under section **240**;

“resolution”,

- (a) in relation to the members of a company, has the meaning specified in section **81**; and
- (b) in relation to the directors of a company, has the meaning specified in section **129**;

“restated articles” means a single document that incorporates the articles together with all amendments made to it;

“restated memorandum” means a single document that incorporates the memorandum together with all amendments made to it;

“restricted purposes company” means a company limited by shares that is registered on its incorporation as having restricted purposes in accordance with section **8(1)**;

“securities” means shares and debt obligations of every kind, and includes options, warrants and rights to acquire shares or debt obligations;

“segregated portfolio company” means a company incorporated or registered as a segregated portfolio company under Part VII;

“series”, in relation to shares, means a division of a class of shares;

“shareholder” has the meaning specified in section **78**;

“solvency test” has the meaning specified in section **56**;

“treasury share” means a share of a company that was previously issued but was repurchased, redeemed or otherwise acquired by the company and not cancelled;

“unlimited company” means a company of a type specified in section **5(d)** or **(e)**; and

“voluntary liquidator” means a liquidator appointed under section **199**, but does not include an Insolvency Act liquidator.

Meaning of
“company” and
“foreign
company”.

- 3.** (1) Unless this Act expressly provides otherwise, “company” means
 - (a) a BVI business company incorporated under section **7**,

- (b) a company continued as a BVI business company under section 182, or
- (c) a former Act company re-registered as a BVI business company under Schedule 2,

Schedule 2

but excludes a dissolved company and a company that has continued as a company incorporated under the laws of a jurisdiction outside the Virgin Islands in accordance with section 184.

(2) In this Act, “foreign company” means a body corporate incorporated, registered or formed outside the Virgin Islands but excludes a company within the meaning of subsection (1).

(3) The Regulations may prescribe types of bodies, associations and entities that, although not a body corporate, are to be treated as a body corporate for the purposes of subsection (2).

4. (1) A company (the first company) is a subsidiary of another company (the second company), if

Meaning of “subsidiary” and “holding company”.

- (a) the second company
 - (i) holds a majority of the voting rights in the first company,
 - (ii) is a member of the first company and has the right to appoint or remove a majority of its board, or
 - (iii) is a member of the first company and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in the first company; or
- (b) the first company is a subsidiary of a company which is itself a subsidiary of the second company.

(2) A company is the holding company of another company if that other company is its subsidiary.

(3) For the purposes of subsections (1) and (2), “company” includes a foreign company and any other body corporate.

PART II
INCORPORATION, CAPACITY AND POWERS

Division 1 - Incorporation

Types of
company.

- 5.** A company may be incorporated or continued under this Act as
- (a) a company limited by shares;
 - (b) a company limited by guarantee that is not authorised to issue shares;
 - (c) a company limited by guarantee that is authorised to issue shares;
 - (d) an unlimited company that is not authorised to issue shares; or
 - (e) an unlimited company that is authorised to issue shares.

Application to
incorporate a
company.

- 6.** (1) Subject to subsection (2), application may be made to the Registrar for the incorporation of a company by filing
- (a) a memorandum complying with section **9** that is signed by the proposed registered agent, as incorporator;
 - (b) articles that are signed by the proposed registered agent, as incorporator;
 - (c) a document in the approved form signed by the proposed registered agent signifying his consent to act as registered agent;
 - (d) if the company is to be incorporated as a segregated portfolio company, the written approval of the Commission given under section **137(1)**; and
 - (e) such other documents as may be prescribed.

(2) An application for the incorporation of a company may be filed only by the proposed registered agent and the Registrar shall not accept an application for the incorporation of a company filed by any other person.

(3) For the purposes of this section, the “proposed registered agent” means the person named in the memorandum as the first registered agent of the company.

7. (1) If he is satisfied that the requirements of this Act in respect of incorporation have been complied with, the Registrar shall, upon receipt of the documents filed under section 6(1),

Incorporation of a company.

- (a) register the documents;
- (b) allot a unique number to the company; and
- (c) issue a certificate of incorporation to the company in the approved form.

(2) A certificate of incorporation issued under subsection (1) is conclusive evidence that

- (a) all the requirements of this Act as to incorporation have been complied with; and
- (b) the company is incorporated on the date specified in the certificate of incorporation.

8. (1) If the memorandum of a company limited by shares, as filed under section 6, contains the statements specified in section 10(1) and (2),

Registration of company as restricted purposes company.

- (a) the company shall be registered on incorporation as having restricted purposes; and
- (b) the certificate of incorporation shall state that the company is a restricted purposes company.

(2) A company that is not registered as a restricted purposes company on its incorporation shall not subsequently be registered as a restricted purposes company.

Division 2 – Memorandum and Articles

9. (1) The memorandum of a company shall state

Memorandum.

- (a) the name of the company;
- (b) whether the company is
 - (i) a company limited by shares,
 - (ii) a company limited by guarantee that is not authorised to issue shares,

- (iii) a company limited by guarantee that is authorised to issue shares,
 - (iv) an unlimited company that is not authorised to issue shares, or
 - (v) an unlimited company that is authorised to issue shares;
- (c) the address of the first registered office of the company;
 - (d) the name of the first registered agent of the company;
 - (e) in the case of a company limited by shares or otherwise authorised to issue shares
 - (i) the maximum number of shares that the company is authorised to issue,
 - (ii) the classes of shares that the company is authorised to issue and, if the company is authorised to issue two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares,
 - (f) in the case of a company limited by guarantee, whether or not it is authorised to issue shares, the amount which each guarantee member of the company is liable to contribute to the company's assets in the event that a voluntary liquidator or an Insolvency Act liquidator is appointed whilst he is a member; and
 - (g) in the case of a segregated portfolio company, that the company is a segregated portfolio company.

(2) In the case of a company limited by shares or otherwise authorised to issue shares, the memorandum shall also state,

- (a) if the company is prohibited by this or any other Act from issuing bearer shares, that the company is not authorised to
 - (i) issue bearer shares,
 - (ii) convert registered shares to bearer shares, or
 - (iii) exchange registered shares for bearer shares; or
- (b) in any other case, either that the company is, or is not, authorised to
 - (i) issue bearer shares,

(ii) convert registered shares to bearer shares, or

(iii) exchange registered shares for bearer shares.

(3) If a company is authorised to issue fractional shares, the memorandum shall contain a statement to that effect.

(4) The memorandum of every company shall contain a statement in the approved form specifying the limitations on the business that the company may carry on.

10. (1) The memorandum of a company limited by shares may state that the company is a restricted purposes company.

Additional matters to be stated in memorandum of restricted purposes company.

(2) The memorandum of a restricted purposes company shall state the purposes of the company.

(3) Nothing in this section prevents the memorandum or articles of a company that is not a restricted purposes company from limiting the capacity, rights, powers or privileges of the company.

11. (1) The memorandum and articles of a company are binding as between

Effect of memorandum and articles.

(a) the company and each member of the company; and

(b) each member of the company.

(2) The company, the board, each director and each member of a company has the rights, powers, duties and obligations set out in this Act except to the extent that they are negated or modified, as permitted by this Act, by the memorandum or the articles.

(3) The memorandum and articles of a company have no effect to the extent that they contravene or are inconsistent with this Act.

12. (1) Subject to subsection (2) and section 14, the members of a company may, by resolution, amend the memorandum or articles of the company.

Amendment of memorandum and articles.

(2) Subject to subsection (3), the memorandum of a company may include one or more of the following provisions:

(a) that specified provisions of the memorandum or articles may not be amended;

(b) that a resolution passed by a specified majority of members, greater

than 50%, is required to amend the memorandum or articles or specified provisions of the memorandum or articles; and

- (c) that the memorandum or articles, or specified provisions of the memorandum or articles, may be amended only if certain specified conditions are met.

(3) Subsection (2) does not apply to any provision in the memorandum of a company that is not a restricted purposes company that restricts the purposes of that company.

(4) Subject to subsection (5), the memorandum of a company may authorise the directors to amend the memorandum or articles of the company.

(5) Notwithstanding any provision in the memorandum or articles to the contrary, the directors of a company shall not have the power to amend the memorandum or articles

- (a) to restrict the rights or powers of the members to amend the memorandum or articles,
- (b) to change the percentage of members required to pass a resolution to amend the memorandum or articles, or
- (c) in circumstances where the memorandum or articles cannot be amended by the members,

and any resolution of the directors of a company is void and of no effect to the extent that it contravenes this subsection.

Filing of notice of amendment of memorandum or articles.

13. (1) Where a resolution is passed to amend the memorandum or articles of a company, the company shall file for registration

- (a) a notice of amendment in the approved form; or
- (b) a restated memorandum or articles incorporating the amendment made.

(2) An amendment to the memorandum or articles has effect from the date that the notice of amendment, or restated memorandum or articles incorporating the amendment, is registered by the Registrar or from such other date as may be ordered by the Court under subsection (5).

(3) A company, a member or director of a company or any interested person may apply to the Court for an order that an amendment to the memorandum or

articles should have effect from a date no earlier than the date of the resolution to amend the memorandum or articles.

(4) An application under subsection (3) may be made

(a) on, or at any time after, the date of the resolution to amend the memorandum or articles; and

(b) before or after the notice of amendment, or the restated memorandum or articles, has been filed for registration.

(5) The Court may make an order on an application made under subsection (3) where it is satisfied that it would be just to do so but if, at the time of the order, the notice of amendment, or restated memorandum or articles, has not been filed, the Court shall order that the notice of amendment, or restated memorandum or articles, must be filed within a period not exceeding five days after the date of the order.

14. (1) A restricted purposes company shall not amend its memorandum to delete or modify the statement specified in section 10(1) and any resolution of the members or directors of a company is void and of no effect to the extent that it contravenes this subsection.

Amendment of memorandum with respect to restricted purposes.

(2) Subject to section 12(2), a restricted purposes company may amend its memorandum to modify its purposes.

(3) A company that is not a restricted purposes company shall not amend its memorandum to state that it is a restricted purposes company and any resolution of the members or directors of a company is void and of no effect to the extent that it contravenes this subsection.

15. (1) A company may, at any time, file a restated memorandum or articles.

Restated memorandum or articles.

(2) A restated memorandum or articles filed under subsection (1) shall incorporate only such amendments that have been registered under section 13.

(3) Where a company files a restated memorandum or articles under subsection (1), the restated memorandum or articles has effect as the memorandum or articles of the company with effect from the date that it is registered by the Registrar.

(4) The Registrar is not required to verify that a restated memorandum or articles filed under this section incorporates all the amendments, or only those amendments, that have been registered under section 13.

Provision of copies of memorandum and articles to members.

16. (1) A copy of the memorandum and a copy of the articles shall be sent to any member who requests a copy on payment by the member of such amount as the directors may determine to be reasonably necessary to defray the costs of preparing and furnishing them.

(2) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$1,000.

Division 3 – Company Names

Required part of company name.

17. (1) Subject to subsections (3), (4), (5) and (6), the name of a limited company, shall end with

- (a) the word “Limited”, “Corporation” or “Incorporated”;
- (b) the words “Societe Anonyme” or “Sociedad Anonima”;
- (c) the abbreviation “Ltd”, “Corp”, “Inc” or “S.A.”; or
- (d) such other word or words, or abbreviations thereof, as may be specified in the Regulations.

(2) The name of an unlimited company shall end with the word “Unlimited” or the abbreviation “Unltd”.

(3) The name of a restricted purposes company shall end with the phrase “(SPV) Limited” or the phrase “(SPV) Ltd”.

(4) The name of a segregated portfolio company shall end with one of the following phrases:

- (a) “Segregated Portfolio Company Limited”;
- (b) “Segregated Portfolio Company Ltd”
- (c) “SPC Limited”;
- (d) “SPC Ltd”; or
- (e) in the case of a segregated portfolio company that is a restricted purposes company, one of the phrases specified in paragraphs (a) to (d) with “(SPV)” inserted immediately before that phrase or immediately before “Limited” or “Ltd”.

(5) Where the abbreviation “Ltd”, “Corp”, “Inc” or “Unltd” is used, a full stop may be inserted at the end of the abbreviation.

(6) A company may use, and be legally designated by, either the full or the abbreviated form of any word or words required as part of its name under this section.

18. (1) No company shall be registered, whether on incorporation, continuation, merger or consolidation under a name

Restrictions on company names.

- (a) the use of which would contravene another enactment or the Regulations;
- (b) that, subject to section **24**,
 - (i) is identical to the name under which a company is or has been registered under this Act or a former Act, or
 - (b) is so similar to the name under which a company is or has been registered under this Act or a former Act, that the use of the name would, in the opinion of the Registrar, be likely to confuse or mislead;
- (c) that is identical to a name that has been reserved under section **25** or that is so similar to a name that has been reserved under section **25** that the use of both names by different companies would, in the opinion of the Registrar, be likely to confuse or mislead;
- (d) that contains a restricted word or phrase, unless the Commission has given its prior written consent to the use of the word or phrase; or
- (e) that, in the opinion of the Registrar, is offensive or, for any other reason, objectionable.

(2) For the purposes of subsection (1)(d), the Commission may, by notice published in the Gazette, specify words or phrases as restricted words or phrases.

19. The name of a company may comprise the expression “BVI Company Number ” followed by its company number in figures and the ending required by section **17** that is appropriate for the company.

Company number as company name.

20. (1) Where the name of a company is in the form permitted under section **19**, the company may have an additional foreign character name approved by the Registrar.

Foreign character name.

(2) The Regulations may provide for the approval, use and change of foreign character names.

Company may change name.

21. (1) Subject to its memorandum and articles, a company may make application to the Registrar in the approved form to change its name or its foreign character name.

(2) If he is satisfied that the proposed new name or foreign character name of the company complies with section **17** and, if appropriate, sections **19** and **20** and is a name under which the company could be registered under section **18**, the Registrar shall, on receipt of an application under subsection (1),

(a) register the company's change of name; and

(b) issue a certificate of change of name to the company.

Registrar may direct change of name.

22. (1) If the Registrar considers, on reasonable grounds, that the name of a company does not comply with sections **17**, **18**, **19** or **20**, he may by written notice direct the company to make application to change its name on or before a date specified in the notice, which shall be not less than 21 days after the date of the notice.

(2) If a company that has received a notice under subsection (1) fails to file an application to change its name to a name acceptable to the Registrar on or before the date specified in the notice, the Registrar may revoke the name of the company and assign it a new name acceptable to the Registrar.

(3) Where the Registrar assigns a new name to a company under subsection (2), he shall

(a) register the company's change of name;

(b) issue a certificate of change of name to the company; and

(c) advertise the change of name in the *Gazette*.

Effect of change of name.

23. (1) A change of the name of a company under section **21** or **22**

(a) takes effect from the date of the certificate of change of name issued by the Registrar; and

(b) does not affect any rights or obligations of the company, or any legal proceedings by or against a company, and any legal proceedings that have been commenced against the company under its former name may be continued against it under its new name.

(2) Where the name of a company is changed section 21 or 22, the amendment of the company's memorandum to state the new name has effect on the date of the change of name certificate.

24. The Regulations may provide for the re-use of names previously used by companies that are or have been registered under this Act or a former Act but which have

Re-use of company names.

- (a) changed their name;
- (b) been struck off the Register; or
- (c) been dissolved.

25. (1) The Registrar may, upon a request made by a registered agent in the approved form, reserve for 90 days a name for future adoption by a company under this Act.

Reservation of name.

(2) The Registrar may refuse to reserve a name if he is not satisfied that the name complies with this Division in respect of the company or proposed company.

26. (1) Subject to section 17(6), a company shall ensure that its full name and, if it has one, its foreign character name, is clearly stated in

Use of company name.

- (a) every written communication sent by, or on behalf of, the company; and
- (b) every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company.

(2) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$1,000.

Division 4 – Capacity and Powers

27. A company is a legal entity in its own right separate from its members and continues in existence until it is dissolved.

Separate legal personality.

28. (1) Subject to this Act, any other enactment and its memorandum and articles, a company has, irrespective of corporate benefit,

Capacity and powers.

- (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.

(2) Without limiting subsection (1), subject to its memorandum and articles, the powers of a company include the power to do the following:

- (a) unless it is a company limited by guarantee or an unlimited company without shares
 - (i) issue and cancel shares and hold treasury shares,
 - (ii) grant options over unissued shares in the company and treasury shares,
 - (iii) issue securities that are convertible into shares, and
 - (iv) give financial assistance to any person in connection with the acquisition of its own shares;
- (b) issue debentures;
- (c) guarantee a liability or obligation of any person and secure any of its obligations by mortgage, pledge or other charge, of any of its assets for that purpose; and
- (d) protect the assets of the company for the benefit of the company, its creditors and its members and, at the discretion of the directors, for any person having a direct or indirect interest in the company.

(3) For purposes of subsection (2)(d), notwithstanding any other provision of this Act, any other enactment or any rule of law to the contrary, the directors may cause the company to transfer any of its assets in trust to one or more trustees, to any company, association, partnership, foundation or similar entity and, with respect to the transfer, the directors may provide that the company, its creditors, its members or any person having a direct or indirect interest in the company, or any of them, may be the beneficiaries, creditors, members, certificate holders, partners or holders of any other similar interest.

(4) The rights or interests of any existing or subsequent creditor of the company in any assets of the company are not affected by any transfer under subsection (3), and those rights or interests may be pleaded against any transferee in any such transfer.

Validity of acts
of company.

29. No act of a company and no transfer of an asset by or to a company is invalid by reason only of the fact that the company did not have the capacity, right or power to perform the act or to transfer or receive the asset.

30. Subject to section **108**, no director, agent or voluntary liquidator of a company is liable for any debt, obligation or default of the company, unless specifically provided in this Act or in any other enactment, and except in so far as he may be liable for his own conduct or acts.

Personal liability.

31. (1) A company or a guarantor of an obligation of a company may not assert against a person dealing with the company or with a person who has acquired assets, rights or interests from the company that

Dealings between company and other persons.

- (a) this Act or the memorandum or articles of the company has not been complied with,
- (b) a person named as a director in the company's register of directors
 - (i) is not a director of the company,
 - (ii) has not been duly appointed as a director of the company, or
 - (iii) does not have authority to exercise a power which a director of a company carrying on business of the kind carried on by the company customarily has authority to exercise,
- (c) a person held out by the company as a director, employee or agent of the company
 - (i) has not been duly appointed, or
 - (ii) does not have authority to exercise a power which a director, employee or agent of a company carrying on business of the kind carried on by the company customarily has authority to exercise,
- (d) a person held out by the company as a director, employee or agent of the company with authority to exercise a power which a director, employee or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power, or
- (e) a document issued on behalf of a company by a director, employee or agent of the company with actual or usual authority to issue the document is not valid or not genuine,

unless the person has, or ought to have, by virtue of his relationship to the company, knowledge of the matters referred to in any of paragraphs (a) to (e).

(2) Subsection (1) applies even though a person of the kind specified in paragraphs (b) to (e) of that subsection acts fraudulently or forges a document that appears to have been signed on behalf of the company, unless the person dealing with the company or with a person who has acquired assets, rights or interests from the company has actual knowledge of the fraud or forgery.

Constructive notice.

32. (1) A person is not deemed to have notice or knowledge of any document relating to a company, including the memorandum and articles, or of the provisions or contents of any such document, by reason only of the fact that a document

(a) is available to the public from the Registrar; or

(b) is available for inspection at the registered office of the company.

(2) Subsection (1) does not apply in relation to a document filed under Part VIII.

PART III

SHARES

Division 1 - General

Legal nature of shares.

33. A share in a company is personal property.

Rights attaching to shares and classes of shares.

34. (1) Subject to subsection (2), a share in a company confers on the holder

(a) the right to one vote at a meeting of the members of the company or on any resolution of the members of the company;

(b) the right to an equal share in any dividend paid in accordance with this Act; and

(c) the right to an equal share in the distribution of the surplus assets of the company.

(2) Where expressly authorised by its memorandum in accordance with section 9(1)(e), a company

(a) may issue more than one class of shares; and

(b) may issue shares subject to terms that negate, modify or add to the rights specified in subsection (1).

35. Subject to its memorandum and articles, a company may issue a class of shares in one or more series. Series of shares.

36. (1) Without limiting section **34(2)(b)**, shares in a company may Types of shares.

- (a) be redeemable;
- (b) confer no rights, or preferential rights, to distributions of capital or income;
- (c) confer special, limited or conditional rights, including voting rights;
- (d) confer no voting rights.

(2) Subject to its memorandum and articles, a company may issue bonus shares, partly paid shares and nil paid shares.

37. (1) Subject to the memorandum and articles of a company, Par value and no par value shares.

- (a) a share may be issued with or without a par value; and
- (b) a share with a par value may be issued in any currency.

(2) The par value of a par value share may be a fraction of the smallest denomination of the currency in which it is issued.

38. (1) Unless expressly authorised to do so by its memorandum in accordance with section **9(2)(b)**, a company has no power to, and shall not, Bearer shares.

- (a) issue a bearer share;
- (b) convert a registered share to a bearer share; or
- (c) exchange a registered share for a bearer share.

(2) Notwithstanding any provision to the contrary in its memorandum or articles, a company may, at any time, convert a bearer share to a registered share or exchange a bearer share for a registered share.

(3) A segregated portfolio company has no power to, and shall not,

- (a) issue a bearer share;
- (b) convert a registered share to a bearer share; or
- (c) exchange a registered share for a bearer share.

(4) A company that contravenes subsection (1) or a segregated portfolio company that contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of \$10,000.

Fractional shares.

39. (1) Where permitted by its memorandum in accordance with section 9(3), a company may issue fractional shares.

(2) A fractional share has the corresponding fractional rights, obligations and liabilities of a whole share of the same class.

Change in number of shares company authorised to issue.

40. (1) Where the memorandum of a company is amended to change the maximum number of shares that the company is authorised to issue, the company shall, together with the notice of amendment of its memorandum or the restated memorandum filed under section 13(1), file a notice in the approved form.

(2) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$1,000.

Register of members.

41. (1) A company shall keep a register of members containing, as appropriate for the company,

- (a) the names and addresses of the persons who hold registered shares in the company;
- (b) the number of each class and series of registered shares held by each shareholder;
- (c) in the case of a shareholder who holds bearer shares, the total number of each class and series of bearer shares held;
- (d) with respect to each bearer share certificate issued by the company,
 - (i) the identifying number of the certificate,
 - (ii) the number of each class or series of bearer shares specified in the certificate,
 - (iii) the date of issue of the certificate, and
 - (iv) the name and address of the custodian of the certificate;
- (e) the names and addresses of the persons who are guarantee members of the company;
- (f) the names and addresses of the persons who are unlimited members;

(g) the date on which the name of each member was entered in the register of members; and

(h) the date on which any person ceased to be a member.

(2) The register of members may be in any such form as the directors may approve but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.

(3) The entry in the register of members of a person as the holder of a share is *prima facie* evidence of the title of the member to the share.

(4) The Regulations may provide for the circumstances in which information relating to persons who are no longer members of a company, and to bearer shares that have been cancelled, may be deleted from the register of members.

(5) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$1,000.

42. (1) The entry of the name of a person in the register of members as a holder of a share in a company is *prima facie* evidence that legal title in the share vests in that person.

Register of members as evidence of legal title.

(2) A company may treat the holder of a registered share as the only person entitled to

(a) exercise any voting rights attaching to the share;

(b) receive notices;

(c) receive a distribution in respect of the share; and

(d) exercise other rights and powers attaching to the share.

43. (1) If

(a) information that is required to be entered in the register of members under section **41** is omitted from the register or inaccurately entered in the register, or

(b) there is unreasonable delay in entering the information in the register,

Rectification of register of members.

a member of the company, or any person who is aggrieved by the omission, inaccuracy or delay, may apply to the Court for an order that the register be

rectified, and the Court may either grant or refuse the application, with or without costs to be paid by the applicant, or order the rectification of the register, and may direct the company to pay all costs of the application and any damages the applicant may have sustained.

(2) The Court may, in any proceedings under subsection (1), determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the register of members, whether the question arises between

- (a) two or more members or alleged members, or
- (b) between members or alleged members and the company,

and generally the Court may, in the proceedings, determine any question that may be necessary or expedient to be determined for the rectification of the register of members.

Share
certificates.

44. (1) A company shall state in its articles the circumstances in which share certificates shall be issued.

- (2) If a company issues share certificates, the certificates
 - (a) shall be signed by at least one director of the company; or
 - (b) shall be under the common seal of the company, with or without the signature of any director of the company;

and the articles may provide for the signatures or common seal to be facsimiles.

Division 2 - Issue of Shares

Issue of shares.

45. Subject to this Act and to the memorandum and articles, shares in a company may be issued, and options to acquire shares in a company granted, at such times, to such persons, for such consideration and on such terms as the directors may determine.

Pre-emptive
rights.

46. (1) Subsections (2) to (4) apply to a company where the memorandum or articles of the company expressly provide that this section shall apply to the company, but not otherwise.

(2) Before issuing shares that rank or would rank as to voting or distribution rights, or both, equally with or prior to shares already issued by the company, the directors shall offer the shares to existing shareholders in such a manner that, if the

offer was accepted by those shareholders, the existing voting or distribution rights, or both, of those shareholders would be maintained.

(3) Shares offered to existing shareholders under subsection (2) shall be offered at such price and on such terms as the shares are to be offered to others.

(4) An offer made under subsection (2) must remain open for acceptance for a reasonable period of time.

(5) Nothing in this section prevents the memorandum or articles of a company from modifying the provisions of this section or from making different provisions with respect to pre-emptive rights.

47. (1) Subject to subsection (2), a share may be issued for consideration in any form, including money, a promissory note, real property, personal property (including goodwill and know-how) or a contract for future services.

Consideration for shares.

(2) The consideration for a share with par value shall not be less than the par value of the share.

(3) If a share is issued in contravention of subsection (2), the person to whom the share is issued is liable to pay to the company an amount equal to the difference between the issue price and the par value.

48. Before issuing shares for a consideration other than money, the directors shall pass a resolution stating

Shares issued for consideration other than money.

- (a) the amount to be credited for the issue of the shares;
- (b) their determination of the reasonable present cash value of the non-money consideration for the issue; and
- (c) that, in their opinion, the present cash value of the non-money consideration for the issue is not less than the amount to be credited for the issue of the shares.

49. The issue by a company of a share that

Consent to issue of shares.

- (a) increases a liability of a person to the company, or
- (b) imposes a new liability on a person to the company,

is void if that person, or an authorised agent of that person, does not agree in writing to becoming the holder of the share.

Time of issue.

50. A share is deemed to be issued when the name of the shareholder is entered in the register of members.

Forfeiture of shares.

51. (1) The memorandum or articles of a company, or the terms on which shares in a company are issued, may contain provisions for the forfeiture of shares which are not fully paid for on issue.

(2) Any provision in the memorandum or articles, or the terms on which shares in a company are issued, providing for the forfeiture of shares shall contain a requirement that a written notice of call specifying a date for payment to be made shall be served on the member who defaults in making payment in respect of the share.

(3) The written notice of call referred to in subsection (2) shall name a further date not earlier than the expiration of 14 days from the date of service of the notice on or before which the payment required by the notice is to be made and shall contain a statement that in the event of non-payment at or before the time named in the notice the shares, or any of them, in respect of which payment is not made will be liable to be forfeited.

(4) Where a written notice of call has been issued under this section and the requirements of the notice have not been complied with, the directors may, at any time before tender of payment, forfeit and cancel the shares to which the notice relates.

(5) The company is under no obligation to refund any moneys to the member whose shares have been cancelled pursuant to subsection (4) and that member shall be discharged from any further obligation to the company.

Division 3 - Transfer of Shares

Transferability of shares.

52. (1) Subject to any limitations or restrictions on the transfer of shares in the memorandum or articles, a share in a company is transferable.

(2) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of the transfer.

Transfer of shares by operation of law.

53. Shares in a company may pass by operation of law, notwithstanding anything to the contrary in the memorandum or articles of the company.

Method of transfer of registered share.

54. (1) Registered shares are transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee.

(2) The instrument of transfer shall also be signed by the transferee if registration as a holder of the share imposes a liability to the company on the transferee.

(3) The instrument of transfer of a registered share shall be sent to the company for registration.

(4) Subject to the memorandum or articles and to subsection (5), the company shall, on receipt of an instrument of transfer, enter the name of the transferee of the share in the register of members unless the directors resolve to refuse or delay the registration of the transfer for reasons that shall be specified in the resolution.

(5) The directors shall not pass a resolution refusing or delaying the registration of a transfer unless this Act or the memorandum or articles permit them to do so.

(6) Where the directors pass a resolution under subsection (4), the company shall, as soon as practicable, send the transferor and the transferee a notice of the refusal or delay in the approved form.

(7) Subject to the memorandum or articles of a company, the directors may refuse or delay the registration of a transfer of shares if the holder of those shares has failed to pay an amount due in respect of those shares.

(8) The transfer of a registered share is effective when the name of the transferee is entered on the register of members.

(9) If the directors of a company are satisfied that an instrument of transfer has been signed but that the instrument has been lost or destroyed, they may resolve

(a) to accept such evidence of the transfer of the shares as they consider appropriate; and

(b) that the transferee's name should be entered in the register of members, notwithstanding the absence of the instrument of transfer.

55. Subject to Division 5, a bearer share is transferred by delivery of a certificate relating to the share.

Transfer of
bearer share.

Division 4 - Distributions

56. For the purposes of this Division,

(a) a company satisfies the solvency test if

Meaning of
solvency test and
distribution.

- (i) the value of the company's assets exceeds its liabilities, and
- (ii) the company is able to pay its debts as they fall due; and

(b) "distribution" in relation to a distribution by a company to a member, means the direct or indirect transfer of an asset, other than the company's own shares, to or for the benefit of the member in relation to shares held by a shareholder, or the entitlements to distributions of a member who is not a shareholder, and whether by means of a purchase of an asset, the redemption or other acquisition of shares, a distribution of indebtedness or otherwise, and includes a dividend.

Distributions.

57. (1) Subject to this Part and to the memorandum and articles of the company, the directors of a company may, by resolution, authorise a distribution by the company at a time, and of an amount, and to any members it thinks fit if they are satisfied, on reasonable grounds, that the company will, immediately after the distribution, satisfy the solvency test.

(2) A resolution of directors passed under subsection (1) shall contain a statement that, in the opinion of the directors, the company will, immediately after the distribution, satisfy the solvency test.

(3) If, after a distribution is authorised and before it is made, the directors cease to be satisfied on reasonable grounds that the company will, immediately after the distribution is made, satisfy the solvency test, any distribution made by the company is deemed not to have been authorised.

Recovery of distribution made when company did not satisfy solvency test.

58. (1) A distribution made to a member at a time when the company did not, immediately after the distribution, satisfy the solvency test may be recovered by the company from the member unless

- (a) the member received the distribution in good faith and without knowledge of the company's failure to satisfy the solvency test;
- (b) the member has altered his position in reliance on the validity of the distribution; and
- (c) it would be unfair to require repayment in full or at all.

(2) If, by virtue of section 57(3), a distribution is deemed not to have been authorised, a director who

- (a) ceased, after authorisation but before the making of the distribution, to be satisfied on reasonable grounds for believing that the company would satisfy the solvency test immediately after the distribution is made; and
- (b) failed to take reasonable steps to prevent the distribution being made;

is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from members.

(3) If, in an action brought against a director or member under this section, the Court is satisfied that the company could, by making a distribution of a lesser amount, have satisfied the solvency test, the Court may

- (a) permit the member to retain; or
- (b) relieve the director from liability in respect of;

an amount equal to the value of any distribution that could properly have been made.

59. (1) Subject to section 57, a company may purchase, redeem or otherwise acquire its own shares in accordance with either

Company may acquire its own shares.

- (a) sections 60, 61 and 62; or
- (b) such other provisions for the purchase, redemption or acquisition of its own shares as may be specified in its memorandum or articles.

(2) Sections 60, 61 and 62 do not apply to a company to the extent that they are negated, modified or inconsistent with provisions for the purchase, redemption or acquisition of its own shares as may be specified in the company's memorandum or articles.

(3) Where a company may purchase, redeem or otherwise acquire its own shares otherwise than in accordance with sections 60,61 and 62, it may not purchase, redeem or otherwise acquire the shares without the consent of the member whose shares are to be purchased, redeemed or otherwise acquired, unless the company is permitted by the memorandum or articles to purchase, redeem or otherwise acquire the shares without that consent.

(4) Unless the shares are held as treasury shares in accordance with section **64**, any shares acquired by a company are deemed to be cancelled immediately on acquisition.

Process for acquisition of own shares.

60. (1) The directors of a company may make an offer to acquire shares issued by the company, if the offer is

- (a) an offer to all shareholders to acquire shares issued by the company that
 - (i) would, if accepted, leave the relative voting and distribution rights of the shareholders unaffected; and
 - (ii) affords each shareholder a reasonable opportunity to accept the offer; or
- (b) an offer to one or more shareholders to acquire shares
 - (i) to which all shareholders have consented in writing; or
 - (ii) that is permitted by the memorandum or articles and is made in accordance with section **61**.

(2) Where an offer is made in accordance with subsection (1)(a),

- (a) the offer may also permit the company to acquire additional shares from a shareholder to the extent that another shareholder does not accept the offer or accepts the offer only in part; and
- (b) if the number of additional shares exceeds the number of shares that the company is entitled to acquire, the number of additional shares shall be reduced rateably.

Offer to one or more shareholders.

61. (1) The directors of a company shall not make an offer to one or more shareholders under section **60(1)(b)** unless they have passed a resolution stating that, in their opinion,

- (a) the acquisition is to the benefit of the remaining shareholders; and
- (b) the terms of the offer and the consideration offered for the shares are fair and reasonable to the company and to the remaining shareholders.

(2) A resolution passed under subsection (1) shall set out the reasons for the directors' opinion.

(3) The directors shall not make an offer to one or more shareholders under section **60(1)(b)** if, after the passing of a resolution under subsection (1) and before the making of the offer, they cease to hold the opinions specified in subsection (1).

(4) A shareholder may apply to the Court for an order restraining the proposed acquisition of shares under section 60(1)(b) on the grounds that

- (a) the acquisition is not in the best interests of the remaining shareholders; or
- (b) the terms of the offer and the consideration offered for the shares are not fair and reasonable to the company or the remaining shareholders.

62. (1) If a share is redeemable at the option of the shareholder and the shareholder gives the company proper notice of his intention to redeem the share

Shares redeemed otherwise than at option of company.

- (a) the company shall redeem the share on the date specified in the notice, or if no date is specified, on the date of the receipt of the notice;
- (b) unless the share is held as a treasury share under section 64, the share is deemed to be cancelled; and
- (c) from the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(2) If a share is redeemable on a specified date

- (a) the company shall redeem the share on that date;
- (b) unless the share is held as a treasury share under section 64, the share is deemed to be cancelled; and
- (c) from the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(3) Where a company redeems a share under subsections (1) and (2), sections 60 and 61 do not apply.

63. The purchase, redemption or other acquisition by a company of one or more of its own shares is deemed not to be a distribution where

Acquisitions deemed not to be a distribution.

- (a) the company redeems the share or shares under and in accordance with section 62;
- (b) the company purchases, redeems or otherwise acquires the share or

shares pursuant to a right of a shareholder to have his shares redeemed or to have his shares exchanged for money or other property of the company; or

(c) the company purchases, redeems or otherwise acquires the share or shares by virtue of the provisions of section 179.

Treasury shares.

64. (1) A company may hold shares that have been acquired under section 59 as treasury shares if

(a) the memorandum or articles of the company permit it to hold treasury shares;

(b) the directors resolve that shares to be acquired shall be held as treasury shares; and

(c) the number of shares acquired, when aggregated with shares of the same class already held by the company as treasury shares, does not exceed 50% of the shares of that class previously issued by the company, excluding shares that have been cancelled.

(2) All the rights and obligations attaching to a treasury share are suspended and shall not be exercised by or against the company while it holds the share as a treasury share.

Reissue of treasury shares.

65. Treasury shares may be reissued by the company as if they are new shares and the provisions of this Act that apply to the issue of shares apply to the reissue of treasury shares.

Mortgages and charges of shares.

66. (1) A mortgage or charge of shares of a company shall be in writing signed by, or with the authority of, the holder of the bearer share or the registered holder of the registered share to which the mortgage or charge relates.

(2) A mortgage or charge of a bearer share is not valid and enforceable unless the certificate for the share is deposited with a custodian.

(3) A mortgage or charge of shares of a company need not be in any specific form but it shall clearly indicate

(a) the intention to create a mortgage or charge; and

(b) the amount secured by the mortgage or charge or how that amount is to be calculated.

(4) Where the governing law of a mortgage or charge of shares in a company is not the law of the Virgin Islands

- (a) the mortgage or charge shall be in compliance with the requirements of its governing law in order for the mortgage or charge to be valid and binding on the company; and
- (b) the remedies available to a mortgagee or chargee shall be governed by the governing law and the instrument creating the mortgage or charge save that the rights between the mortgagor or mortgagee as a member of the company and the company shall continue to be governed by the memorandum and the articles of the company and this Act.

(5) Where the governing law of a mortgage or charge of shares in a company is the law of the Virgin Islands, in the case of a default by the mortgagor or chargor on the terms of the mortgage or charge, the mortgagee or chargee is entitled to the following remedies:

- (a) subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, the right to sell the shares, and
- (b) the right to appoint a receiver who, subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, may
 - (i) vote the shares,
 - (ii) receive dividends and other payments in respect of the shares, and
 - (iii) exercise other rights and powers of the mortgagor or chargor in respect of the shares,

until such time as the mortgage or charge is discharged.

(6) Subject to any provisions to the contrary in the instrument of mortgage or charge of shares of a company, all amounts that accrue from the enforcement of the mortgage or charge shall be applied in the following manner:

- (a) firstly, in meeting the costs incurred in enforcing the mortgage or charge;
- (b) secondly, in discharging the sums secured by the mortgage or charge; and
- (c) thirdly, in paying any balance due to the mortgagor or chargor.

- (7) The remedies referred to in subsection (5) are not exercisable until
- (a) a default has occurred and has continued for a period of not less than 30 days, or such shorter period as may be specified in the instrument creating the mortgage or charge; and
 - (b) the default has not been rectified within 14 days or such shorter period as may be specified in the instrument creating the mortgage or charge from service of the notice specifying the default and requiring rectification thereof.
- (8) In the case of the mortgage or charge of registered shares there may be entered in the register of members of the company
- (a) a statement that the shares are mortgaged or charged;
 - (b) the name of the mortgagee or chargee; and
 - (c) the date on which the statement and name are entered in the register of members.
- (9) A mortgage or charge of shares of a company may specify that the Conveyancing and Law of Property Act shall not apply to the mortgage or charge.

Division 5 - Immobilisation of Bearer Shares

Interpretation for this Division.

67. In this Division

“authorised custodian” means a person approved by the Commission as an authorised custodian under section 50A(1) or section 50A(2) of the Financial Services Commission Act;

“custodian” means an authorised custodian or a recognised custodian;

“recognised custodian” means a person recognised by the Commission as a custodian under section 50B of the Financial Services Commission Act.

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Meaning of disabled bearer share.

68. (1) During the period in which a bearer share is disabled, that share does not carry any of the entitlements which it would otherwise carry and, subject to subsection (3), any transfer or purported transfer of an interest in the bearer share is void and of no effect.

(2) Without limiting subsection (1), “entitlement” includes an entitlement to vote, an entitlement to a dividend and an entitlement to a share in the assets of the company on its winding up or on its dissolution.

(3) Subsection (1) does not apply to the transfer or delivery of a bearer share in a company

(a) to a custodian in accordance with this Division;

(b) to the company where the share is to be, or has been

(i) converted to, or exchanged for, a registered share,

(ii) redeemed, purchased or otherwise acquired by the company, or

(iii) forfeited and cancelled,

and the company does not hold the bearer share for or on behalf of any other person; or

(c) to the registered agent of a company in accordance with section 73(1)(c), 73(4)(b) or 74(2).

69. (1) Where a company issues a bearer share or disposes of a treasury share that is a bearer share, it shall not deliver the share to any person other than a custodian who has agreed to hold the share.

Issue of bearer shares and conversion of registered shares.

(2) A company shall not deliver a bearer share converted from a registered share to any person other than a custodian who has agreed to hold the share.

70. (1) Subject to subsections (2) and (3), a bearer share in a company is disabled for any period during which it is held by a person other than a custodian.

Bearer shares not held by custodian disabled.

(2) Subject to section 74(7), subsection (1) does not apply to a bearer share in a company

(a) that is held by the registered agent of the company under section 73(1)(c), 73(4)(b) or 74(2); or

(b) that is held by a person who received the share at a time when he was a custodian but who has ceased to be a custodian.

(3) Subsection (1) does not apply where

(a) a bearer share in a company is held by the company;

- (b) the bearer share is to be, or has been
 - (i) converted to, or exchanged for, a registered share,
 - (ii) redeemed, purchased or otherwise acquired by the company, or
 - (iii) cancelled and forfeited; and
- (c) the company does not hold the bearer share for or on behalf of any other person.

Information concerning beneficial owner of bearer share.

71. (1) Where a bearer share in a company is delivered to or deposited with an authorised custodian, the company, where it delivers the share, or the authorised custodian delivering or the person depositing the share, shall provide the authorised custodian with a notice in the approved form

- (a) stating the full name of the beneficial owner of the bearer share;
- (b) stating the full name of any other person having an interest in that share, whether by virtue of a charge on the share or otherwise, or containing a statement that no other person has an interest in that share; and
- (c) containing such other information as may be required by the approved form.

(2) An authorised custodian shall not accept a bearer share unless it is accompanied by a notice complying with subsection (1).

(3) Where a bearer share in a company is delivered to or deposited with a recognised custodian, the company, where it delivers the share, or the person depositing the share shall, within 14 days of the date on which the share is delivered or deposited with the recognised custodian, send to the registered agent proof, in such form as may be approved, of the delivery or deposit of the share and a notice in the approved form containing the information specified in paragraphs (a), (b) and (c) of subsection (1).

Duties of authorised custodian holding bearer share.

72. (1) An authorised custodian shall, within 14 days of the receipt of a bearer share in a company that is delivered to it, other than by the registered agent of the company, or deposited with it, send notification to the registered agent of the company that it is the custodian of the share.

- (2) An authorised custodian who holds a bearer share
 - (a) shall keep the notice provided to it under section **71(1)**, any notice filed under section **75(1)**, any notice sent to the registered agent

under section 76(1) or (4) and a record of the location of the bearer share

(i) in the case of an authorised custodian approved under section 50A(1) of the Financial Services Commission Act at its principal office in the Virgin Islands or at such other office in the Virgin Islands as may be approved by the Commission in writing, or

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(ii) in the case of an authorised custodian approved under section 50A(2) of the Financial Services Commission Act, at such office as may be approved by the Commission in writing; and

(b) whether the bearer share is kept inside or outside the Virgin Islands, shall ensure that the bearer share remains at all times within its custody and control.

(3) Where an authorised custodian desires to cease acting as custodian in respect of a bearer share in a company, it shall give the registered agent of the company, the beneficial owner and any person who has an interest in that share not less than 60 days notice of its intention to cease acting as custodian in respect of the share.

73. (1) An authorised custodian holding a bearer share in a company shall not transfer possession of that share to any person other than

Transfer of
bearer shares.

(a) another authorised custodian who has agreed to hold the share,

(b) the company where the bearer share is to be, or has been

(i) converted to, or exchanged for, a registered share,

(ii) redeemed, purchased or otherwise acquired by the company, or

(iii) cancelled and forfeited; or

(c) the registered agent of the company.

(2) Where an authorised custodian transfers possession of a bearer share in accordance with subsection (1), it shall

(a) make a copy of all notices provided to it under section 71(1) or section 75(1) and any notices sent to the registered agent under section 76(1) or (4) and retain the copies made for such period as may be prescribed; and

(b) deliver, with the bearer share, all original notices provided to it under section 71(1) or section 75(1) and copies of any notices sent to the registered agent under section 76(1) or (4).

(3) Where an authorised custodian transfers possession of a bearer share in a company to another authorised custodian or to the company, it shall, within 7 days, send a notice of transfer in the approved form to the registered agent of the company.

(4) A recognised custodian shall not transfer possession of a bearer share in a company to any person other than

(a) the company where the bearer share is to be, or has been

(i) converted to, or exchanged for, a registered share,

(ii) redeemed, purchased or otherwise acquired by the company, or

(iii) cancelled and forfeited; or

(b) the registered agent of the company.

(5) Where a recognised custodian transfers possession of a bearer share in a company, it shall deliver, with the bearer share, a copy of any notice sent to the registered agent under section 76(1) or (4).

(6) Where possession of a bearer share in a company is transferred by a recognised custodian to the company, the company shall, within 14 days of the receipt of the share, send notification of its receipt of the share to its registered agent.

(7) The registered agent of a company shall not transfer possession of a bearer share in the company to any person other than

(a) a custodian who has agreed to hold the share; or

(b) the company where the bearer share is to be, or has been

(i) converted to, or exchanged for, a registered share,

(ii) redeemed, purchased or otherwise acquired by the company, or

(iii) cancelled and forfeited.

(8) Where a registered agent transfers possession of a bearer share received from an authorised custodian to an authorised custodian, he shall

- (a) make a copy of all notices provided to him under subsection (2)(b) and retain the copies made for such period as may be prescribed; and
- (b) deliver, with the bearer share,
 - (i) the original notices, and
 - (ii) any copies of notices,
 received under subsection (2)(b).

74. (1) Where the Commission revokes the approval of an authorised custodian or ceases to recognise a person as a recognised custodian, it shall

Procedure on a person ceasing to be a custodian.

- (a) publish a revocation notice in the *Gazette* and in a newspaper published and circulating in the Virgin Islands; and
- (b) send a revocation notice to the person whose approval has been revoked or who has ceased to be recognised.

(2) A person whose approval as an authorised custodian has been revoked or who has ceased to be recognised by the Commission as a recognised custodian shall, in respect of each bearer share in a company that he holds,

- (a) forthwith give the registered agent of the company, the beneficial owner of the share and any person who has an interest in that share notice in the approved form that he has ceased to be an authorised or recognised custodian; and
- (b) deliver to the registered agent of the company, within 14 days of his ceasing to be a custodian,
 - (i) the bearer share in the company; and
 - (ii) all original notices provided to him under section 71(1) or section 75(1) and a copy of any notice sent to the registered agent under section 76(1) or (4).

(3) A registered agent of a company who receives a bearer share in a company under subsection (2), shall hold the share on behalf of the beneficial owner of the share and shall only transfer possession of that share in accordance with instructions received under subsection (4) or, if he does not receive such instructions within the time period specified in subsection (4), in accordance with subsection (5).

(4) The beneficial owner of a bearer share received by a registered agent under subsection (2) shall, within 90 days of the date of publication in the *Gazette* of a notice under subsection (1)(a), provide the registered agent with written instructions as to the transfer of possession of the share to

- (a) a custodian who has agreed to hold the share; or
- (b) the company where the bearer share is to be, or has been
 - (i) converted to, or exchanged for, a registered share,
 - (ii) redeemed, purchased or otherwise acquired by the company, or
 - (iii) cancelled and forfeited.

(5) If the registered agent does not receive instructions from the beneficial owner of a bearer share complying with subsection (4) within the time period specified in subsection (4), the registered agent shall transfer possession of the share to such authorised custodian as he considers fit.

(6) Where a registered agent fails to transfer possession of a bearer share in accordance with subsection (5), the Commission may apply to the Court for an order that the bearer share be disabled, notwithstanding section 70(3).

(7) On an application made under subsection (6), the Court may make such order as it considers appropriate.

(8) A registered agent commits an offence and is liable on summary conviction to a fine of \$10,000 if he

- (a) transfers possession of a bearer share otherwise than in accordance with instructions received in accordance with subsection (4); or
- (b) fails to transfer possession of a bearer share in accordance with subsection (5).

Transfer of
beneficial
ownership of, or
interest in, bearer
share.

75. (1) A transfer of the beneficial ownership of, or an interest in, a bearer share held by an authorised custodian is not effective until a notice in the approved form amending the notice provided under section 71(1) is submitted to the authorised custodian.

(2) A transfer of the beneficial ownership of, or an interest in, a bearer share in a company held by a recognised custodian is not effective until a notice in the approved form amending the notice provided under section 71(3) is submitted to the registered agent of the company.

76. (1) The custodian of a bearer share in a company may deliver to the registered agent of the company a notice specifying the name and address of the person who is to be regarded as having the right to those entitlements carried by the share that are specified in the notice.

Notification of person having right to entitlements carried by bearer share.

(2) A notice under subsection (1) may extend to all the entitlements carried by the share or may be limited to certain specified entitlements, including the right to vote at meetings of the members of the company generally or to vote at a specified meeting of the members of the company.

(3) Subject to sections 68 and 70, where the registered agent of a company receives a notice under subsection (1) that has not been revoked, notwithstanding that the bearer share is in the custody of a custodian, the company shall treat the person specified in the notice as the bearer of the share for the purposes of the entitlements carried by the share that are specified in the notice.

(4) The custodian of a bearer share may, by written notice delivered to the registered agent of the company, revoke a notice delivered under subsection (1).

(5) A notice of revocation under subsection (4) takes effect from the time that the notice is received by the registered agent or at such later time as may be specified in the notice.

77. Without limiting section 240, the Regulations may provide that where

Regulations.

- (a) notice is required or permitted to be given by a custodian, or former custodian, to the beneficial owner of a bearer share or to any person who has an interest in a bearer share; or
- (b) instructions are required or permitted to be given by the beneficial owner of a bearer share in a company to a custodian, or former custodian, or to the registered agent of the company:

the notice or instructions may be given to or by some other person or persons instead of or in addition to the beneficial owner or, in the case of a notice, instead of or in addition to the person interested in the share.

PART IV

MEMBERS

78. In this Act,

“guarantee member”, in relation to a company, means a person whose name is entered in the register of members as a guarantee member;

Meaning of “shareholder” and “guarantee member”.

“shareholder”, in relation to a company, means a person whose name is entered in the register of members as the holder of one or more shares, or fractional shares, in the company;

“unlimited member”, in relation to a company, means a person whose name is entered in the register of members as a member who has unlimited liability for the liabilities of the company.

Company to have one or more members.

79. (1) A company shall at all times have one or more members.

(2) In the case of a company limited by guarantee, whether or not authorised to issue shares, at least one of the members of the company shall be a guarantee member.

(3) In the case of an unlimited company, whether or not authorised to issue shares, at least one of the members of the company shall be an unlimited member.

Liability of members.

80. (1) A member of a limited company has no liability, as a member, for the liabilities of the company.

(2) The liability of a shareholder to the company, as shareholder, is limited to

(a) any amount unpaid on a share held by the shareholder;

(b) any liability expressly provided for in the memorandum or articles of the company; and

(c) any liability to repay a distribution under section **58**(1).

(3) The liability of a guarantee member to the company, as guarantee member, is limited to

(a) the amount that the guarantee member is liable to contribute as specified in the memorandum in accordance with section **9**(1)(f); and

(b) any other liability expressly provided for in the memorandum or articles of the company.

(4) An unlimited member has unlimited liability for the liabilities of the company.

Members' resolutions.

81. (1) Unless otherwise specified in this Act or in the memorandum or articles of a company, the exercise by the members of a company of a power which is given to them under this Act or the memorandum or articles shall be by a resolution

- (a) passed at a meeting of members held pursuant to section 82; or
- (b) passed as a written resolution in accordance with section 88.

(2) A resolution is passed if approved by a simple majority or, if a higher majority is required by the memorandum or articles, that higher majority, of the votes of those members entitled to vote and voting on the resolution.

(3) For the purposes of subsection (2),

- (a) votes of shareholders shall be counted according to the votes attached to the shares held by the shareholder voting; and
- (b) unless the memorandum or articles otherwise provide, a guarantee member and a member of an unlimited company without shares is entitled to one vote on any resolution on which he is entitled to vote.

82. (1) Subject to a company's memorandum and articles, the following may convene a meeting of the members of the company at any time: Meetings of members.

- (a) the directors of the company; or
- (b) such person or persons as may be authorised by the memorandum or articles to call the meeting.

(2) Subject to a provision in the memorandum or articles for a lesser percentage, the directors of a company shall call a meeting of the members of the company if requested in writing to do so by members entitled to exercise at least thirty per cent of the voting rights in respect of the matter for which the meeting is requested.

(3) Subject to a company's memorandum and articles, a meeting of the members of the company may be held at such time and in such place, within or outside the Virgin Islands, as the convener of the meeting considers appropriate.

(4) Subject to the memorandum or articles of a company, a member of the company shall be deemed to be present at a meeting of members if

- (a) he participates by telephone or other electronic means; and
- (b) all members participating in the meeting are able to hear each other.

(5) A member may be represented at a meeting of members by a proxy who may speak and vote on behalf of the member.

- (6) The following apply where shares are jointly owned
 - (a) if two or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of members and may speak as a member;
 - (b) if only one of them is present in person or by proxy, he may vote on behalf of all of them; and
 - (c) if two or more are present in person or by proxy, they must vote as one.

Notice of meetings of members.

83. (1) Subject to a requirement in the memorandum or articles to give longer notice, a person or persons convening a meeting of the members of a company shall give not less than seven days notice of the meeting to those persons whose names, on the date the notice is given, appear as members in the register of members and are entitled to vote at the meeting.

(2) Notwithstanding subsection (1), and subject to the memorandum or articles, a meeting of members held in contravention of the requirement to give notice is valid if members holding a 90 percent majority, or such lesser majority as may be specified in the memorandum or articles, of

- (a) the total vote rights on all the matters to be considered at the meeting; or
- (b) the votes of each class or series of shares where members are entitled to vote thereon as a class or series together with an absolute majority of the remaining votes,

have waived notice of the meeting and, for this purpose, the presence of a member at the meeting shall be deemed to constitute waiver on his part.

(3) The inadvertent failure of the convener or conveners of a meeting of members to give notice of the meeting to a member, or the fact that a member has not received the notice, does not invalidate the meeting.

(4) The convener or conveners of a meeting of members may fix the date notice is given of a meeting, or such other date as may be specified in the notice, as the record date for determining those members that are entitled to vote at the meeting.

Quorum for meetings of members.

84. The quorum for a meeting of the members of a company for the purposes of a resolution of members is that fixed by the memorandum or articles but, where no quorum is so fixed, a meeting of members is properly constituted for all purposes if at the commencement of the meeting there are present in person or by proxy,

members entitled to exercise at least fifty percent of the voting rights of the shares of each class or series of shares entitled to vote as a class or series thereon and the same proportion of the votes of the remaining shares entitled to vote thereon.

85. (1) One or more shareholders of a company may, by agreement in writing, deposit bearer shares with a custodian, or transfer registered shares to any person, authorised to act as trustee for the purpose of vesting in such person, who may be designated voting trustee, the right to vote thereon and the following provisions shall apply Voting trusts.

- (a) the period of time for which the trustee may vote shall not exceed 10 years;
- (b) subject to paragraph (a), the agreement may contain any other provisions not inconsistent with the purpose of the agreement;
- (c) a copy of the agreement shall be deposited at the registered office of the company and shall be open to the inspection of members of the company
 - (i) in the case of any beneficiary of the trust under the agreement, daily during business hours, and
 - (ii) in the case of members of the company, subject to the provisions of section **100**;
- (d) where certificates for registered shares have been issued for shares that are to be transferred to a trustee pursuant to this section, new certificates shall be issued to the voting trustee to represent the shares so transferred and the certificates formerly representing the shares that have been transferred shall be surrendered and cancelled;
- (e) where a certificate is issued to a voting trustee, an endorsement shall be made on the certificate that the shares represented thereby in the case of registered shares and the certificates in case of bearer shares are held by the person named therein pursuant to an agreement;
- (f) there shall be noted in the register of members of the company against the record of the shares held by the trustee the fact that such an agreement exists;
- (g) the voting trustee may vote the shares so issued or transferred during the period specified in the agreement;
- (h) shares registered in the name of the voting trustee may be voted either in person or by proxy and, in voting the shares, the voting

trustee shall not incur any liability as member or trustee, except in so far as he may be liable for his own conduct or acts;

- (i) where two or more persons are designated as voting trustees and the right and method of voting any shares registered in their names at any meeting of members or on any resolution of members are not fixed by the agreement appointing the trustees, the right to vote shall be determined by a majority of the trustees, or if they are equally divided as to the right and manner of voting the shares in any particular case, the votes of the shares in such case shall be divided equally among the trustees;
- (j) at any time within 2 years prior to the time of expiration of any voting trust agreement as originally fixed or as last extended as provided in this subsection, one or more beneficiaries of the trust under the voting trust agreement may, by written agreement and with the written consent of the voting trustee, extend the duration of the voting trust agreement for an additional period not exceeding 10 years from the expiration date of the trust as originally fixed or as last extended; and
- (k) the voting trustee shall, prior to the time of expiration of a voting trust agreement, as originally fixed or as previously extended, as the case may be, deposit at the registered office of the company a copy of the extension agreement and of his consent thereto, and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement, but no extension agreement shall affect the rights or obligations of persons not parties thereto.

(2) Bearer shares may only be deposited under subsection (1) with a custodian and Division 5 shall apply

(3) Two or more members of a company may by agreement in writing provide that in exercising any voting rights the shares held by them shall be voted

- (a) as provided by the agreement;
- (b) as the parties may agree; or
- (c) as determined in accordance with such procedure as they may agree upon.

(4) The validity of any voting trust or other voting agreement is not affected during a period of 10 years from the date when it was created or last extended by reason only of the fact that under its terms it will or may last beyond a period of 10 years.

(5) This section shall be deemed not to invalidate any voting or other agreement among members or any irrevocable proxy that is not otherwise illegal.

86. (1) The Court may order a meeting of members to be held and to be conducted in such manner as the Court orders if it is of the opinion that

Court may call meeting of members.

(a) it is impracticable to call or conduct a meeting of the members of a company in the manner specified in this Act or in the memorandum and articles of the company; or

(b) it is in the interests of the members of the company that a meeting of members is held.

(2) An application for an order under subsection (1) may be made by a member or director of the company.

(3) The Court may make an order under subsection (1) on such terms, including as to costs of conducting the meeting and as to the provision of security for those costs, as it considers appropriate.

87. The Regulations may specify provisions for proceedings of members' meetings which shall apply in respect of a company, except to the extent that the memorandum or articles of the company provide otherwise.

Proceedings at meetings of members.

88. (1) Subject to the memorandum or articles of a company, an action that may be taken by members of the company at a meeting of members may also be taken by a resolution of members consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice.

Written resolutions.

(2) A resolution under subsection (1) may consist of several documents, including written electronic communications, in like form each signed or assented to by one or more members.

89. (1) Any notice, information or written statement required under this Act to be given by a company to members shall be served

Service of notice on members.

(a) in the case of members holding registered shares,

(i) in the manner specified in the memorandum or articles, as the case may be, or

(ii) in the absence of a provision in the memorandum or articles, by personal service or by mail addressed to each member at the address shown in the register of members; and

(b) in the case of members holding bearer shares, in the absence of a provision in the memorandum or articles, or if the notice, information or written statement can no longer be served as specified in the memorandum and articles, by publishing the notice, information or written statement in a newspaper circulated in the Virgin Islands and a newspaper in the place where the company has its principal office.

(2) Subject to a requirement in the memorandum or articles to give a specific length of notice, the directors shall give sufficient notice of meetings of members to members holding bearer shares to allow a reasonable opportunity for them to take action in order to secure or exercise the right or privilege, other than the right or privilege to vote, that is the subject of the notice.

(3) For purposes of subsection (2), what amounts to sufficient notice is a matter of fact to be determined after having regard to all the circumstances.

PART V

COMPANY ADMINISTRATION

Division 1 – Registered Office and Registered Agent

Registered
office.

90. (1) A company shall, at all times, have a registered office in the Virgin Islands.

(2) The registered office of a company is

(a) the place specified as the company's first registered office in the memorandum filed under section 6(1); or

(b) if one or more notices of change of registered office have been filed under section 92, the place specified in the last such notice to be registered by the Registrar.

(3) The registered office of a company, whether as specified in the memorandum or in any notice filed under section 92

(a) shall be a physical address in the Virgin Islands; and

(b) if the registered office of the company is at the office of its registered agent, that fact shall be stated in the description of the address in the memorandum or in the notice.

91. (1) Subject to subsection (5), a company shall at all times have a registered agent in the Virgin Islands. Registered agent.

(2) Unless the last registered agent of the company has resigned in accordance with section 93 or ceased to be the company's registered agent in accordance with section 94(3), the registered agent of a company is

- (a) the person specified as the company's first registered agent in the memorandum filed under section 6(1); or
- (b) if one or more notices of change of registered agent have been filed under section 92, the person specified as the company's registered agent in the last such notice to be registered by the Registrar.

(3) No person shall be, or agree to be, the registered agent of a company unless that person

- (i) holds a licence under the Company Management Act 1990 or under the Banks and Trust Companies Act 1990; and No. 8 of 1990
No. 9 of 1990
- (ii) has the approval of the Commission to provide registered agent services.

(4) Subject to section 94(6), a person who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of \$10,000.

(5) A company does not require a registered agent if it is in liquidation within the meaning of section 160 of the Insolvency Act. No. 5 of 2003

(6) A company that does not have a registered agent in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000.

92. (1) A resolution to change the location of a company's registered office or to change a company's registered agent may be passed Change of registered office or registered agent.

- (a) notwithstanding any provision to the contrary in the memorandum or articles, by the members of the company; or
- (b) if authorised by the memorandum or articles, by the directors of the company.

(2) A change of registered office or registered agent is effected by filing a notice in the approved form.

(3) A notice of change of registered agent shall be endorsed by the new registered agent with his agreement to act as registered agent.

(4) A notice of change of registered office or registered agent may be filed only by

- (a) the registered agent of the company; or
- (b) a legal practitioner in the Virgin Islands acting on behalf of the company for the purposes of filing the notice.

(5) For the purposes of subsection (4)(a), in the case of a notice of change of registered agent, “registered agent” means the existing registered agent.

(6) A change of registered office or registered agent takes effect on the registration by the Registrar of the notice filed under subsection (1).

(7) As soon as reasonably practicable after registering a notice of change of registered agent, the Registrar shall send a copy of the notice endorsed by the Registrar with the time and date of registration

- (a) to the company’s new registered agent; and
- (b) where the notice was filed by a legal practitioner, to the former registered agent.

(8) A change of registered office or registered agent is deemed not to constitute an amendment of the company’s memorandum.

Resignation of
registered agent.

93. (1) A person may resign as the registered agent of a company only in accordance with this section.

- (2) A person wishing to resign as the registered agent of a company shall
 - (a) give not less than 90 days written notice of his intention to resign as registered agent of the company on the date specified in the notice to a person specified in subsection (3);
 - (b) together with the written notice, provide a list of all approved registered agents in the Virgin Islands with their names and addresses; and
 - (c) file a copy of the notice and the list of registered agents provided under paragraph (b).

(3) A notice under subsection (2) and a list of approved registered agents shall be sent to a director of the company at the director's last known address or, if the registered agent is not aware of the identity of any director of the company, to the person from whom the registered agent last received instructions concerning the company.

(4) If a company does not change its registered agent in accordance with section 92 on or before the date specified in the notice given under subsection (2), the registered agent may file a notice of resignation as the company's registered agent.

(5) Unless the company has previously changed its registered agent, the resignation of a registered agent is effective the day after the notice of resignation is registered by the Registrar.

94. (1) For the purposes of this section, a person ceases to be eligible to act as a registered agent if Registered agent ceasing to be eligible to act.

(a) the person ceases to hold a licence under the Company Management Act 1990 or the Banks and Trust Companies Act 1990; or No. 8 of 1990
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(b) the Commission withdraws its approval for the person to provide registered agent services.

(2) Where a person ceases to be eligible to act as a registered agent, that person shall, with respect to each company of which he was, immediately before ceasing to be eligible to act, the registered agent send to the person specified in subsection (3)

(a) a notice

(i) advising the company that he is no longer eligible to be its registered agent,

(ii) advising the company that it must appoint a new registered agent within 90 days of the date of the notice, and

(iii) specifying that on the expiration of the period specified in subparagraph (ii), he will cease to be the registered agent of the company, if the company has not previously changed its registered agent; and

(b) a list of persons who are authorised by the Commission to provide registered agent services.

(3) A notice under subsection (2) and a list of approved registered agents shall be sent to a director of the company at the director's last known address or, if the registered agent is not aware of the identity of any director of the company, to the person from whom the registered agent last received instructions concerning the company.

(4) A company that receives a notice under subsection (2) shall, within 90 days of the date of the notice, appoint a new registered agent.

(5) A registered agent who contravenes subsection (2) and a company that contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of \$10,000.

(6) A person does not commit an offence under section 91(4) by reason only of the fact that

- (a) he ceases to be eligible to act as a registered agent; and
- (b) after ceasing to be eligible to act, he continues to be the registered agent of a company during the period from the date he ceases to be eligible to act to the date that the company appoints a new registered agent.

Register of
Approved
Registered Agents.

95. (1) The Commission shall maintain a Register of Approved Registered Agents in which the following details shall be recorded in respect of each licensed registered agent

- (a) the name of the approved registered agent;
- (b) the address of the approved registered agent;
- (c) the names of the individuals authorised to sign on behalf of any firm or company that is an approved registered agent;
- (d) the date when the registered agent
 - (i) was issued a licence under the Company Management Act, 1990 or the Banks and Trust Companies Act, 1990, and
 - (ii) obtained the approval of the Commission to provide registered agent services;
- (e) in a case where a person ceases to be an approved registered agent,
 - (i) the date on which the person ceased to be so approved, and

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(ii) the reason for his ceasing to be an approved registered agent.

(2) The Regulations may provide for the publication by the Commission of the names of persons who are, from time to time, approved to provide registered agent services.

(3) An approved registered agent shall, forthwith, send notification to the Commission in the approved form of any change in the details kept by the Commission in respect of the registered agent in the Register of Approved Registered Agents and the Commission shall record the change in the Register.

(4) A registered agent who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of \$5,000.

Division 2 – Company Records

96. (1) A company shall keep the following documents at the office of its registered agent:

Documents to be kept at office of registered agent.

- (a) the memorandum and articles of the company;
- (b) the register of members maintained in accordance with section **41** or a copy of the register of members;
- (c) the register of directors maintained under section **118** or a copy of the register of directors; and
- (d) copies of all notices and other documents filed by the company in the previous ten years.

(2) Where a company keeps a copy of the register of members or the register of directors at the office of its registered agent, it shall

- (a) within 15 days of any change in the register, notify the registered agent, in writing, of the change; and
- (b) provide the registered agent with a written record of the physical address of the place or places at which the original register of members or the original register of directors is kept.

(3) Where the place at which the original register of members or the original register of directors is changed, the company shall provide the registered agent with the physical address of the new location of the records within fourteen days of the change of location.

(4) A company that contravenes subsection (1), (2) or (3) commits an offence and is liable on summary conviction to a fine of \$10,000.

Other records to be maintained by company.

97. (1) A company shall keep the following records at the office of its registered agent or at such other place or places, within or outside the Virgin Islands, as the directors may determine:

- (a) minutes of meetings and resolutions of members and of classes of members maintained in accordance with section **102**; and
- (b) minutes of meetings and resolutions of directors and committees of directors maintained in accordance with section **102**.

(2) Where any records specified under section (1) are kept at a place other than at the office of the company's registered agent, the company shall provide the registered agent with a written record of the physical address of the place or places at which the records are kept.

(3) Where the place at which any records specified under subsection (1) is changed, the company shall provide the registered agent with the physical address of the new location of the records within fourteen days of the change of location.

(4) A company that contravenes this section commits an offence and is liable on summary conviction to a fine of \$10,000.

Financial records.

98. (1) A company shall keep records that

- (a) are sufficient to show and explain the company's transactions; and
- (b) will, at any time, enable the financial position of the company to be determined with reasonable accuracy.

(2) A company that contravenes this section commits an offence and is liable on summary conviction to a fine of \$10,000.

Form of records.

99. The records required to be kept by a company under this Act shall be kept

- (a) in written form; or
- (b) either wholly or partly as electronic records complying with the requirements of the Electronic Transactions Act.

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Inspection of records.

100. (1) A director of a company is entitled, on giving reasonable notice, to inspect the documents and records of the company

- (a) in written form;

- (b) without charge; and
- (c) at a reasonable time specified by the director;

and to make copies of or take extracts from the documents and records.

(2) Subject to subsection (3), a member of a company is entitled, on giving written notice to the company, to inspect

- (a) the memorandum and articles;
- (b) the register of members;
- (c) the register of directors; and
- (d) minutes of meetings and resolutions of members and of those classes of members of which he is a member;

and to make copies of or take extracts from the documents and records.

(3) The directors may, if they are satisfied that it would be contrary to the company's interests to allow a member to inspect any document, or part of a document, specified in subsection (2)(b), (c) or (d), refuse to permit the member to inspect the document or limit the inspection of the document, including limiting the making of copies or the taking of extracts from the records.

(4) The directors shall, as soon as reasonably practicable, notify a member of any exercise of their powers under subsection (3).

(5) Where a company fails or refuses to permit a member to inspect a document or permits a member to inspect a document subject to limitations, that member may apply to the Court for an order that he should be permitted to inspect the document or to inspect the document without limitation.

(6) On an application under subsection (5), the Court may make such order as it considers just.

101. (1) Service of a document may be effected on a company by addressing the document to the company and leaving it at, or sending it by a prescribed method to

Service of process, etc. on company.

- (a) the company's registered office; or
- (b) the office of the company's registered agent.

(2) The Regulations may provide for the methods by which service of a document on a company may be proved.

Books, records
and common
seal.

102. (1) A company shall keep

- (a) minutes of all meetings of
 - (i) directors,
 - (ii) members,
 - (iii) committees of directors, and
 - (iv) committees of members;
- (b) copies of all resolutions consented to by
 - (i) directors,
 - (ii) members,
 - (iii) committees of directors, and
 - (iv) committees of members;

(2) A company may have a common seal and, if it has a seal, an imprint of the seal shall be kept at the office of the registered agent of the company.

(3) A company that wilfully contravenes this section commits an offence and is liable on summary conviction to a fine of \$10,000.

Division 3 - General Provisions

Contracts
generally.

103. (1) A contract may be entered into by a company as follows:

- (a) a contract that, if entered into by an individual, would be required by law to be in writing and under seal, may be entered into by or on behalf of the company in writing under the common seal of the company, and may be varied or discharged in the same manner;
- (b) a contract that, if entered into by an individual, would be required by law to be in writing and signed, may be entered into by or on behalf of the company in writing and signed by a person acting under the express or implied authority of the company, and may be varied or discharged in the same manner; and

- (c) a contract that, if entered into by an individual, would be valid although entered into orally, and not reduced to writing, may be entered into orally by or on behalf of the company by a person acting under the express or implied authority of the company, and may be varied or discharged in the same manner.

(2) A contract entered into in accordance with this section is valid and is binding on the company and its successors and all other parties to the contract.

(3) Without affecting subsection (1)(a), a contract, agreement or other instrument executed by or on behalf of a company by a director or an authorised agent of the company is not invalid by reason only of the fact that the common seal of the company is not affixed to the contract, agreement or instrument.

104. (1) A person who enters into a written contract in the name of or on behalf of a company before the company is incorporated, is personally bound by the contract and is entitled to the benefits of the contract, except where

Contracts before incorporation.

- (a) the contract specifically provides otherwise; or
- (b) subject to any provisions of the contract to the contrary, the company adopts the contract under subsection (2).

(2) A company may, by any action or conduct signifying its intention to be bound by a written contract entered into in its name or on its behalf before it was incorporated, adopt the contract within such period as may be specified in the contract or, if no period is specified, within a reasonable period after the company's incorporation.

(3) When a company adopts a contract under subsection (2),

- (a) the company is bound by, and entitled to the benefits of, the contract as if the company had been incorporated at the date of the contract and had been a party to it; and
- (b) subject to any provisions of the contract to the contrary, the person who acted in the name of or on behalf of the company ceases to be bound by or entitled to the benefits of the contract.

105. A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed by a company if it is made, accepted or endorsed in the name of the company

Notes and bills of exchange.

- (a) by or on behalf or on account of the company; or

(b) by a person acting under the express or implied authority of the company;

and if so endorsed, the person signing the endorsement is not liable thereon.

Power of attorney.

106. (1) Subject to its memorandum and articles, a company may, by an instrument in writing appoint a person as its attorney either generally or in relation to a specific matter.

(2) An act of an attorney appointed under subsection (1) in accordance with the instrument under which he was appointed binds the company.

Authentication or attestation.

107. (1) A document requiring authentication or attestation by a company may be signed by a director, a secretary or by an authorised agent of the company, and need not be under its common seal.

(2) If the signature of any director or agent authenticating or attesting any document is verified in writing by the registered agent of a company the company is bound by the document.

Company without members.

108. If at any time there is no member of a company, any person doing business in the name of or on behalf of the company is personally liable for the payment of all debts of the company contracted during the time and the person may be sued therefor without joinder in the proceedings of any other person.

PART VI

DIRECTORS

Division 1 – Management by Directors

Management by directors.

109. (1) The business and affairs of a company shall be managed by, or under the direction or supervision of, the directors of the company.

(2) The directors of a company have all the powers necessary for managing, and for directing and supervising, the business and affairs of the company.

(3) Subsections (1) and (2) are subject to any modifications or limitations in the memorandum or articles.

(4) A company shall have one or more directors.

(5) Subject to subsection (4), the number of directors of a company may be fixed by the articles of the company.

110. (1) Subject to the memorandum and articles and to subsection (2), the directors may Committees of directors.

- (a) designate one or more committees of directors, each consisting of one or more directors; and
- (b) delegate any one or more of its powers, including the power to affix the common seal of the company, to the committee.

(2) Notwithstanding anything to the contrary in the memorandum or articles, the directors have no power to delegate the following powers to a committee of directors:

- (a) to amend the memorandum or articles;
- (b) to designate committees of directors;
- (c) to delegate powers to a committee of directors;
- (d) to appoint directors;
- (e) to appoint an agent;
- (f) to approve a plan or merger, consolidation or arrangement; or
- (g) to make a declaration of solvency or approve a liquidation plan.

(3) Subsection (2)(b) and (c) do not prevent a committee of directors, where authorised by the directors, from appointing a sub-committee and delegating powers exercisable by the committee to the sub-committee.

(4) Where the directors of a company delegate their powers to a committee of directors under subsection (1), they remain responsible for the exercise of that power by the committee, unless they believed on reasonable grounds that at all times before the exercise of the power that the committee would exercise the power in conformity with the duties imposed on directors of the company by this Act.

(5) The Regulations may amend subsection (2) by adding to the powers that the directors have no power to delegate to a committee of directors.

Division 2 – Appointment, Removal and Resignation of Directors

Persons disqualified for appointment as director.

111. (1) The following are disqualified for appointment as the director of a company:

- (a) an individual who is under 18 years of age;
- (b) a person who is a disqualified person within the meaning of section 260(4) of the Insolvency Act;
- (c) a person who is a restricted person within the meaning of section 409 of the Insolvency Act;
- (d) an undischarged bankrupt; and
- (e) a person who, in respect of a particular company, is disqualified by the memorandum or articles from being a director of the company.

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(2) A person who acts as a director of a company whilst disqualified under subsection (1) is nevertheless deemed to be a director of the company for the purposes of any provision of this Act that imposes a duty or obligation on a director.

Consent to act as director.

112. A person shall not be appointed as the director of a company unless he has consented in writing to be a director.

Appointment of directors.

113. (1) The first registered agent of a company shall, within thirty days of the date of incorporation of the company, appoint one or more persons as the first directors of the company.

(2) Subsequent directors of a company may be appointed

- (a) unless the memorandum or articles provide otherwise, by resolution of the members; or
 - (b) where permitted by the memorandum or articles, by the directors.
- (3) A director is appointed for such term as may be specified in the resolution appointing him.

(4) Unless the memorandum or articles of a company provide otherwise, the directors of a company may appoint one or more directors to fill a vacancy on the board.

(5) For the purposes of subsection (4),

- (a) there is a vacancy on the board if a director dies or otherwise ceases to hold office as a director prior to the expiration of his term of office; and
- (b) the directors may not appoint a director for a term exceeding the term that remained when the person who has ceased to be a director left or otherwise ceased to hold office.

(6) A director holds office until his successor takes office or until his earlier death, resignation or removal.

114. (1) Subject to the memorandum or articles of a company, a director of the company may be removed from office by resolution of the members of the company. Removal of directors.

(2) A resolution under subsection (1) may only be passed

- (a) at a meeting of the members called for the purpose of removing the director or for purposes including the removal of the director; or
- (b) by a written resolution passed by at least seventy five per cent of the members of the company entitled to vote.

(3) The notice of a meeting called under subsection (2)(a) shall state that the purpose of the meeting is, or the purposes of the meeting include, the removal of a director.

(4) Where permitted by the memorandum or articles of a company, a director of the company may be removed from office by the directors of the company.

115. (1) A director of a company may resign his office by giving written notice of his resignation to the company and the resignation has effect from the date the notice is received by the company or from such later date as may be specified in the notice. Resignation of director.

(2) A director of a company shall resign forthwith if he is, or becomes, disqualified to act as a director under section **111**.

116. A director who vacates office remains liable under any provisions of this Act that impose liabilities on a director in respect of any acts or omissions or decisions made whilst he was a director. Liability of former directors.

117. The acts of a person as a director are valid notwithstanding that

- (a) the person's appointment as a director was defective; or

Validity of acts of director.

(b) the person is disqualified to act as a director under section 111.

Register of directors.

118. (1) A company shall keep a register to be known as a register of directors containing

- (a) the names and addresses of the persons who are directors of the company;
- (b) the date on which each person whose name is entered in the register was appointed as a director of the company;
- (c) the date on which each person named as a director ceased to be a director of the company; and
- (d) such other information as may be prescribed.

(2) The register of directors may be in such form as the directors approve, but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.

(3) The register of directors is *prima facie* evidence of any matters directed or authorised by this Act to be contained therein.

Emoluments of directors.

119. Subject to the memorandum or articles of a company, the directors of the company may fix the emoluments of directors in respect of services to be rendered in any capacity to the company.

Division 3 - Duties of Directors and Conflicts

Duties of directors.

120. (1) Subject to this section, a director of a company, in exercising his powers or performing his duties, shall act honestly and in good faith and in what the director believes to be in the best interests of the company.

(2) A director of a company that is a wholly-owned subsidiary may, when exercising powers or performing duties as a director, if expressly permitted to do so by the memorandum or articles of the company, act in a manner which he believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.

(3) A director of a company that is a subsidiary, but not a wholly-owned subsidiary, may, when exercising powers or performing duties as a director, if expressly permitted to do so by the memorandum or articles of the company and with the prior agreement of the shareholders, other than its holding company, act in

a manner which he believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.

(4) A director of a company that is carrying out a joint venture between the shareholders may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, if expressly permitted to do so by the memorandum or articles of the company, act in a manner which he believes is in the best interests of a member or members, even though it may not be in the best interests of the company.

121. A director shall exercise his powers as a director for a proper purpose and shall not act, or agree to the company acting, in a manner that contravenes this Act or the memorandum or articles of the company.

Powers to be exercised for proper purpose.

122. A director of a company, when exercising powers or performing duties as a director, shall exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation,

Standard of care.

- (a) the nature of the company;
- (b) the nature of the decision; and
- (c) the position of the director and the nature of the responsibilities undertaken by him or her.

123. (1) Subject to subsection (2), a director of a company, when exercising his powers or performing his duties as a director, is entitled to rely upon the register of members and upon books, records, financial statements and other information prepared or supplied, and on professional or expert advice given, by

Reliance on records and reports.

- (a) an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
- (b) a professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence; and
- (c) any other director, or committee of directors upon which the director did not serve, in relation to matters within the director's or committee's designated authority.

(2) Subsection (1) applies only if the director

- (a) acts in good faith;

- (b) makes proper inquiry where the need for the inquiry is indicated by the circumstances; and
- (c) has no knowledge that his reliance on the register of members or the books, records, financial statements and other information or expert advice is not warranted.

Disclosure of interest.

124. (1) A director of a company shall, forthwith after becoming aware of the fact that he is interested in a transaction entered into or to be entered into by the company, disclose the interest to the board of the company.

(2) The Regulations shall prescribe the circumstances in which a director is interested in a transaction for the purposes of this section and section 125 and such circumstances may include a director's relationship with another person who will or may obtain a benefit from the transaction.

(3) A director of a company is not required to comply with subsection (1) if

- (a) the transaction or proposed transaction is between the director and the company; and
- (b) the transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.

(4) For the purposes of subsection (1), a disclosure to the board to the effect that a director is a member, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

(5) Subject to section 125(1), the failure by a director to comply with subsection (1) does not affect the validity of a transaction entered into by the director or the company.

(5) For the purposes of subsection (1), a disclosure is not made to the board unless it is made or brought to the attention of every director on the board.

(6) A director who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000.

Avoidance of company transactions in which director is interested.

125. (1) Subject to this section, a transaction entered into by a company in respect of which a director is interested is voidable by the company unless the director's interest was disclosed to the board in accordance with section **124** prior to the company entering into the transaction.

(2) Notwithstanding subsection (1), a transaction entered into by a company in respect of which a director is interested is not voidable by the company if

- (a) the material facts of the interest of the director in the transaction are known by the members entitled to vote at a meeting of members and the transaction is approved or ratified by a resolution of members; or
- (b) the company received fair value for the transaction.

(3) For the purposes of subsection (2), a determination as to whether a company receives fair value for a transaction shall be made on the basis of the information known to the company and the interested director at the time that the transaction was entered into.

(4) Subject to the memorandum or articles, a director of a company who is interested in a transaction entered into or to be entered into by the company may

- (a) vote on a matter relating to the transaction;
- (b) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purposes of a quorum; and
- (c) sign a document on behalf of the company, or do any other thing in his capacity as a director, that relates to the transaction.

(5) The avoidance of a transaction under subsection (1) does not affect the title or interest of a person in or to property which that person has acquired if the property was acquired

- (a) from a person other than the company (“the transferor”);
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances of the transaction under which the transferor acquired the property from the company.

Division 4 – Proceedings of Directors and Miscellaneous Provisions

126. (1) Subject to the memorandum or articles of a company, the directors of a company may meet at such times and in such manner and places within or outside the Virgin Islands as they may determine to be necessary or desirable.

Meetings
directors. of

(2) A director shall be deemed to be present at a meeting of directors if

- (a) he participates by telephone or other electronic means; and
- (b) all directors participating in the meeting are able to hear each other.

Notice of meeting of directors.

127. (1) Subject to any requirements as to notice in the memorandum or articles, a director shall be given reasonable notice of a meeting of directors.

(2) Notwithstanding subsection (1), subject to the memorandum or articles, a meeting of directors held in contravention of that subsection is valid if all of the directors, or such majority thereof as may be specified in the memorandum or articles entitled to vote at the meeting, have waived the notice of the meeting; and, for this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on his part.

(3) The inadvertent failure to give notice of a meeting to a director, or the fact that a director has not received the notice, does not invalidate the meeting.

Quorum meetings of directors.

128. The quorum for a meeting of directors is that fixed by the memorandum or articles but, where no quorum is so fixed, a meeting of directors is properly constituted for all purposes if at the commencement of the meeting one half of the total number of directors are present in person or by alternate.

Consents of directors.

129. (1) Subject to the memorandum or articles, an action that may be taken by the directors or a committee of directors at a meeting may also be taken by a resolution of directors or a committee of directors consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice.

(2) A resolution under subsection (1) may consist of several documents, including written electronic communications, in like form each signed or assented to by one or more directors.

Alternates for directors.

130. (1) Subject to the memorandum or articles of a company, a director of the company may by a written instrument appoint an alternate who need not be a director.

(2) An alternate for a director appointed under subsection (1) is entitled to attend meetings in the absence of the director who appointed him and to vote or consent in the place of the director.

Agents.

131. (1) The directors may appoint any person, including a person who is a director, to be an agent of the company.

(2) Subject to the memorandum or articles of a company, an agent of the company has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the articles or

in the resolution of directors appointing the agent, except that no agent has any power or authority with respect to the matters specified in section 110(2).

(3) Where the directors appoint any person to be an agent of the company, they may authorise the agent to appoint one or more substitutes or delegates to exercise some or all of the powers conferred on the agent by the company.

(4) The directors may remove an agent, appointed under subsection (1) and may revoke or vary a power conferred on him under subsection (2).

132. (1) Subject to subsection (2) and its memorandum or articles, a company may indemnify against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who Indemnification.

(a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director of the company; or

(b) is or was, at the request of the company, serving as a director of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise.

(2) Subsection (1) does not apply to a person referred to in that subsection unless the person acted honestly and in good faith and in what he believed to be in the best interests of the company and, in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.

(3) The termination of any proceedings by any judgement, order, settlement, conviction or the entering of a *nolle prosequi* does not, by itself, create a presumption that the person did not act honestly and in good faith and with a view to the best interests of the company or that the person had reasonable cause to believe that his conduct was unlawful.

(4) If a person referred to in subsection (1) has been successful in defence of any proceedings referred to in subsection (1), the person is entitled to be indemnified against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

(5) A company must not indemnify a person in breach of subsection (2) and any indemnity given in breach of that section is void and of no effect.

133. A company may purchase and maintain insurance in relation to any person who is or was a director of the company, or who at the request of the company is or Insurance.

was serving as a director of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under section **132**.

PART VII

SEGREGATED PORTFOLIO COMPANIES

Interpretation for
this Part.

134. (1) In this Part,

“general assets” of a segregated portfolio company has the meaning specified in section **143(3)**;

“portfolio liquidator” means the person appointed as portfolio liquidator under a portfolio liquidation order;

“portfolio liquidation order” means an order made under section 152;

“segregated portfolio” means a segregated portfolio created by a segregated portfolio company under section **138** for the purpose of segregating the assets and liabilities of the company in accordance with this Part;

“segregated portfolio assets” has the meaning specified in section **143(2)**;

“segregated portfolio distribution” means a distribution made in respect of segregated portfolio shares and “segregated portfolio dividend” shall be construed accordingly;

“segregated portfolio shares” means shares issued in respect of a segregated portfolio in accordance with section **139(1)**;

“segregated portfolio transfer order” means an order of the Court made under section **149(4)**.

(2) This Act applies to a segregated portfolio company subject to the provisions of this Part and to such modifications as are necessary.

Division 1 – Approval and Registration

135. (1) A company limited by shares may, with the written approval of the Commission given under subsection (2),

Incorporation or registration as segregated portfolio company.

- (a) be incorporated as a segregated portfolio company; or
- (b) if it has already been incorporated, be registered by the Registrar as a segregated portfolio company.

(2) The Commission may give its written approval to the incorporation of a company, or the registration of an existing company, as a segregated portfolio company only if the company

- (a) is, or on its incorporation will be, licensed as an insurer under the Insurance Act, 1994;
- (b) is, or on its incorporation will be, recognised as a professional or private fund or registered as a public fund under the Mutual Funds Act, 1996; or
- (c) is, or on its incorporation will be, of such class or description as may be prescribed by the Regulations made under section **159**.

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(3) The Registrar shall not incorporate or register a company as a segregated portfolio company unless the Commission has given its written approval under subsection (1).

136. (1) An application for approval to incorporate or register a company as a segregated portfolio company shall be made to the Commission in the approved form and shall be accompanied by such documentation as may be prescribed.

Application for approval of Commission.

(2) The Commission may require an applicant under subsection (1) to furnish it with such other documentation and information as it considers necessary to determine the application.

137. (1) On receipt of an application under section **136**, if it is satisfied that the company has, or has available to it, the knowledge and expertise necessary for the proper management of segregated portfolios, the Commission may give its approval to the incorporation or registration of a company as a segregated portfolio company subject to such conditions as it considers appropriate.

Commission may approve application.

- (2) The Commission may, at any time,
 - (a) vary or revoke any condition subject to which an approval under subsection (1) was given; and
 - (b) impose any condition in respect of any such approval.

Division 2 - Attributes and Requirements of Segregated Portfolio Companies

Segregated portfolios.

138. (1) Subject to subsection (4), a segregated portfolio company may create one or more segregated portfolios for the purpose of segregating the assets and liabilities of the company held within or on behalf of a segregated portfolio from the assets and liabilities of the company held within or on behalf of any other segregated portfolio of the company or the assets and liabilities of the company which are not held within or on behalf of any segregated portfolio of the company.

(2) A segregated portfolio company is a single legal entity and a segregated portfolio of or within a segregated portfolio company does not constitute a legal entity separate from the company.

(3) Each segregated portfolio shall be separately identified or designated and shall include in such identification or designation the words “Segregated Portfolio”.

(4) Where pursuant to the Regulations made under section **159**, a segregated portfolio company is required to obtain the approval of the Commission for the creation of a segregated portfolio, the company shall not create a segregated portfolio unless it has obtained the prior written approval of the Commission.

(5) A segregated portfolio company that contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of \$10,000.

Segregated portfolio shares.

139. (1) A segregated portfolio company may, in respect of a segregated portfolio, issue shares, the proceeds of which shall be included in the segregated portfolio assets of the segregated portfolio in respect of which the segregated portfolio shares are issued.

(2) Segregated portfolio shares may be issued in one or more classes and a class of segregated portfolio shares may be issued in one or more series.

(3) Notwithstanding section **9(1)(e)**, the memorandum of a segregated portfolio company is not required to state the classes of segregated portfolio shares that a segregated portfolio company is authorised to issue.

(4) Unless the context otherwise requires, references in Part III to shares include references to segregated portfolio shares.

General shares.

140. The proceeds of the issue of shares in a segregated portfolio company, other than segregated portfolio shares, shall be included in the company’s general assets.

141. (1) Subject to this section, a segregated portfolio company may pay a dividend or otherwise make a distribution in respect of segregated portfolio shares. Segregated portfolio distributions and dividends.

(2) Segregated portfolio dividends may be paid, and segregated portfolio distributions made, by reference only to the segregated portfolio assets and liabilities attributable to the segregated portfolio in respect of which the segregated portfolio shares were issued.

(3) In determining whether a segregated portfolio company satisfies the solvency test for the purposes of section 57, in respect of a segregated portfolio distribution, no account shall be taken of

(a) the assets and liabilities of or attributable to any other segregated portfolio of the company; or

(b) the company's general assets and liabilities.

(4) The Regulations may prescribe restrictions on the power of a segregated portfolio company to make distributions, including segregated portfolio distributions, where the company or any segregated portfolio of or within the company does not satisfy the solvency test.

142. Any act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement which is to be binding on or to enure to the benefit of a segregated portfolio or portfolios shall be executed by the segregated portfolio company for and on behalf of such segregated portfolio or portfolios which shall be identified or specified and, where in writing, it shall be indicated that such execution is in the name of, or by, or for the account of, such segregated portfolio or portfolios. Company to act on behalf of portfolios.

143. (1) The assets of a segregated portfolio company shall be either segregated portfolio assets or general assets. Assets.

(2) The segregated portfolio assets comprise the assets of the segregated portfolio company held within or on behalf of the segregated portfolios of the company.

(3) The general assets of a segregated portfolio company comprise the assets of the company which are not segregated portfolio assets.

(4) The assets of a segregated portfolio comprise

(a) assets representing the consideration paid or payable for the issue of segregated portfolio shares and reserves attributable to the segregated portfolio; and

(b) all other assets attributable to or held within the segregated portfolio.

(5) It shall be the duty of the directors of a segregated portfolio company to establish and maintain (or cause to be established and maintained) procedures

- (a) to segregate, and keep segregated, segregated portfolio assets separate and separately identifiable from general assets;
- (b) to segregate, and keep segregated, segregated portfolio assets of each segregated portfolio separate and separately identifiable from segregated portfolio assets of any other segregated portfolio; and
- (c) where relevant, to apportion or transfer assets and liabilities between segregated portfolios, or between segregated portfolios and general assets of the company.

(6) Notwithstanding subsection (5), the directors of a segregated portfolio company may cause or permit segregated portfolio assets and general assets to be held

- (a) by or through a nominee; or
- (b) by a company, the shares and capital interests of which may be segregated portfolio assets or general assets or a combination of both.

(7) The directors of a segregated portfolio company do not breach the duties imposed on them under subsection (5) by reason only that they cause or permit segregated portfolio assets or general assets, or a combination of both, to be collectively invested, or collectively managed by an investment manager, provided that the assets remain separately identifiable in accordance with subsection (5).

Creditors of a segregated portfolio company.

144. (1) The rights of creditors of a segregated portfolio company shall correspond with the liabilities provided for in section **146** and no creditor of a segregated portfolio company shall have any rights other than the rights specified in this section and in sections **145** and **146**.

(2) Subject to subsection (3), the following terms shall be implied in every transaction entered into by a segregated portfolio company:

- (a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wheresoever, to make or attempt to make liable any segregated portfolio assets attributable to any segregated portfolio of the company in respect of a liability not attributable to that segregated portfolio;
- (b) that if any party shall succeed by any means whatsoever or

wheresoever in making liable any segregated portfolio assets attributable to any segregated portfolio of the company in respect of a liability not attributable to that segregated portfolio, that party shall be liable to the company to pay a sum equal to the value of the benefit thereby obtained by him; and

- (c) that if any party shall succeed in seizing or attaching by any means or otherwise levying execution against any segregated portfolio assets attributable to any segregated portfolio of the company in respect of a liability not attributable to that segregated portfolio, that party shall hold those assets or their proceeds on trust for the company and shall keep those assets or proceeds separate and identifiable as such trust property.

(3) Subsection (2) does not apply to the extent that it is excluded in writing.

(4) All sums recovered by a segregated portfolio company as a result of any trust referred to in subsection (2)(c) shall be credited against any concurrent liability imposed pursuant to the implied term set out in subsection (2)(b).

(5) Any asset or sum recovered by a segregated portfolio company pursuant to the implied term set out in subsection (2)(b) or (2)(c) or by any other means whatsoever or wheresoever in the events referred to in those subsections shall, after the deduction or payment of any costs of recovery, be applied by the company so as to compensate the segregated portfolio affected.

(6) In the event of any segregated portfolio assets attributable to a segregated portfolio of a segregated portfolio company being taken in execution in respect of a liability not attributable to that segregated portfolio, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the segregated portfolio affected, the company shall

- (a) cause or procure its auditor, acting as expert and not as arbitrator, to certify the value of the assets lost to the segregated portfolio affected; and
- (b) transfer or pay, from the segregated portfolio assets or general assets to which the liability was attributable to the segregated portfolio affected, assets or sums sufficient to restore to the segregated portfolio affected the value of the assets lost.

(7) Where under subsection (6)(b) a segregated portfolio company is obliged to make a transfer or payment from segregated portfolio assets attributable to a segregated portfolio of the company, and those assets are insufficient, the company shall so far as possible make up the deficiency from its general assets.

(8) This section shall have extra-territorial application.

Segregation of assets.

145. Segregated portfolio assets

- (a) shall only be available and used to meet liabilities to the creditors of the segregated portfolio company who are creditors in respect of that segregated portfolio and who shall thereby be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio for such purposes; and
- (b) shall not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the segregated portfolio company who are not creditors in respect of that segregated portfolio, and who accordingly shall not be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio.

Segregation of liabilities.

146. (1) Where a liability of a segregated portfolio company to a person arises from a matter, or is otherwise imposed, in respect of or attributable to a particular segregated portfolio,

- (a) such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to
 - (i) firstly the segregated portfolio assets attributable to such segregated portfolio;
 - (ii) secondly the segregated portfolio company's general assets, to the extent that the segregated portfolio assets attributable to such segregated portfolio are insufficient to satisfy the liability and to the extent that the assets attributable to such segregated portfolio company's general assets exceed any minimum capital amounts lawfully required by the Commission; and
- (b) such liability shall not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to the segregated portfolio assets attributable to any other segregated portfolio.

(2) Where a liability of a segregated portfolio company to a person

- (a) arises otherwise than from a matter in respect of a particular segregated portfolio or particular segregated portfolios, or
- (b) is imposed otherwise than in respect of a particular segregated portfolio or particular segregated portfolios,

such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the company's general assets.

147. (1) Liabilities of a segregated portfolio company not attributable to any of its segregated portfolios shall be discharged from the company's general assets. General liabilities and assets.

(2) Income, receipts and other assets or rights of, or acquired by, a segregated portfolio company not otherwise attributable to any segregated portfolio shall be applied to and comprised in the company's general assets.

148. The financial statements of a segregated portfolio company shall take into account the segregated nature of the company and shall include an explanation of Financial statements.

- (a) the nature of the company;
- (b) how the segregation of the assets and liabilities of the company impacts upon members of the company and persons with whom the company transacts; and
- (c) the effect that any existing deficit in the assets of one or more segregated portfolios of the company has on the general assets of the company.

149. (1) Subject to subsection (3), the segregated portfolio assets attributable to any segregated portfolio of a segregated portfolio company, but not the general assets of the company, may be transferred to another person, wherever resident or incorporated, and whether or not a segregated portfolio company. Transfer of segregated portfolio assets from segregated portfolio company.

(2) A transfer, pursuant to subsection (1), of segregated portfolio assets attributable to a segregated portfolio of a segregated portfolio company shall not, of itself, entitle creditors of that company to have recourse to the assets of the person to whom the segregated portfolio assets were transferred.

(3) No transfer of the segregated portfolio assets attributable to a segregated portfolio of a segregated portfolio company may be made except under the authority of, and in accordance with the terms and conditions of, an order of the Court under this section.

(4) The Court shall not make a segregated portfolio transfer order in relation to a segregated portfolio of a segregated portfolio company

- (a) unless it is satisfied
 - (i) that the creditors of the company entitled to have recourse to the segregated portfolio assets attributable to the segregated portfolio consent to the transfer; or

- (ii) that those creditors would not be unfairly prejudiced by the transfer; and
 - (b) without hearing the representations of the Commission on the matter.
- (5) The Court, on hearing an application for a segregated portfolio transfer order, may
- (a) make an interim order or adjourn the hearing, conditionally or unconditionally;
 - (b) dispense with any of the requirements of subsection (4)(a).
- (6) The Court may attach such conditions as it thinks fit to a segregated portfolio transfer order, including conditions as to the discharging of claims of creditors entitled to have recourse to the segregated portfolio assets attributable to the segregated portfolio in relation to which the order is sought.
- (7) The Court may make a segregated portfolio transfer order in relation to a segregated portfolio of a segregated portfolio company notwithstanding that
- (a) a voluntary liquidator has been appointed in respect of the company; or
 - (b) a portfolio liquidation order has been made in respect of the segregated portfolio or any other segregated portfolio of the company.
- (8) The provisions of this section are without prejudice to any power of a segregated portfolio company lawfully to make payments or transfers from the segregated portfolio assets attributable to any segregated portfolio of the company to a person entitled, in conformity with the provisions of this Act, to have recourse to those segregated portfolio assets.
- (9) Notwithstanding the provisions of this section, a segregated portfolio company shall not require a segregated portfolio transfer order to invest, and change investment of, segregated portfolio assets or otherwise to make payments or transfers from segregated portfolio assets in the ordinary course of the company's business.

Division 3 – Liquidation, Portfolio Liquidation Orders and Administration

150. In this Division, “liquidator” means a voluntary liquidator or an Insolvency Act liquidator and “liquidation” shall be construed accordingly. Meaning of “liquidator”.

151. (1) Notwithstanding the provisions of Part XII, the Insolvency Act or any other statutory provision or rule of law to the contrary, in the liquidation of a segregated portfolio company, the liquidator Liquidation of segregated portfolio company.
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(a) shall be bound to deal with the company's assets in accordance with the requirements set out in section **143(5)**;

(b) in discharge of the claims of creditors of the segregated portfolio company, shall apply the company's assets to those entitled to have recourse thereto in conformity with the provisions of this Part.

(2) Part XII or the Insolvency Act, as the case may be, shall apply to the liquidation of a segregated portfolio subject to such modifications as are necessary to give effect to subsection (1) and, in the event of any conflict between the provisions in Part XII or the Insolvency Act relating to the liquidation of companies and this Part, this Part shall prevail.

152. (1) Subject to the provisions of this section, if in relation to a segregated portfolio company the Court is satisfied Portfolio liquidation orders.

(a) that the segregated portfolio assets attributable to a particular segregated portfolio of the company (when account is taken of the company's general assets, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company's general assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that segregated portfolio, and

(b) that the making of an order under this section would achieve the purposes set out in subsection (3),

the Court may make a portfolio liquidation order under this section in respect of that segregated portfolio.

(2) A portfolio liquidation order may be made in respect of one or more segregated portfolios.

(3) A portfolio liquidation order is an order directing that the business and segregated portfolio assets of or attributable to a segregated portfolio shall be managed by a portfolio liquidator specified in the order for the purposes of

(a) the orderly closing down of the business of or attributable to the

segregated portfolio; and

- (b) the distribution of the segregated portfolio assets attributable to the segregated portfolio to those entitled to have recourse thereto.

(4) Where the Court makes a portfolio liquidation order it shall, at the same time, appoint the Official Receiver or an eligible insolvency practitioner to act as portfolio liquidator under the portfolio liquidation order.

(5) For the purposes of subsection (4), “eligible insolvency practitioner” has the meaning specified in the Insolvency Act, subject to such modifications as are necessary.

(6) A portfolio liquidation order

- (a) shall not be made if a liquidator is appointed in respect of the segregated portfolio company; and
- (b) shall cease to be of effect upon the appointment of a liquidator in respect of the segregated portfolio company, but without prejudice to the prior acts of the portfolio liquidator or his agents.

(7) The members of a segregated portfolio company shall not pass a resolution to appoint a liquidator of the company, whether under Part XII or under the Insolvency Act if any segregated portfolio is subject to a portfolio liquidation order without the prior leave of the Court.

(8) Any resolution passed contrary to subsection (7) shall be void and of no effect.

(9) Sections 483 to 485 of the Insolvency Act apply to a portfolio liquidation order.

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Application for
portfolio
liquidation order.

153. (1) An application for a portfolio liquidation order in respect of a segregated portfolio of a segregated portfolio company may be made by

- (a) the company;
- (b) the directors of the company;
- (c) any creditor of the company in respect of that segregated portfolio;
- (d) any holder of segregated portfolio shares in respect of that segregated portfolio; or
- (e) the Commission.

(2) Notice of an application to the Court for a portfolio liquidation order in respect of a segregated portfolio of a segregated portfolio company shall be served upon

- (a) the company,
- (b) the Commission, and
- (c) such other persons, if any, as the Court may direct,

each of whom shall be given an opportunity of making representations to the Court before the order is made.

- (3) The Court, on hearing an application
 - (a) for a portfolio liquidation order, or
 - (b) for leave, pursuant to section 152(7), to pass a resolution appointing a liquidator,

may, instead of making the order sought or dismissing the application, make an interim order or adjourn the hearing, conditionally or unconditionally.

(4) The Court may make a portfolio liquidation order subject to such terms and conditions as it considers appropriate.

154. (1) The portfolio liquidator of a portfolio of a segregated portfolio company Conduct portfolio liquidation. of

- (a) may do all such things as may be necessary for the purposes set out in section 152(3); and
- (b) shall have all the functions and powers of the directors in respect of the business and segregated portfolio assets of, or attributable to, the segregated portfolio.

- (2) The portfolio liquidator may at any time apply to the Court
 - (a) for directions as to the extent or exercise of any function or power;
 - (b) for the portfolio liquidation order to be discharged or varied; or
 - (c) for an order as to any matter arising in the course of the liquidation of the portfolio.

(3) In exercising his functions and powers the portfolio liquidator shall be deemed to act as agent of the segregated portfolio company, and shall not incur personal liability except to the extent that he is fraudulent, reckless, negligent, or acts in bad faith.

(4) Any person dealing with the portfolio liquidator in good faith is not concerned to inquire whether the portfolio liquidator is acting within his powers.

(5) When an application has been made for, and during the period of operation of, a portfolio liquidation order,

- (a) no proceedings may be instituted or continued by or against the segregated portfolio company in relation to the segregated portfolio in respect of which the portfolio liquidation order was made, and
- (b) no steps may be taken to enforce any security or in the execution of legal process in respect of the business or segregated portfolio assets of, or attributable to, the segregated portfolio in respect of which the portfolio liquidation order was made,

except by leave of the Court, which may be conditional or unconditional.

(6) During the period of operation of a portfolio liquidation order,

- (a) the powers, functions and duties of the directors in respect of the business of, or attributable to, and the segregated portfolio assets of or attributable to, the segregated portfolio in respect of which the order was made continue to the extent specified in this Part or in Regulations made under section 159 or to the extent that the portfolio liquidator or the Court shall direct; and
- (b) the portfolio liquidator of the segregated portfolio shall be entitled to be present at all meetings of the segregated portfolio and to vote at such meetings, as if he were a director of the segregated portfolio company, in respect of the general assets of the company, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company's general assets.

Distribution of
segregated
portfolio assets.

155. (1) Subject to subsection (2) and to any agreement between the segregated portfolio company and any creditor of the company as to the subordination of the debts due to that creditor or to the debts due to the company's other creditors, the portfolio liquidator of a segregated portfolio shall, in the winding up of the business of that segregated portfolio, apply the segregated portfolio assets in satisfaction of the company's liabilities attributable to that segregated portfolio *pari passu*.

(2) Creditors of a segregated portfolio that is subject to a portfolio liquidation order shall be regarded as preferential creditors of the segregated portfolio to the extent that they would be preferential creditors under the Insolvency Act if

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(a) the segregated portfolio was a company; and

(b) the portfolio liquidator was an Insolvency Act liquidator.

(3) Subject to the memorandum or articles, any surplus shall be distributed among the holders of the segregated portfolio shares or the persons otherwise entitled to the surplus, in each case according to their respective rights and interests in or against the company.

(4) Where there are no segregated portfolio shares and no persons otherwise entitled to the surplus, any surplus shall be paid to the segregated portfolio company and shall become a general asset of the company.

156. (1) The Court shall not discharge a portfolio liquidation order unless it appears to the Court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

Discharge and variation of portfolio liquidation orders.

(2) Subject to subsection (1), the Court, on hearing an application for the discharge or variation of a portfolio liquidation order, may make such order as it considers appropriate, may dismiss the application, may make any interim order or may adjourn the hearing, conditionally or unconditionally.

(3) Upon the Court discharging a portfolio liquidation order in respect of a segregated portfolio or a segregated portfolio company on the ground that the purpose for which the order was made has been achieved or substantially achieved, the Court may direct that any payment made by the portfolio liquidator to any creditor of the company in respect of that segregated portfolio shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that segregated portfolio, and the creditor's claims against the company in respect of that segregated portfolio shall be thereby deemed extinguished.

(4) Nothing in subsection (3) shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the segregated portfolio company.

(5) The Court may, upon discharging a portfolio liquidation order in respect of a segregated portfolio of a segregated portfolio company, direct that the segregated portfolio shall be dissolved on such date as the Court may specify.

(6) When a segregated portfolio of a segregated portfolio company has been dissolved under subsection (5), the company may not undertake business or incur liabilities in respect of that cell.

Remuneration of portfolio liquidator.

157. The remuneration of a portfolio liquidator shall be fixed by the Court applying the general principles specified in section 432 of the Insolvency Act and shall be payable, in priority to all other claims, from

- (a) the segregated portfolio assets attributable to the segregated portfolio in respect of which the portfolio liquidator was appointed; and
- (b) to the extent that these may be insufficient, from the general assets of the company;

but not from any the segregated portfolio assets attributable to any other segregated portfolio.

Administration of segregated portfolio under Insolvency Act.

158. (1) In this section, a “relevant segregated portfolio company” is a company in respect of which the Court would have the power to make an administration order under Part III of the Insolvency Act if it was satisfied, in respect of that company, as to the matters specified in section 77(1)(a) of that Act.

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(2) Application may be made to the Court for an administration order in respect of a segregated portfolio of a relevant segregated portfolio company.

(3) Part III of the Insolvency Act applies to

- (a) an application made under subsection (2); and
- (b) if the Court makes an administration order, to the administration of the segregated portfolio;

subject to any Regulations made under section 159(2)(c) and subject to such other modifications as are necessary to give effect to Part III of the Insolvency Act with respect to the administration of a segregated portfolio.

Division 4 – General Provisions

Regulations.

159. (1) The Governor in Council may, on the advice of the Commission, make Regulations concerning segregated portfolio companies.

(2) Without limiting subsection (1), Regulations made under that subsection may

- (a) provide that the provisions of this Act shall apply in relation to any

class or description of company specified by or prescribed under section 135(2)(c) subject to such exceptions, adaptations and modifications as may be specified in the Regulations;

- (b) make provision in respect of any of the following matters:
 - (i) the classes or descriptions of segregated portfolio company which shall obtain the approval of the Commission for the creation of segregated portfolios, or circumstances in which such approval is required to be obtained,
 - (ii) where the Commission's approval is required for the creation of segregated portfolios under subparagraph (i), the procedure for the application for, and the granting of, the Commission's approval,
 - (iii) the conduct of the business of segregated portfolio companies,
 - (iv) the manner in which segregated portfolio companies may carry on, or hold themselves out as carrying on, business,
 - (v) the form and content of the accounts of segregated portfolio companies,
 - (vi) the portfolio liquidation of segregated portfolios under Division 3, and
 - (vii) the fees payable by segregated portfolio companies and by applicants for an approval under section 136;
- (c) provide for modifications to the Insolvency Act necessary to apply that Act to the liquidation and administration of segregated portfolios and of segregated portfolio companies;
- (d) generally give effect to this Part; and
- (e) provide for the fees and penalties payable by segregated portfolio companies which may be in addition to, or in substitution for, the fees and penalties specified in Schedule 1.

Schedule 1

(3) Regulations made under this section may make different provision in relation to different persons, circumstances or cases.

PART VIII

REGISTRATION OF CHARGES

Interpretation for this Part.

160. (1) In this Part,

“charge” means any form of security interest, over property, wherever situated, other than an interest arising by operation of law;

“commencement date” means 1st January 2005;

“liability” includes contingent and prospective liabilities;

“property” includes future property;

“relevant charge” means a charge created on or after the commencement date.

(2) A reference in this Part to the creation of a charge includes a reference to the acquisition of property, wherever situated, which was, immediately before its acquisition, the subject of a charge and which remains subject to that charge after its acquisition and for this purpose, the date of creation of the charge is deemed to be the date of acquisition of the property.

Creation of charges by a company.

161. (1) Subject to its memorandum and articles, a company may, by an instrument in writing, create a charge over its property.

(2) The governing law of a charge created by a company may be the law of such jurisdiction that may be agreed between the company and the chargee and the charge shall be binding on the company to the extent, and in accordance with, the requirements of the governing law.

(3) Where a company acquires property subject to a charge,

(a) subsection (1) does not require the acquisition of the property to be by instrument in writing, if the acquisition is not otherwise required to be by instrument in writing; and

(b) unless the company and the chargee agree otherwise, the governing law of the charge is the law that governs the charge immediately before the acquisition by the company of the property subject to the charge.

Company to keep register of charges.

162. (1) A company shall keep a register of all relevant charges created by the company showing

- (a) if the charge is a charge created by the company, the date of its creation or, if the charge is a charge existing on property acquired by the company, the date on which the property was acquired;
- (b) a short description of the liability secured by the charge;
- (c) a short description of the property charged;
- (d) the name and address of the trustee for the security or, if there is no such trustee, the name and address of the chargee;
- (e) unless the charge is a security to bearer, the name and address of the holder of the charge; and
- (f) details of any prohibition or restriction, if any, contained in the instrument creating the charge on the power of the company to create any future charge ranking in priority to or equally with the charge.

(2) A copy of the register of charges shall be kept at the registered office of the company or at the office of its registered agent.

(3) A company that contravenes this section commits an offence and is liable on summary conviction to a fine of \$5,000.

163. (1) Where a company creates a relevant charge, an application to the Registrar to register the charge may be made by

Registration of charges.

- (a) the company, or a person authorised to act on its behalf; or
- (b) the chargee, or a person authorised to act on his behalf.

(2) An application under subsection (1) is made by filing an application, specifying the particulars of the charge, in the approved form.

(3) The Registrar shall keep, with respect to each company, a Register of Registered Charges containing such information as may be prescribed.

(4) If he is satisfied that the requirements of this Part as to registration have been complied with, upon receipt of an application under subsection (2), the Registrar shall forthwith

- (a) register the charge in the Register of Registered Charges kept by him for that company; and
- (b) issue a certificate of registration of the charge and send a copy to the

company and to the chargee.

(5) The Registrar shall state in the Register of Registered Charges and on the certificate of registration the date and time on which a charge was registered.

(6) A certificate issued under subsection (4) is conclusive proof that the requirements of this Part as to registration have been complied with and that the charge referred to in the certificate was registered on the date and time stated in the certificate.

Variation of registered charge.

164. (1) Where there is a variation in the terms of a charge registered under section **163**, application for the variation to be registered may be made by

(a) the company, or a person authorised to act on its behalf; or

(b) the chargee, or a person authorised to act on his behalf.

(2) An application under subsection (1) is made by filing an application in the approved form.

(3) Upon receipt of an application complying with subsection (2), the Registrar shall forthwith

(a) register the variation of the charge; and

(b) issue a certificate of variation and send a copy of the certificate to the company and to the chargee.

(4) The Registrar shall state in the Register of Registered Charges and on the certificate of variation the date and time on which a variation of charge was registered.

(5) A certificate issued under subsection (3) is conclusive proof that the variation referred to in the certificate was registered on the date and time stated in the certificate.

Charge ceasing to affect company's property.

165. (1) Where a charge registered under this Part ceases to affect the property of a company, the company shall file a notice specifying the property that has ceased to be affected by the charge in the approved form.

(2) A notice filed under subsection (1) shall be signed by or on behalf of the chargee.

(3) If he is satisfied that a notice filed under subsection (1) is correctly completed and has been signed in accordance with subsection (2), the Registrar shall forthwith

- (a) register the notice; and
- (b) issue a certificate and send a copy of the certificate to the company and to the chargee.

(4) The Registrar shall state in the Register of Registered Charges and on the certificate issued under subsection (3) the date and time on which the notice filed under subsection (1) was registered.

(5) From the date and time stated in the certificate issued under subsection (3), the charge is deemed not to be registered in respect of the property specified in the notice filed under subsection (1).

166. (1) A relevant charge on property of a company that is registered in accordance with section 163 has priority over Priority of relevant charges.

- (a) a relevant charge on the property that is subsequently registered in accordance with section 163; and
- (b) a relevant charge on the property that is not registered in accordance with section

(2) Charges created on or after the commencement date which are not registered shall rank among themselves in the order in which they would have ranked had this section not come into force.

167. Charges created prior to the commencement date shall continue to rank in the order in which they would have ranked had this section not come into force and, where they would have taken priority over a charge created on or after the commencement date, they shall continue to take such priority after the commencement date. Priority of other charges.

168. Notwithstanding sections **166** and **167**, Exceptions to sections **166** and **167**.

- (a) the order of priorities of charges is subject to
 - (i) any express consent of the holder of a charge that varies the priority of that charge in relation to one or more other charges that it would, but for the consent, have had priority over, or
 - (ii) any agreement between chargees that effects the priorities in relation to the charges held by the respective chargees; and
- (b) a registered floating charge is postponed to a subsequently registered fixed charge unless the floating charge contains a prohibition or

restriction on the power of the company to create any future charge ranking in priority to or equally with the charge.

PART IX

MERGER, CONSOLIDATION, SALE OF ASSETS, FORCED REDEMPTIONS, ARRANGEMENTS AND DISSENTERS

Interpretation for purposes of this Part.

169. In this Part,

“consolidated company” means the new company that results from the consolidation of two or more constituent companies;

“consolidation” means the consolidating of two or more constituent companies into a new company;

“constituent company” means an existing company that is participating in a merger or consolidation with one or more other existing companies;

“merger” means the merging of two or more constituent companies into one of the constituent companies;

“parent company” means a company that owns at least 90 per cent of the outstanding shares of each class of shares in another company;

“subsidiary company” means a company at least 90 per cent of whose outstanding shares of each class of shares are owned by another company;

“surviving company” means the constituent company into which one or more other constituent companies are merged.

Approval of merger and consolidation.

170. (1) Two or more companies may merge or consolidate in accordance with this section.

(2) The directors of each constituent company that proposes to participate in a merger or consolidation shall approve a written plan of merger or consolidation containing, as the case requires,

(a) the name of each constituent company and the name of the surviving company or the consolidated company;

(b) with respect to each constituent company,

- (i) the designation and number of outstanding shares of each class of shares, specifying each such class entitled to vote on the merger or consolidation, and
 - (ii) a specification of each such class, if any, entitled to vote as a class;
 - (c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of cancelling, reclassifying or converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other asset, or a combination thereof; and
 - (d) in respect of a merger, a statement of any amendment to the memorandum or articles of the surviving company to be brought about by the merger.
- (3) In the case of a consolidation, the plan of consolidation shall have annexed to it a memorandum and articles complying with Part II, Division 2 to be adopted by the consolidated company.
- (4) Some or all shares of the same class of shares in each constituent company may be converted into a particular or mixed kind of assets and other shares of the class, or all shares of other classes of shares, may be converted into other assets.
- (5) The following apply in respect of a merger or consolidation under this section:
- (a) the plan of merger or consolidation shall be authorised by a resolution of members and the outstanding shares of every class of shares that are entitled to vote on the merger or consolidation as a class if the memorandum or articles so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the memorandum or articles, would entitle the class to vote on the proposed amendment as a class;
 - (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each member, whether or not entitled to vote on the merger or consolidation;

- (c) if it is proposed to obtain the written consent of members, a copy of the plan of merger or consolidation shall be given to each member, whether or not entitled to consent to the plan of merger or consolidation;

Registration of merger and consolidation.

171. (1) After approval of the plan of merger or consolidation by the directors and members of each constituent company, articles of merger or consolidation shall be executed by each company containing

- (a) the plan of merger or consolidation;
- (b) the date on which the memorandum and articles of each constituent company were registered by the Registrar;
- (c) the manner in which the merger or consolidation was authorised with respect to each constituent company;

(2) The articles of merger or consolidation shall be filed with the Registrar together with,

- (a) in the case of a merger, any resolution to amend the memorandum and articles of the surviving company; and
- (b) in the case of a consolidation, memorandum and articles for the consolidated company complying with Part II, Division 2.

(3) If he is satisfied that the requirements of this Act in respect of merger or consolidation have been complied with and that the proposed name of the surviving or consolidated company complies with section 17 and, if appropriate, sections 19 and 20 and is a name under which the company could be registered under section 18, the Registrar shall

- (a) register
 - (i) the articles of merger or consolidation, and
 - (ii) in the case of a merger, any amendment to the memorandum or articles of the surviving company or, in the case of a consolidation, the memorandum and articles of the consolidated company; and
- (b) issue a certificate of merger or consolidation in the approved form and, in the case of a consolidation, a certificate of incorporation of the consolidated company.

(4) A certificate of merger or consolidation issued by the Registrar is conclusive evidence of compliance with all requirements of this Act in respect of the merger or consolidation.

172. (1) A parent company may merge with one or more subsidiary companies, without the authorisation of the members of any company, in accordance with this section. Merger with subsidiary.

(2) The directors of the parent company shall approve a written plan of merger containing

- (a) the name of each constituent company and the name of the surviving company;
- (b) with respect to each constituent company,
 - (i) the designation and number of outstanding shares of each class of shares, and
 - (ii) the number of shares of each class of shares in each subsidiary company owned by the parent company; and
- (c) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other assets, or a combination thereof; and
- (d) a statement of any amendment to the memorandum or articles of the surviving company to be brought about by the merger.

(3) Some or all shares of the same class of shares in each company to be merged may be converted into assets of a particular or mixed kind and other shares of the class, or all shares of other classes of shares, may be converted into other assets; but, if the parent company is not the surviving company, shares of each class of shares in the parent company may only be converted into similar shares of the surviving company.

(4) A copy of the plan of merger or an outline thereof shall be given to every member of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that member.

(5) Articles of merger shall be executed by the parent company and shall contain

- (a) the plan of merger;

- (b) the date on which the memorandum and articles of each constituent company were registered by the Registrar; and
- (c) if the parent company does not own all shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or an outline thereof was made available to, or waived by, the members of each subsidiary company.

(6) The articles of merger shall be filed with the Registrar together with any resolution to amend the memorandum and articles of the surviving company.

(7) If he is satisfied that the requirements of this section have been complied with and that the proposed name of the surviving company complies with section 17 and, if appropriate, sections 19 and 20 and is a name under which the company could be registered under section 18, the Registrar shall

- (a) register
 - (i) the articles of merger, and
 - (ii) any amendment to the memorandum or articles of the surviving company; and
- (b) issue a certificate of merger in the approved form.

(8) A certificate of merger issued by the Registrar is conclusive evidence of compliance with all requirements of this Act in respect of the merger.

Effect of merger or consolidation.

173. (1) A merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation.

- (2) As soon as a merger or consolidation becomes effective,
 - (a) the surviving company or the consolidated company in so far as is consistent with its memorandum and articles, as amended or established by the articles of merger or consolidation, has all rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;
 - (b) in the case of a merger, the memorandum and articles of the surviving company are automatically amended to the extent, if any, that changes in its memorandum and articles are contained in the articles of merger;

- (c) in the case of a consolidation, the statements contained in the articles of consolidation that are required or authorised to be contained in the memorandum and articles of a company under this Act, are the memorandum and articles of the consolidated company;
 - (d) assets of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and
 - (e) the surviving company or the consolidated company is liable for all claims, debts, liabilities and obligations of each of the constituent companies.
- (3) Where a merger or consolidation occurs,
- (a) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any member, director or agent thereof, is released or impaired by the merger or consolidation; and
 - (b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any member, director or agent thereof, are abated or discontinued by the merger or consolidation, but
 - (i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, officer or agent thereof, as the case may be, or
 - (ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.
- (4) The Registrar shall strike off the Register of Companies
- (a) a constituent company that is not the surviving company in a merger; or
 - (b) a constituent company that participates in a consolidation.

174. (1) One or more companies may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside the Virgin Islands in accordance with this section, including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of the jurisdictions in which the companies incorporated outside the Virgin Islands are incorporated.

Merger or consolidation with foreign company.

(2) The following apply in respect of a merger or consolidation under this section:

- (a) a company shall comply with the provisions of this Act with respect to merger or consolidation, as the case may be, and a company incorporated under the laws of a jurisdiction outside the Virgin Islands shall comply with the laws of that jurisdiction; and
- (b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside the Virgin Islands, it shall file
 - (i) an agreement that a service of process may be effected on it in the Virgin Islands in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company that is a company registered under this Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company that is a company registered under this Act against the surviving company or the consolidated company;
 - (ii) an irrevocable appointment of its registered agent as its agent to accept service of process in proceedings referred to in subparagraph (i);
 - (iii) an agreement that it will promptly pay to the dissenting members of a constituent company that is a company registered under this Act the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting members; and
 - (iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated; or, if no certificate of merger is issued by the appropriate authority of the foreign jurisdiction, then, such evidence of the merger or consolidation as the Registrar considers acceptable.

(3) The effect under this section of a merger or consolidation is the same as in the case of a merger or consolidation under section **170** if the surviving company or the consolidated company is incorporated under this Act, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside the Virgin Islands, the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section **170** except in so far as the laws of the other jurisdiction otherwise provide.

(4) If the surviving company or the consolidated company is a company incorporated under this Act, the merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation; but if the surviving company or the consolidated company is a company incorporated under the laws of a jurisdiction outside the Virgin Islands, the merger or consolidation is effective as provided by the laws of that other jurisdiction.

175. Subject to the memorandum or articles of a company, any sale, transfer, lease, exchange or other disposition, other than a mortgage, charge or other encumbrance or the enforcement thereof, of more than 50 per cent in value of the assets of the company, other than a transfer pursuant to the power described in section **28(3)**, if not made in the usual or regular course of the business carried on by the company, shall be made as follows:

Disposition of assets.

- (a) the sale, transfer, lease, exchange or other disposition shall be approved by the directors;
- (b) upon approval of the sale, transfer, lease, exchange or other disposition, the directors shall submit details of the disposition to the members for it to be authorised by a resolution of members;
- (c) if a meeting of members is to be held, notice of the meeting, accompanied by an outline of the disposition, shall be given to each member, whether or not he is entitled to vote on the sale, transfer, lease, exchange or other disposition; and
- (d) if it is proposed to obtain the written consent of members, an outline of the disposition shall be given to each member, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.

176. (1) Subject to the memorandum or articles of a company,

Redemption of minority shares.

- (a) members of the company holding 90 per cent of the votes of the outstanding shares entitled to vote; and
- (b) members of the company holding 90 per cent of the votes of the outstanding shares of each class of shares entitled to vote as a class,

may give a written instruction to the company directing it to redeem the shares held by the remaining members.

(2) Upon receipt of the written instruction referred to in subsection (1), the company shall redeem the shares specified in the written instruction irrespective of whether or not the shares are by their terms redeemable.

(3) The company shall give written notice to each member whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.

Arrangements.

177. (1) In this section, “arrangement” means

- (a) an amendment to the memorandum or articles;
- (b) a reorganisation or reconstruction of a company;
- (c) a merger or consolidation of one or more companies that are companies registered under this Act with one or more other companies, if the surviving company or the consolidated company is a company incorporated under this Act;
- (d) a separation of two or more businesses carried on by a company;
- (e) any sale, transfer, exchange or other disposition of any part of the assets or business of a company to any person in exchange for shares, debt obligations or other securities of that other person, or money or other assets, or a combination thereof;
- (f) any sale, transfer, exchange or other disposition of shares, debt obligations or other securities in a company held by the holders thereof for shares, debt obligations or other securities in the company or money or other property, or a combination thereof;
- (g) a dissolution of a company; and
- (h) any combination of any of the things specified in paragraph (a) to (g).

(2) If the directors of a company determine that it is in the best interests of the company or the creditors or members thereof, the directors of the company may approve a plan of arrangement that contains details of the proposed arrangement, even though the proposed arrangement may be authorised or permitted by any other provision of this Act or otherwise permitted.

(3) Upon approval of the plan of arrangement by the directors, the company shall make application to the Court for approval of the proposed arrangement.

(4) The Court may, upon an application made to it under subsection (3), make an interim or a final order that is not subject to an appeal unless a question of law is involved and in which case notice of appeal shall be given within the period of 20 days immediately following the date of the order, and in making the order the Court may

- (a) determine what notice, if any, of the proposed arrangement is to be given to any person;
- (b) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;
- (c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under section 179;
- (d) conduct a hearing and permit any interested person to appear; and
- (e) approve or reject the plan of arrangement as proposed or with such amendments as it may direct.

(5) Where the Court makes an order approving a plan of arrangement, the directors of the company, if they are still desirous of executing the plan, shall confirm the plan of arrangement as approved by the Court whether or not the Court has directed any amendments to be made thereto.

(6) The directors of the company, upon confirming the plan of arrangement, shall

- (a) give notice to the persons to whom the order of the Court requires notice to be given; and
- (b) submit the plan of arrangement to those persons for such approval, if any, as the order of the Court requires.

(7) After the plan of arrangement has been approved by those persons by whom the order of the Court may require approval, articles of arrangement shall be executed by the company and shall contain

- (a) the plan of arrangement;
- (b) the order of the Court approving the plan of arrangement; and
- (c) the manner in which the plan of arrangement was approved, if approval was required by the order of the Court.

(8) The articles of arrangement shall be filed with the Registrar who shall register them.

(9) Upon the registration of the articles of arrangement, the Registrar shall issue a certificate under his hand and seal certifying that the articles of arrangement have been registered.

(10) A certificate of arrangement issued by the Registrar is prima facie evidence of compliance with all requirements of this Act in respect of the arrangement.

(11) An arrangement is effective on the date the articles of arrangement are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of arrangement.

Arrangement where company in voluntary liquidation.

178. The voluntary liquidator of a company may approve a plan of arrangement under section 177 in which case, that section applies as if “Voluntary liquidator” was substituted for “directors” and subject to such other modifications as are appropriate.

Rights of dissenters.

179. (1) A member of a company is entitled to payment of the fair value of his shares upon dissenting from

- (a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;
- (b) a consolidation, if the company is a constituent company;
- (c) any sale, transfer, lease, exchange or other disposition of more than 50 per cent in value of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including
 - (i) a disposition pursuant to an order of the Court having jurisdiction in the matter,
 - (ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition, or
 - (iii) a transfer pursuant to the power described in section 28(2);
- (d) a redemption of his shares by the company pursuant to section 176;

and

(e) an arrangement, if permitted by the Court.

(2) A member who desires to exercise his entitlement under subsection (1) shall give to the company, before the meeting of members at which the action is submitted to a vote, or at the meeting but before the vote, written objection to the action; but an objection is not required from a member to whom the company did not give notice of the meeting in accordance with this Act or where the proposed action is authorised by written consent of members without a meeting.

(3) An objection under subsection (2) shall include a statement that the member proposes to demand payment for his shares if the action is taken.

(4) Within 20 days immediately following the date on which the vote of members authorising the action is taken, or the date on which written consent of members without a meeting is obtained, the company shall give written notice of the authorisation or consent to each member who gave written objection or from whom written objection was not required, except those members who voted for, or consented to in writing, the proposed action.

(5) A member to whom the company was required to give notice who elects to dissent shall, within 20 days immediately following the date on which the notice referred to in subsection (4) is given, give to the company a written notice of his decision to elect to dissent, stating

- (a) his name and address;
- (b) the number and classes of shares in respect of which he dissents; and
- (c) a demand for payment of the fair value of his shares;

and a member who elects to dissent from a merger under section **172** shall give to the company a written notice of his decision to elect to dissent within 20 days immediately following the date on which the copy of the plan of merger or an outline thereof is given to him in accordance with section **172**.

(6) A member who dissents shall do so in respect of all shares that he holds in the company.

(7) Upon the giving of a notice of election to dissent, the member to whom the notice relates ceases to have any of the rights of a member except the right to be paid the fair value of his shares.

(8) Within 7 days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within

7 days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company shall make a written offer to each dissenting member to purchase his shares at a specified price that the company determines to be their fair value; and if, within 30 days immediately following the date on which the offer is made, the company making the offer and the dissenting member agree upon the price to be paid for his shares, the company shall pay to the member the amount in money upon the surrender of the certificates representing his shares.

(9) If the company and a dissenting member fail, within the period of 30 days referred to in subsection (8), to agree on the price to be paid for the shares owned by the member, within 20 days immediately following the date on which the period of 30 days expires, the following shall apply:

- (a) the company and the dissenting member shall each designate an appraiser;
- (b) the two designated appraisers together shall designate an appraiser;
- (c) the three appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorising the action was taken or the date on which written consent of members without a meeting was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and
- (d) the company shall pay to the member the amount in money upon the surrender by him of the certificates representing his shares.

(10) Shares acquired by the company pursuant to subsection (8) or (9) shall be cancelled but if the shares are shares of a surviving company, they shall be available for reissue.

(11) The enforcement by a member of his entitlement under this section excludes the enforcement by the member of a right to which he might otherwise be entitled by virtue of his holding shares, except that this section does not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.

(12) Only subsections (1) and (8) to (11) shall apply in the case of a redemption of shares by a company pursuant to the provisions of section 176 and in such case the written offer to be made to the dissenting member pursuant to

subsection (8) shall be made within 7 days immediately following the direction given to a company pursuant to section 176 to redeem its shares.

PART X

CONTINUATION

180. (1) Subject to subsection (2), a foreign company may continue as a company incorporated under this Act in accordance with this Part if the laws of the jurisdiction in which it is registered authorise it to continue in another jurisdiction, including the Virgin Islands. Foreign company may continue under this Act.

(2) A foreign company may not continue as a company incorporated under this Act if

- (a) it is in liquidation, or subject to equivalent insolvency proceedings, in another jurisdiction;
- (b) a receiver or manager has been appointed in relation to any of its assets;
- (c) it has entered an arrangement with its creditors, that has not been concluded; or
- (d) an application made to a Court in another jurisdiction for the liquidation of the company or for the company to be subject to equivalent insolvency proceedings has not been determined.

181. (1) An application by a foreign company to continue under this Act shall be made by filing Application to continue under this Act.

- (a) a certified copy of its certificate of incorporation, or such other document as evidences its incorporation, registration or formation;
- (b) a memorandum and articles complying with subsections (2) and (3);
- (c) evidence satisfactory to the Registrar that the application to continue and the proposed memorandum and articles have been approved
 - (i) by a majority of the directors or the other persons who are charged with exercising the powers of the company, or
 - (ii) in such other manner as may be established by the company for exercising the powers of the company; and

(d) evidence satisfactory to the Registrar that the company is not disqualified from continuing in the Virgin Islands under section **180(2)**.

(2) Subject to subsection (3), the memorandum of a company continuing under this Act shall comply with section **9**.

(3) The memorandum of a company applying to continue under this Act

(a) shall, in addition to the matters required to be stated under section **9**, state

(i) the name of the company at the date of the application and the name under which it proposes to be continued,

(ii) the jurisdiction under which it is incorporated, registered or formed, and

(iii) the date on which it was incorporated, registered or formed; and

(b) shall not state the matters specified in section **9(2)**.

(4) The memorandum and articles of a company applying to continue under this Act shall be signed by, or on behalf of, the persons who have approved them under subsection (1)(c).

Continuation.

182. (1) If he is satisfied that the requirements of this Act in respect of continuation have been complied with, upon receipt of the documents specified in section **181(1)**, the Registrar shall

(a) register the documents;

(b) allot a unique number to the company; and

(c) issue a certificate of continuation to the company.

(2) A certificate of continuation issued by the Registrar under subsection (1) is conclusive evidence that

(a) all the requirements of this Act as to continuation have been complied with; and

(b) the company is continued as a company incorporated under this Act under the name designated in its memorandum on the date specified in the certificate of continuation.

- 183.** (1) When a foreign company is continued under this Act, Effect of continuation.
- (a) this Act applies to the company as if it had been incorporated under section 7 after the commencement date;
 - (b) the company is capable of exercising all the powers of a company incorporated under this Act;
 - (c) the company is no longer to be treated as a company incorporated under the laws of a jurisdiction outside the Virgin Islands; and
 - (d) the memorandum and articles filed under section 181(1) become the memorandum and articles of the company.
- (2) The continuation of a foreign company under this Act does not affect
- (a) the continuity of the company as a legal entity; or
 - (b) the assets, rights, obligations or liabilities of the company.
- (3) Without limiting subsection (2),
- (a) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under this Act; and
 - (b) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.
- (4) All shares in the company that were outstanding prior to the issue by the Registrar of a certificate of continuation shall be deemed to have been issued in conformity with this Act.

184. (1) Subject to its memorandum or articles, a company for which the Registrar would issue a certificate of good standing pursuant to section 235(1) may, by a resolution of directors or by a resolution of members, continue as a company incorporated under the laws of a jurisdiction outside the Virgin Islands in the manner provided under those laws. Continuation under foreign law.

(2) A company that continues as a company incorporated under the laws of jurisdiction outside the Virgin Islands does not cease to be a company incorporated under this Act unless the laws of the jurisdiction outside the Virgin Islands permit the continuation and the company has complied with those laws.

(3) The registered agent of a company that continues as a company incorporated under the laws of a jurisdiction outside the Virgin Islands shall within 30 days of the continuation of the company under the laws of the foreign jurisdiction file a notice to the effect that the company has continued its incorporation under the laws of the named foreign jurisdiction and the Registrar shall register the notice.

(4) Upon registration of the notice referred to in subsection (3) the Registrar shall

- (a) strike the name of the company off the Register of Companies;
- (b) issue a certificate of discontinuance; and
- (c) publish the striking off in the *Gazette*.

(5) Where a company is continued under the laws of a jurisdiction outside the Virgin Islands

- (a) the company continues to be liable for all of its claims, debts, liabilities and obligations that existed prior to its continuation as a company under the laws of the jurisdiction outside the Virgin Islands;
- (b) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside the Virgin Islands;
- (c) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside the Virgin Islands, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be; and
- (d) service of process may continue to be effected on the registered agent of the company in the Virgin Islands in respect of any claim, debt, liability or obligation of the company during its existence as a

company under this Act.

PART XI

FOREIGN COMPANIES

185. (1) A reference in this Part to a foreign company carrying on business in the Virgin Islands includes a reference to the foreign company establishing or having a place of business in the Virgin Islands. Meaning of “carrying on business”.

(2) For the purposes of this Part, a foreign company does not carry on business in the Virgin Islands solely by reason of the fact that, in the Virgin Islands, it

- (a) is or becomes a party to legal proceedings or settles a legal proceeding or a claim or dispute;
- (b) holds meetings of its directors or members or carries on other activities concerning its internal affairs;
- (c) maintains a bank account;
- (d) effects a sale of property through an independent contractor;
- (e) solicits or procures an order that becomes a binding contract only if the order is accepted outside the Virgin Islands;
- (f) creates evidence of a debt, or creates a charge on property;
- (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;
- (h) conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or
- (i) invests any of its funds or holds any property.

186. (1) A foreign company shall not carry on business in the Virgin Islands unless Registration of foreign company.

- (a) it is registered under this Part; or
- (b) it has applied to be so registered and the application has not been determined.

(2) An application by a foreign company for registration under this Part shall be made to the Registrar in the approved form and shall be accompanied by

- (a) evidence of its incorporation;
- (b) a certified copy of the instrument constituting or defining its constitution;
- (c) a list of its directors as at the date of the application specifying the full name, nationality and address of each director;
- (d) a notice specifying the name of the person appointed as the registered agent of the foreign company in the Virgin Islands, endorsed by the registered agent with his agreement to act as registered agent;
- (e) if a document specified in paragraph (a) or (b) is not in English, a translation of the document certified as accurate in accordance with the Regulations; and
- (f) such other documentation as may be prescribed.

(3) A foreign company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000.

Registration.

187. Where the Registrar receives an application complying with section **186**(2), he shall register the foreign company in the Register of Foreign Companies and issue a certificate of registration as a foreign company.

Registration of changes in particulars.

188. (1) A foreign company registered under this Part shall file a notice in the approved form within one month after a change in

- (a) its corporate name;
- (b) the jurisdiction of its incorporation;
- (c) the instrument constituting or defining its constitution;
- (d) its directors, or in the information filed in respect of a director; or
- (e) its registered agent

(2) A notice of change of registered agent shall be endorsed by the new registered agent with his agreement to act as registered agent.

(3) A notice of a change in the instrument constituting or defining the constitution of a foreign company shall be accompanied by

- (a) a certified copy of the new or amended instrument; and
- (b) if the instrument is not in English, a translation of the document certified as accurate in accordance with the Regulations.

(4) A foreign company that contravenes this section commits an offence and is liable on summary conviction to a fine of \$1,000.

189. (1) A foreign company that carries on business in the Virgin Islands shall, at all times, have a registered agent in the Virgin Islands. Foreign company to have registered agent.

(2) No person shall act, or agree to act, as the registered agent of a foreign company unless that person

- (i) holds a licence under the Company Management Act or under the Banks and Trust Companies Act; and No. 8 of 1990
No. 9 of 1990
- (ii) has the approval of the Commission to provide registered agent services.

(3) A foreign company that contravenes subsection (1) and a person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of \$10,000.

190. (1) Where the Registrar is satisfied that the corporate name of, or a name being used by, a foreign company carrying on business in the Virgin Islands is undesirable, he may serve a notice in the approved form on the foreign company requiring it to cease carrying on business in the Virgin Islands under, or using, that name. Control over names of foreign companies.

(2) A foreign company on which a notice is served under subsection (1) shall not carry on business in the Virgin Islands under, or using, the name specified in the notice from

- (a) a date 30 days after the date of the service of the notice; or
- (b) such later date as may be specified in the notice.

(3) The Registrar may, at any time, withdraw a notice served under subsection (1).

(4) A foreign company on which a notice is served under subsection (1) shall, if it proposes to carry on business in the Virgin Islands under, or using, an alternate name, file a notice of the alternate name.

(5) A foreign company that contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of \$5,000.

Use of name by foreign company.

191. (1) Subject to subsection (3), a foreign company that carries on business in the Virgin Islands shall ensure that its full corporate name and the name of the country of its incorporation are clearly stated in

(a) every communication sent by it, or on its behalf; and

(b) every document issued or signed by it, or on its behalf, that evidences or creates a legal obligation of the foreign company.

(2) For the purposes of subsection (1), a generally recognised abbreviation of a word or words may be used in the name of a foreign company if it is not misleading to do so.

Annual return.

192. (1) A foreign company registered under this Part shall, on or before 31 March of each year, file an annual return made up to 31 December of the previous year.

(2) The annual return shall

(a) be in the approved form; and

(b) be certified as correct by a director of the foreign company or by its registered agent.

Foreign company ceasing to carry on business in the Virgin Islands.

193. (1) A foreign company shall, within seven days of ceasing to carry on business in the Virgin Islands, file a notice in the approved form.

(2) On receipt of a notice under subsection (1), the Registrar shall remove the name of the foreign company from the Register of Foreign Companies and, from that time, the person appointed as the registered agent of the foreign company ceases to be its registered agent.

Service of documents on a foreign company registered under this Part.

194. (1) A document may be served on a foreign company registered under this Part by leaving it at, or sending it by post to, the address of the registered agent of the foreign company.

(2) Subsection (1) does not affect or limit the power of the Court to authorise a document to be served on a foreign company registered under this Part in a different manner.

195. A failure by a foreign company to comply with this Part does not affect the validity or enforceability of any transaction entered into by the foreign company. Validity of transactions not affected.

196. (1) In this section, “effective date” means the date when this Part is brought into force. Transitional provisions for this Part.

(2) A foreign company that, immediately before the effective date, was carrying on business in the Virgin Islands shall, if it continues to carry on business in the Virgin Islands after the effective date, apply for registration under this Part within 30 days of the effective date.

(3) A foreign company registered under Part IX of the Companies Act at the effective date is deemed to be registered under this Part, with effect from the effective date and subsection (2) does not apply to such a company. Cap. 285

(4) A foreign company to which subsection (3) applies shall, within 30 days of the effective date, file

- (a) a list of its directors as at the effective date specifying the full name, nationality and address of each director;
- (b) a notice specifying the name of the person appointed as the registered agent of the foreign company in the Virgin Islands, endorsed by the registered agent with his agreement to act as registered agent; and
- (c) a notice containing such additional information as may be prescribed.

(5) A foreign company to which subsection (2) applies does not commit an offence under **186(3)** by carrying on business in the Virgin Islands during the period commencing with the effective date and terminating on the earlier of

- (a) the date on which it files its application; and
- (b) the thirtieth day after the effective date.

(6) A foreign company that contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of \$10,000.

PART XII

LIQUIDATION, STRIKING-OFF AND DISSOLUTION

Division 1 - Liquidation

Application of
this Part.

197. A company may only be liquidated under this Division if

- (a) it has no liabilities; or
- (b) it is able to pay its debts as they fall due.

Declaration of
solvency.

198. (1) Where it is proposed to appoint a voluntary liquidator under this Division, the directors of the company shall

- (a) make a declaration of solvency in the approved form stating that, in their opinion, the company is and will continue to be able to discharge, pay or provide for its debts as they fall due; and
- (b) approve a liquidation plan specifying
 - (i) the reasons for the liquidation of the company;
 - (ii) their estimate of the time required to liquidate the company;
 - (iii) whether the liquidator is authorised to carry on the business of the company if he determines that to do so would be necessary or in the best interests of the creditors or members of the company;
 - (iv) the name and address of each individual to be appointed as liquidator and the remuneration proposed to be paid to each liquidator; and
 - (v) whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.

(2) A declaration of solvency has no effect for the purposes of section **203(1)(d)** unless

- (a) it is made on a date no more than four weeks earlier than the date of the resolution to appoint a voluntary liquidator; and
- (b) it includes a statement of the company's assets and liabilities as at the latest practical date before the making of the declaration.

(3) A liquidation plan has no effect for the purposes of section 203(1)(e) unless it is approved by the directors no less than six weeks earlier than the date of the resolution to appoint a voluntary liquidator.

(4) A director making a declaration of solvency under this section without having reasonable grounds for the opinion that the company is and will continue to be able to discharge, pay or provide for its debts in full as they fall due, commits an offence and is liable on summary conviction to a fine of \$10,000.

199. (1) Subject to section 200, a voluntary liquidator may be appointed in respect of a company Appointment of liquidator.

(a) by a resolution of the directors passed under subsection (2); or

(b) by a resolution of the members passed under subsection (3).

(2) The directors of a company may, by resolution, appoint an eligible individual as the voluntary liquidator of the company

(a) upon the expiration of such time as may be specified in its memorandum or articles for the company's existence;

(b) upon the happening of such event as may be specified in its memorandum or articles as an event that shall terminate the existence of the company;

(c) in the case of a company limited by shares, if it has never issued any shares; or

(d) in any other case

(i) if the memorandum or articles permit them to pass a resolution for the appointment of a voluntary liquidator, and

(ii) the members have, by resolution, approved the liquidation plan.

(3) The members of a company may, by resolution

(a) approve the liquidation plan; and

(b) appoint an eligible individual as the voluntary liquidator of the company.

(4) The following provisions apply to a members' resolution under subsection (2)(d)(ii) or (3):

- (a) holders of the outstanding shares of a class or series of shares are entitled to vote on the resolution as a class or series only if the memorandum or articles so provide.
- (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the liquidation plan, shall be given to each member, whether or not entitled to vote on the liquidation plan; and
- (c) if it is proposed to obtain the written consent of members, a copy of the liquidation plan shall be given to each member, whether or not entitled to consent to the liquidation plan.

Appointment of voluntary liquidator of long term insurance company or other regulated person.

200. (1) In this section, the term “long term insurance company” has the meaning specified in section 237(1) of the Insolvency Act.

(2) A voluntary liquidator shall not be appointed under this Division in respect of a long term insurance company and any appointment made in contravention of this subsection is void and of no effect.

(3) A resolution to appoint a voluntary liquidator shall not be passed under subsection **199** by the directors or members of a company that is a regulated person, other than a long term insurance company, unless the Commission has

- (a) given its prior written consent to the company being put into voluntary liquidation; and
- (b) approved the appointment of the individual proposed as voluntary liquidator.

(4) Any resolution passed in contravention of subsection (3)(a) and any appointment of a liquidator who has not been approved by the Commission under subsection (3)(b) is void and of no effect.

Control of voluntary liquidation of regulated person.

201. (1) The Commission may, at any time during or after the completion of the voluntary liquidation of a regulated person, require the liquidator to produce for inspection, at such place as it may specify

- (a) his records and accounts in respect of the liquidation; and
- (b) any reports that he has prepared in respect of the liquidation.

(2) The Commission may cause the accounts and records produced to it under subsection (1) to be audited.

(3) The voluntary liquidator of a regulated person shall give the Commission such further information, explanations and assistance in relation to the records, accounts and reports as the Commission may require.

202. The liquidation of a company under this Division commences at the time at which a voluntary liquidator is appointed under section **199** and continues until it is terminated in accordance with section **208** and throughout this period, the company is referred to as being in voluntary liquidation.

Duration of liquidation.

203. (1) A voluntary liquidator may not be appointed under section **199** by the directors or the members of a company if

Circumstances in which liquidator may not be appointed.

- (a) an administrator or liquidator of the company has been appointed under the Insolvency Act;
- (b) an application has been made to the Court to appoint an administrator or a liquidator of the company under the Insolvency Act and the application has not been dismissed;
- (c) the person to be appointed voluntary liquidator has not consented in writing to his appointment;
- (d) the directors of the company have not made a declaration of solvency complying with section **198**; or
- (e) the directors have not approved a liquidation plan under section **198(1)(b)**.

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(2) A resolution to appoint a voluntary liquidator under this Part in the circumstances referred to in subsection (1) is void and of no effect.

(3) Where a voluntary liquidator is appointed under this section, the directors or the members, as the case may be, shall, as soon as practicable, give the liquidator notice of his appointment

204. Where a voluntary liquidator is appointed under section **199** the liquidator shall,

Notice and advertisement of liquidation.

- (a) within 14 days of the commencement of the liquidation, file the following documents:
 - (i) a notice of the his appointment,
 - (ii) the declaration of solvency made by the directors, and
 - (iii) a copy of the liquidation plan; and

- (b) within 30 days of commencement of the liquidation, advertise notice of his appointment in the manner prescribed.

Effect of appointment of voluntary liquidator.

205. (1) Subject to subsections (2) and (3), with effect from the commencement of the voluntary liquidation of a company,

- (a) the voluntary liquidator has custody and control of the assets of the company; and
- (b) the directors of the company remain in office but they cease to have any powers, functions or duties other than those required or permitted under this Part.

(2) Subsection (1)(a) does not affect the right of a secured creditor to take possession of and realise or otherwise deal with assets of the company over which the creditor has a security interest.

(3) Notwithstanding subsection (1)(b), the directors, after the commencement of the voluntary liquidation, may

- (a) authorise the liquidator to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company where the liquidation plan does not give the liquidator such authorisation;
- (b) exercise such powers as the liquidator, by written notice, may authorise them to exercise.

Duties of voluntary liquidator.

206. (1) The principal duties of a voluntary liquidator are to

- (a) take possession of, protect and realise the assets of the company;
- (b) identify all creditors of and claimants against the company;
- (c) pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the company;
- (d) distribute the surplus assets of the company to the members in accordance with the memorandum and articles;
- (e) prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and
- (f) send a copy of the statement of account to all members if so required by the liquidation plan required by section **198(1)(b)**.

(2) A transfer, including a prior transfer, described in section **28(3)** of all or substantially all of the assets of a company incorporated under this Act for the benefit of the creditors and members of the company, is sufficient to satisfy the requirements of subsection (1)(c) and (d).

207. In order to perform the duties imposed on him under section **206**, a voluntary liquidator has all powers of the company that are not reserved to the members under this Act or in the memorandum or articles, including, but not limited to, the power

Powers of voluntary liquidator.

- (a) to take custody of the assets of the company and, in connection therewith, to register any property of the company in the name of the liquidator or that of his nominee;
- (b) to sell any assets of the company at public auction or by private sale without any notice;
- (c) to collect the debts and assets due or belonging to the company;
- (d) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;
- (e) to negotiate, compromise and settle any claim, debt, liability or obligation of the company;
- (f) to prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;
- (g) to retain solicitors, accountants and other advisers and appoint agents;
- (h) to carry on the business of the company, if the liquidator has received authorisation to do so in the plan of liquidation or from the directors under section **205(3)(a)**, as the liquidator may determine to be necessary or to be in the best interests of the creditors or members of the company.
- (i) to execute any contract, agreement or other instrument in the name of the company or in the name of the liquidator; and
- (j) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

(2) Notwithstanding subsection (1)(h), a voluntary liquidator shall not, without the permission of the Court, carry on the business of a company in voluntary liquidation for a period of more than two years.

Completion of liquidation.

208. (1) A voluntary liquidator shall, upon completion of a voluntary liquidation, file a statement that the liquidation has been completed and upon receiving the statement, the Registrar shall

- (a) strike the company off the Register of Companies; and
- (b) issue a certificate of dissolution under his hand and seal certifying that the company has been dissolved.

(2) Where the Registrar issues a certificate of dissolution under his hand and seal certifying that the company has been dissolved,

- (a) the certificate is *prima facie* evidence of compliance with all requirements of this Act in respect of dissolution; and
- (b) the dissolution of the company is effective from the date of the issue of the certificate.

(3) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (1), the person who, immediately prior to the dissolution, was the voluntary liquidator of the company shall cause to be published in the *Gazette*, a notice that the company has been struck off the Register of Companies and dissolved.

Division 2 – Liquidation where Company Insolvent

Company in voluntary liquidation unable to pay its debts.

209. (1) For the purposes of this Division, a company is insolvent if

- (a) the value of its liabilities exceeds, or will exceed, its assets; or
- (b) it is, or will be, unable to pay its debts as they fall due.

(2) If at any time the voluntary liquidator of a company in voluntary liquidation is of the opinion that the company is insolvent, he shall forthwith send a written notice to the Official Receiver in the approved form.

(3) A voluntary liquidator who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of \$25,000.

210. (1) A voluntary liquidator who sends a notice to the Official Receiver under section **209(2)** shall call a meeting of creditors of the company to be held within twenty one days of the date of the notice.

Liquidator to call meeting of creditors.

(2) A meeting called under subsection (1) shall be treated as if it was the first meeting of the creditors of a company called under section 179 of the Insolvency Act by a liquidator appointed by the members of a company and sections 179 and 180 of the Insolvency Act shall apply to the calling and holding of such a meeting.

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(3) Without affecting any acts carried out by the voluntary liquidator appointed under Division 1 prior to his sending a notice to the Official Receiver under section **209(2)**, section 182 of the Insolvency Act applies to a voluntary liquidator appointed under Division 1 as if he was a liquidator appointed by the members under the Insolvency Act.

(4) Where a voluntary liquidator who files a notice under subsection (1) is not an eligible licenced insolvency practitioner with respect to the company, the Official Receiver may apply to the Court *ex parte* for the appointment of himself or an eligible licensed insolvency practitioner as the liquidator of the company and the Court may make the appointment subject to such conditions as it considers appropriate.

(5) A liquidator who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000.

211. (1) From the time that a voluntary liquidator appointed under Division 1 first becomes aware that the company is not, or will not be, able to pay its debts he shall conduct the liquidation as if he had been appointed liquidator under the Insolvency Act.

Insolvency Act to apply.

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(2) Where the voluntary liquidator of a company files a notice with the Official Receiver under section **209(2)**,

- (a) the Insolvency Act applies to the liquidation of the company subject to such modifications as are appropriate; and
- (b) the liquidation of the company shall be deemed to have commenced on the date of the appointment of the liquidator under Division 1.

Division 3 – Striking Off and Dissolution

212. In this Division, “Register” means the Register of Companies.

Interpretation for this Division.

Striking
company off
Register.

- 213.** (1) The Registrar may strike the name of a company off the Register if
- (a) the company
 - (i) fails to appoint a registered agent under section **93**(4) or **94**(4), or
 - (ii) fails to file any return, notice or document required to be filed under this Act;
 - (b) he is satisfied that
 - (i) the company has ceased to carry on business, or
 - (ii) the company is carrying on business for which a licence, permit or authority is required under the laws of the Virgin Islands without having such licence, permit or authority; or
 - (c) the company fails to pay its annual fee or any late payment penalty by the due date.

(2) If the Registrar is of the opinion that the company is trading or has property or that there is some other reason why the company should not be struck off the Register, he may, instead of striking the company from the Register, refer the company to the Commission for investigation.

(3) Before striking a company off the Register on the grounds specified in subsection (1)(a) or (1)(b), the Registrar shall

- (a) send the company a notice stating that, unless the company shows cause to the contrary, it will be struck from the Register on a date specified in the notice which shall be no less than 30 days after the date of the notice; and
- (b) publish a notice of his intention to strike the company off the Register in the *Gazette*.

(4) After the expiration of the time specified in the notice, unless the company has shown cause to the contrary, the Registrar may strike the name of the company off the Register.

(5) The Registrar shall publish a notice of the striking of a company from the Register in the *Gazette*.

(6) The striking of a company off the Register is effective from the date of the notice published in the *Gazette*.

(7) The striking off of a company shall not be affected by any failure on the part of the Registrar to serve a notice on the registered agent or to publish a notice in the *Gazette*.

214. (1) Any person who is aggrieved by the striking of a company off the Register under section **213** may, within 90 days of the date of the notice published in the *Gazette*, appeal to the Court. Appeal.

(2) Notice of an appeal to the Court under subsection (1) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(3) The Registrar may, pending an appeal under subsection (1) of any person aggrieved by the striking of a company off the Register, suspend the operation of the striking off upon such terms as he considers appropriate, pending the determination of the appeal.

215. (1) Where a company has been struck off the Register, the company and the directors, members and any liquidator or receiver thereof, may not Effect of striking off.

- (a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;
- (b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the company; or
- (c) act in any way with respect to the affairs of the company.

(2) Notwithstanding subsection (1), where a company has been struck off the Register, the company, or a director, member, liquidator or receiver thereof, may

- (a) make application for restoration of the company to the Register;
- (b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and
- (c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.

(3) The fact that a company is struck off the Register does not prevent

- (a) the company from incurring liabilities, or
- (b) any creditor from making a claim against the company and pursuing the claim through to judgement or execution,

and does not affect the liability of any of its members, directors, officers or agents.

(4) In this section and section 217, “liquidator” means a voluntary liquidator and an Insolvency Act liquidator.

Dissolution of
company struck
off the Register.

216. Where a company that has been struck off the Register under section 213 remains struck off continuously for a period of 10 years, it is dissolved with effect from the last day of that period.

Restoration of
name of
company to
Register by
Registrar.

217. (1) Where a company has been struck off the Register, but not dissolved, the Registrar may, upon receipt of an application in the approved form and upon payment of the restoration fee and all outstanding fees and penalties, restore the company to the Register and issue a certificate of restoration to the Register.

(2) Where the company has been struck off the Register under section 213(1)(a)(i), the Registrar shall not restore the company to the Register unless

- (a) he is satisfied that a licensed person has agreed to act as registered agent of the company; and
- (b) he is satisfied that it would be fair and reasonable for the name of the company to be restored to the Register;

(3) An application to restore a company to the Register under subsection (1) may be made by the company, or a creditor, member or liquidator of the company and shall be made within 10 years of the date of the notice published in the Gazette under section 213(5).

(4) The company, a creditor, a member or a liquidator thereof may, within 90 days, appeal to the Court from a refusal of the Registrar to restore the company to the Register and, if the Court is satisfied that it would be just for the company to be restored to the register, the Court may direct the Registrar to do so upon such terms and conditions as it may consider appropriate.

(5) Notice of an appeal to the Judge in chambers under subsection (4) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(6) Where a company is restored to the Register under this section, the company is deemed never to have been struck off the Register.

Restoration of
name to Register
by Court.

218. (1) Where a company has been dissolved, application may be made to the Court to restore the company to the Register by the company, or a creditor, member or liquidator of the company and shall be made within 10 years of the date that the company was dissolved.

(2) On an application under subsection (1), the Court may restore the company to the Register subject to such conditions as it considers just.

(3) Where a company is restored to the Register under this section, the company is deemed never to have been struck off the Register.

219. (1) Where a company has been struck off the Register, the Registrar may apply to the Court for the appointment of the Official Receiver or an eligible insolvency practitioner as liquidator of the company.

Appointment of Official Receiver as liquidator of company struck off.

(2) Where the Court makes an order under subsection (1),

(a) the company is restored to the Register; and

(b) the liquidator is deemed to have been appointed under section 159 of the Insolvency Act.

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220. (1) Subject to subsection (2), any property of a company that has not been disposed of at the date of the company's dissolution vests in the Crown.

Property of dissolved company.

(2) When a company is restored to the Register, any property, other than money, that was vested in the Crown under subsection (1) on the dissolution of the company and that has not been disposed of must be returned to the company upon its restoration to the Register.

(3) The company is entitled to be paid out of the Consolidated Fund,

(a) any money received by the Crown under subsection (1) in respect of the company; and

(b) if property, other than money, vested in the Crown under subsection (1) in respect of the company and that property has been disposed of, an amount equal to the lesser of

(i) the value of any such property at the date it vested in the Crown, and

(ii) the amount realized by the Crown by the disposition of that property.

221. (1) In this section, "onerous property" means

Disclaimer.

(a) an unprofitable contract; or

(b) property of the company that is unsaleable, or not readily saleable, or

that may give rise to a liability to pay money or perform an onerous act.

(2) Subject to subsection (3), the Minister may, by notice in writing published in the *Gazette*, disclaim the Crown's title to onerous property which vests in the Crown under section **220**.

(3) A statement in a notice disclaiming property under this section that the vesting of the property in the Crown first came to the notice of the Minister on a specified date shall, in the absence of proof to the contrary, be evidence of the fact stated.

(4) Unless the Court, on the application of the Minister, orders otherwise, the Minister is not entitled to disclaim property unless the property is disclaimed

- (a) within 12 months of the date upon which the vesting of the property under section **220** came to the notice of the Minister, or
- (b) if any person interested in the property gives notice in writing to the Minister requiring him to decide whether he will or will not disclaim the property, within 3 months of the date upon which he received the notice,

whichever occurs first.

(5) Property disclaimed by the Minister under this section is deemed not to have vested in the Crown under section **220**.

(6) A disclaimer under this section

- (a) operates so as to determine, with effect from immediately prior to the dissolution of the company, the rights, interests and liabilities of the company in or in respect of the property disclaimed; and
- (b) does not, except so far as is necessary to release the company from liability, affect the rights or liabilities of any other person.

(7) A person suffering loss or damage as a result of a disclaimer under this section

- (a) shall be treated as a creditor of the company for the amount of the loss or damage, taking into account the effect of any order made by the Court under subsection (8); and
- (b) may apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

(8) The Court may, on an application made under subsection (7)(b), make an order under that paragraph if it is satisfied that it is just for the disclaimed property to be delivered to or vested in the applicant.

PART XIII

INVESTIGATION OF COMPANIES

222. In sections **223** to **228**, “inspector” means an inspector appointed by an order made under section **223(2)**. Definition of “inspector”.

223. (1) A member or the Registrar may apply to the Court *ex parte* or upon such notice as the Court may require, for an order directing that an investigation be made of the company and any of its affiliated companies. Investigation order.

- (2) If, upon an application under subsection (1), it appears to the Court that
- (a) the business of the company or any of its affiliates is or has been carried on with intent to defraud any person,
 - (b) the company or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose, or
 - (c) persons concerned with the incorporation, business or affairs of the company or any of its affiliates have in connection therewith acted fraudulently or dishonestly,

the Court may make any order it thinks fit with respect to an investigation of the company and any of its affiliated companies by an inspector, who may be the Registrar.

(3) If a member makes an application under subsection (1), he shall give the Registrar reasonable notice of it, and the Registrar is entitled to appear and be heard at the hearing of the application.

224. (1) An order made under section **223(2)** shall include an order appointing an inspector to investigate the company and an order fixing the inspector’s remuneration. Court’s powers.

- (2) The Court may, by order, at any time
- (a) replace the inspector;

- (b) determine the notice to be given to any interested person, or dispense with notice to any person;
- (c) authorise the inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;
- (d) require any person to produce documents or records to the inspector;
- (e) authorise the inspector to conduct a hearing, administer oaths or affirmations and examine any person upon oath or affirmation, and prescribe rules for the conduct of the hearing;
- (f) require any person to attend a hearing conducted by the inspector and to give evidence upon oath or affirmation;
- (g) give directions to the inspector or any interested person on any matter arising in the investigation;
- (h) require the inspector to make an interim or final report to the Court;
- (i) determine whether a report of the inspector should be published, and, if so, order the Registrar to publish the report in whole or in part, or to send copies to any person the Court designates; and
- (j) require an inspector to discontinue an investigation.

(3) The inspector shall file a copy of every report he makes under this section.

(4) A report received by the Registrar under subsection (3) shall not be disclosed to any person other than in accordance with an order of the Court made under subsection (2)(i).

Inspector's powers.

225. An inspector

- (a) has the powers set out in the order appointing him; and
- (b) shall upon request produce to an interested person a copy of the order.

Hearing in camera.

226. (1) An application under this Part and any subsequent proceedings, including applications for directions in respect of any matter arising in the investigation, shall be heard *in camera* unless the Court orders otherwise.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part may appear or be heard at the hearing.

(3) No person shall publish anything relating to any proceedings under this Part except with the authorisation of the Court.

227. No person is excused from attending and giving evidence and producing documents and records to an inspector appointed by the Court under this Part by reason only that the evidence tends to incriminate that person or subject him to any proceeding or penalty, but the evidence may not be used or received against him in any proceeding thereafter instituted against him, other than a prosecution for perjury in giving the evidence. Incriminating evidence.

228. An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege. Absolute privilege.

PART XIV

ADMINISTRATION AND GENERAL

229. (1) The Commission Registrar of Corporate Affairs.

(a) shall appoint a suitably experienced person to be Registrar of Corporate Affairs, and

(b) may appoint one or more Deputy Registrars of Corporate Affairs and one or more Assistant Registrars of Corporate Affairs,

on such terms and conditions as it considers appropriate.

(2) The Registrar and any Deputy and Assistant Registrars are employees of the Commission.

(3) Subject to the control of the Commission, the Registrar is responsible for the administration of this Act.

(4) Subject to the control of the Registrar, a Deputy Registrar and an Assistant Registrar has and may exercise the powers, duties and functions of the Registrar and the fact that a Deputy or Assistant Registrar exercises those powers, duties and functions is conclusive evidence of his authority to do so.

230. (1) The Registrar shall maintain Registers.

(a) a Register of Companies incorporated or continued under this Act;

- (b) a Register of Foreign Companies registered under Part XI; and
- (c) a Register of Charges registered under Part VIII.

(2) The Registers maintained by the Registrar and the information contained in any document filed may be kept in such manner as the Registrar considers fit including, either wholly or partly, by means of a device of facility

- (a) that records or stores information magnetically, electronically or by other means; and
- (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(3) The Regulations may provide for the keeping of Registers by the Registrar in electronic form, the filing of documents in both paper and electronic form, including the approval by the Registrar of systems and the inspection of Registers kept in electronic form.

(4) The Registrar

- (a) shall retain every qualifying document filed;
- (b) shall not retain any document filed that is not a qualifying document.

(5) For the purposes of subsection (4), a document is a qualifying document if

- (a) the Act or the Regulations, or another enactment, require or expressly permit the document to be filed;
- (b) the document complies with the requirements of, and is filed in accordance with, the Act, the Regulations or the other enactment that requires or permits the document to be filed.

Optional registration of registers of members and directors.

231. (1) A company may elect to file for registration by the Registrar a copy of either or both of the following:

- (a) its register of members;
- (b) its register of directors.

(2) A company that has elected to file a copy of a register under subsection (1) shall, until such time as it may file a notice under subsection (3), file any changes in the register by filing a copy of the register containing the changes.

(3) A company that has elected to file a copy of a register under subsection (1) may elect to cease registration of changes in the register by filing a notice in the approved form.

(4) If a company elects to file a copy of a register under subsection (1), the company is bound by the contents of the copy register filed then until such time as it may file a notice under subsection (3).

232. Except as otherwise provided in this Act or the Regulations, a document required or permitted to be filed by a company under this Act, may only be filed Filing of documents.

- (a) by the registered agent of the company; or
- (b) if an Insolvency Act liquidator is appointed in respect of the company, by that liquidator.

233. (1) Except as otherwise provided in this Act, the Regulations or any other enactment, a person may Inspection of Registers and documents filed.

- (a) inspect the Registers maintained by the Registrar under section **230(1)**;
- (b) inspect any document retained by the Registrar in accordance with section **230(4)**; and
- (c) require a certified or uncertified copy or extract certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing of a company, or a copy or an extract of any document or any part of a document of which he has custody, to be certified by the Registrar; and a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing or a certified copy or extract is prima facie evidence of the matters contained therein.

(2) A document or a copy or an extract of any document or any part of a document certified by the Registrar under subsection (1) is admissible in evidence in any proceedings as if it were the original document.

234. Any certificate or other document required to be issued by the Registrar under this Act shall be in the approved form. Form of certificate.

235. (1) The Registrar shall, upon request by any person, issue a certificate of good standing under his hand and seal certifying that a company is of good standing if the Registrar is satisfied that Certificate of good standing.

- (a) the company is on the Register of Companies; and
- (b) the company has paid all fees, annual fees and penalties due and payable.

(2) The certificate of good standing issued under subsection (1) shall contain a statement as to whether

- (a) the company has filed articles of merger or consolidation that have not yet become effective;
- (b) the company has filed articles of arrangement that have not yet become effective;
- (c) the company is in the process of being wound up and dissolved; or
- (d) any proceedings to strike the name of the company off the Register of Companies have been instituted.

Fees and penalties to be paid to Registrar.

236. (1) The fees and penalties specified in Parts I and II respectively of Schedule 1 shall be payable to the Registrar who shall pay them into the Government Trust Account established under section 19 of the Financial Services Commission Act.

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(2) Parts I and II of Schedule 1 are subject to the provisions contained in Part III of that Schedule.

Recovery of penalties, etc.

237. Any fee or penalty payable under this Act that remains unpaid for 30 days immediately following the date on which demand for payment is made by the Registrar is recoverable at the instance of the Commission before a Magistrate in civil proceedings notwithstanding the amount sought to be recovered.

Company struck off liable for fees, etc.

238. A company continues to be liable for all fees and penalties payable under this Act notwithstanding that the name of the company has been struck off the Register of Companies.

Fees payable to Registrar.

239. The Registrar may refuse to take any action required of him under this Act for which a fee is prescribed until all fees have been paid.

Companies Regulations.

240. (1) The Governor in Council may, on the advice of the Commission, make Regulations generally for giving effect to this Act and specifically in respect of anything required or permitted to be prescribed by this Act.

(2) Without limiting subsection (1), the Regulations may provide for the circumstances in which, and the procedures by which, a company may re-register from one type of company under section 5 to another type of company under that section;

(3) The Regulations may make different provision in relation to different persons, circumstances or cases.

241. (1) The Commission may, by publication in the *Gazette*, approve forms to be used where specified in this Act.

Approval of forms by Commission.

(2) Where a form is required to be in “approved form”, it shall

(a) contain the information specified in, and

(b) have attached to it such documents as may be required by,

the form approved by the Commission under subsection (1).

242. (1) Notwithstanding any provision of the Income Tax Ordinance

Exemptions from tax.

(a) a company,

(b) all dividends, interest, rents, royalties, compensations and other amounts paid by a company, and

(c) capital gains realised with respect to any shares, debt obligations or other securities of a company,

are exempt from all provisions of the Income Tax Ordinance.

(2) No estate, inheritance, succession or gift tax is payable with respect to any shares, debt obligations or other securities of a company.

(3) Subject to subsection (4), notwithstanding any provision of the Stamp Act,

(a) all instruments relating to transfers of property to or by a company,

(b) all instruments relating to transactions in respect of the shares, debt obligations or other securities of a company, and

(c) all instruments relating to other transactions relating to the business of a company,

are exempt from the payment of stamp duty.

(4) Subsection (3) does not apply to an instrument relating to

(a) the transfer to or by a company of an interest in land situate in the

Virgin Islands; or

- (b) transactions in respect of the shares, debt obligations or other securities of a land owning company.

(5) For the purposes of subsection (4), a company is a land owning company if it, or any of its subsidiaries, has an interest in any land in the Virgin Islands.

(6) Notwithstanding any provision of the Registration and Records Act, all deeds and other instruments relating to

- (a) transfers of property to or by a company,
- (b) transactions in respect of the shares, debt obligations or other securities of a company, and
- (c) other transactions relating to the business of a company,

are exempt from the provisions of that Act.

Offence provisions.

243. Where an offence under this Act is committed by a body corporate, a director or officer who authorized, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction to the penalty specified for the commission of the offence.

PART XV

TRANSITIONAL AND MISCELLANEOUS PROVISIONS

Limited Liability Companies.

244. (1) The Executive Council may, on the advice of the Commission, make regulations providing for the formation, management and operation of limited liability companies and to provide for connected and consequential matters.

(2) Regulations made under subsection (1) shall be subject to a negative resolution of the Legislative Council.

Jurisdiction.

245. For purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the situs of the ownership of shares, debt obligations or other securities of a company is in the Virgin Islands.

Declaration by Court.

246. (1) A company may, without the necessity of joining any other party, apply to the Court, by summons supported by an affidavit, for a declaration on any question of interpretation of this Act or of the memorandum or articles of the company.

(2) A person acting on a declaration made by the Court as a result of an application under subsection (1) shall be deemed, in so far as regards the discharge of any fiduciary or professional duty, to have properly discharged his duties in the subject matter of the application.

247. A Judge of the High Court may exercise in Chambers any jurisdiction that is vested in the Court by this Act and in exercise of that jurisdiction, the judge may award costs as may be just. Judge in Chambers.

248. The transitional provisions set out in Schedule 2 apply. Transitional provisions.

249. (1) The Executive Council may, on the advice of the Commission, by order amend the Schedules to this Act in such manner as it considers necessary. Schedule 2 Amendment of Schedules.

(2) An order made under subsection (1) shall be subject to a negative resolution of the Legislative Council.

250. The enactments set out in the second column of Schedule 3 to this Act are repealed or amended to the extent specified in the third column with effect from the date specified in the fourth column. Repeals and amendments. Schedule 3

251. This Act is binding on the Crown. Act binding on Crown.

SCHEDULE 1
[Section 236]
Fees and Penalties

PART I - FEES

COLUMN 1	COLUMN 2	COLUMN 3
<u>Section</u>	<u>Nature of fee</u>	<u>Fee (\$)</u>
7(1)	For the incorporation of:	
	(a) a company specified in section 5(a), (c) or (d) that is authorized to issue no more than 50,000 shares	350.00
	(b) a company specified in section 5(a), (c) or (d) that is authorized to issue more than 50,000 shares	1,100.00
	(c) a company specified in section 5(b) or (e)	350.00
8(1)	For the incorporation of a company as a restricted purposes company	5,000.00
13	For the registration of a notice of amendment of the memorandum or articles or of a restated memorandum or articles:	
13(1)	(a) filed within 30 days after the date of the resolution	25.00
13(1)	(b) filed more than 30 days but less than 61 days after the date of the resolution	50.00
13(1)	(c) filed more than 60 days but less than 91 days after the date of the resolution	75.00
13(1)	(d) filed more than 90 days after the date of the resolution	100.00
13(5)	(e) filed pursuant to an order made by the Court under section 13(5)	100.00
15	For the registration of a restated memorandum and/or articles	25.00
21(2)	For the issuance of certificate of change of name	25.00
25	For the reservation of a name	25.00

40	For filing a notice of change in the number of shares a company authorised to issue, where the number of shares is increased from less than 50,000 to more than 50,000.	750.00
92(2)	For the registration of a notice of change of registered office or registered agent	25.00
93	For the registration of a notice of resignation as registered agent	25.00
95(3)	For notifying change in details kept by the Commission in the register of approved registered agents	25.00
163(4)	For the registration of a charge	100.00
164(3)	For the registration of a variation of a registered charge	50.00
165(3)	For the registration of a notice that a registered charge has ceased to affect property of a company	50.00
	For the registration of articles of merger or consolidation:	
171(3) and 172(7)	(a) where, the consolidated or surviving company is a company specified in section 5(a) , (c) or (d) authorized to issue no more than 50,000 shares	600.00
171(3)	(b) where, in the case of a consolidation, the consolidated company is a company specified in section 5(a) , (c) or (d) that is authorized to issue more than 50,000 shares	800.00
171(3) and 172(7)	(c) where, in the case of a merger, the surviving company is a company specified in section 5(a) , (c) or (d) that, as a result of the merger is authorized to issue more than 50,000 shares	800.00
171(3) and 172(7)	(d) where, the consolidated or surviving company is a company specified in section 5(b) or (e)	600.00
177(8)	For the registration of articles of arrangement:	
	(a) in the case of a company specified in section 5(a) , (c) or (d) authorized to issue no more than 50,000 shares	600.00
	(b) in the case of a company specified in section 5(a) , (c) or (d) authorized to issue more than 50,000 shares	800.00

	(c) in the case of a company specified in section 5(b) or (e)	600.00
182(1)	For the continuation of a company as:	
	(a) a company specified in section 5(a), (c) or (d) authorized to issue no more than 50,000 shares	500.00
	(b) a company specified in section 5(a), (c) or (d) authorized to issue more than 50,000 shares	1,100.00
	(c) a company specified in section 5(b) or (e)	500.00
184(3)	For the registration of a notice of continuation out of the Virgin Islands	250.00
187	For the registration of a company as a foreign company carrying on business in the Virgin Islands	300.00
188	For the registration of a change of particulars of foreign company	50.00
204	For the registration of a notice of appointment of voluntary liquidator	75.00
208	For the issue of a certificate of dissolution	25.00
217	For the restoration of the name of a company to the Register by the Registrar	
	(a) if the application for restoration is made 6 months or less after the date that the name of the company was struck from the Register	350.00
	(b) if the application for restoration is made more than 6 months after the date that the name of the company was struck from the Register	750.00
218	For the restoration of the name of a company to the Register pursuant to an order of the Court	750.00
231(1)	For the initial registration by the Registrar of a copy of a register of members or a register of directors	50.00
231(2)	For the registration of a change in a register of members or a register of directors	50.00
231(3)	For the registration of a notice that a company has elected to cease to register a copy of its register of members or register of directors	50.00

233	For each inspection of:	
	(a) the register of companies, foreign companies, charges or approved registered agents	15.00
	(b) the file of a company	15.00
	Where the Registrar undertakes an inspection on behalf of a third party, the fee specified in paragraphs (a) and (b) is increased to:	25.00
N/a	For the issue by the Registrar of:	
	(a) a duplicate certificate	25.00
	(b) an uncertified copy, or extract of, any documents (per page)	1.00
	(c) a certified copy, or extract of, any document	25.00
235	For a certificate of good standing	25.00
N/a	Annual fee, payable on the date specified in paragraph 1 of Part III of this Schedule, for a company which, on the date that the fee is due, is:	
	(a) a company specified in section 5(a), (c) or (d) authorized to issue no more than 50,000 shares	350.00
	(b) a company specified in section 5(a), (c) or (d) authorized to issue more than 50,000 shares	1,100.00
	(c) a company specified in section 5(b) or (e)	350.00
	(d) a restricted purposes company	5,000.00
	(e) a company registered as a foreign company carrying on business in the Virgin Islands	300.00
	For the registration of any document required or permitted to be registered under this Act for which a charge is not specified above.	50.00

PART II – PENALTIES

If a company fails to pay the annual fee payable under Part I of this Schedule on or before the date on which the annual fee is due, it shall, in addition to the annual fee, be liable to a penalty calculated as follows:

- (a) if the fee is paid before the expiration of two months after the date when the fee is due, the penalty payable shall be equal to 10 per cent of the annual fee due; or
- (b) if the fee is paid after the expiration of two months after the date when the fee is due, the penalty payable shall be equal to 50 per cent of the annual fee due.

PART III – ADDITIONAL PROVISIONS WITH REGARD TO FEES AND PENALTIES

1. The date when the annual fee payable by a company Part I of this Schedule is due shall be determined as follows:
 - (a) if the company was incorporated, continued or re-registered between the 1st January and 30th June in any year, the annual fee shall be due on the 31st May of each year, commencing in the year following its incorporation;
 - (b) if the company was incorporated, continued or re-registered between the 1st July and 31st December in any year, the annual fee shall be due on the 30th November of each year, commencing in the year following its incorporation.
2. Any fee liable to be paid under sections 7(1) for the incorporation of a company, under section 182(1) for the continuation of a company or under Part I of this Schedule in respect of the annual fee for a company is increased as follows if the company is authorised by its memorandum to issue bearer shares, convert registered shares to bearer shares or exchange registered shares for bearer shares:
 - (a) in the case of a company specified in section 5(a), (c) or (d) that is authorized to issue no more than 50,000 shares
 - (i) if all the company's bearer shares are held by a recognized custodian, the registered office and head office of which are situated in the Virgin Islands, by \$450.00, or

- (ii) if any of the company's bearer shares are held by a custodian not falling within paragraph (a)(i), by \$750.00; or
 - (b) in the case of a company specified in section 5(a), (c) or (d) that is authorized to issue more than 50,000 shares, if any of its bearer shares are held by a custodian not falling within paragraph (a)(i), by \$250.00.
- 3. If by reason of an amendment of its memorandum, its merger with another company or an arrangement, a company becomes authorized to issue bearer shares, convert registered shares to bearer shares or exchange registered shares for bearer shares, in circumstances where it was not so authorized prior to the amendment, merger or arrangement, it shall be liable to pay a fee equal to the difference between:
 - (a) the fee that it would have paid on its incorporation or continuation had it been so authorized, and
 - (b) the fee that it actually paid.
- 4. Where a company is incorporated as a restricted purposes company, the fee payable under section 8(1) is payable instead of, and not in addition to, the incorporation fee specified in respect of section 7(1).
- 5. Where an Insolvency Act liquidator is appointed in respect of a company, the company is not liable for any fees incurred under this Schedule after the date of the liquidator's appointment.

SCHEDULE 2
[Section 248]

TRANSITIONAL PROVISIONS

Interpretation.

1. In this Schedule, “the transition period” means the period from 1st January 2005 to 31st December 2006.

Former Act companies may re-register under this Act during the transition period.

2. (1) A former Act company that, at the date of the application, is on the appropriate Register maintained under the Companies Act or the International Business Companies Act, may at any time during the transition period apply to the Registrar to re-register as a company under this Act.

(2) An application filed with the Registrar under subparagraph (1) shall

(a) be, and contain the information specified, in the approved form; and

(b) be accompanied by

(i) a memorandum that, subject to subparagraphs (3), (4) and (5), complies with section 9 and by articles,

(ii) a document in the approved form signed by the registered agent signifying his consent to act as the registered agent of the company on its re-registration, and

(iii) such other documents as may be prescribed.

(3) The memorandum and articles filed under subparagraph (2) shall be signed by the registered agent as the applicant to reregister.

(4) In addition to the matters required under section 9, the memorandum shall state

(a) the date that the company was first incorporated and, if appropriate, the date with effect from which it was continued under the International Business Companies Act;

- (b) whether, immediately prior to its re-registration under this Act, it was governed by the Companies Act or the International Business Companies Act .

(5) The memorandum shall state the registered office and registered agent of the company at the time of the application to re-register under this paragraph.

(6) Subject to subparagraph (7), an application to re-register under this paragraph shall be authorised, and the memorandum and articles filed under subparagraph (2) shall be approved, by

- (a) a resolution of the members of the company; or
- (b) unless the memorandum or articles provide otherwise, by a resolution of directors.

(7) The directors of a company shall not have any power to approve the memorandum and articles filed under subparagraph (2) (“the new memorandum and articles”) to the extent that they amend the memorandum and articles of the company in effect at the date of the application (“the original memorandum and articles”), unless the directors would otherwise be authorised to make amendments having the same effect to the original memorandum and articles.

Re-registration by the Registrar

3. (1) If he is satisfied that the requirements of this Act in respect of re-registration have been complied with, the Registrar shall, upon receipt of an application and the other documents specified in paragraph 2

- (a) register the documents;
- (b) allot a unique number to the company; and
- (c) issue a certificate of re-registration to the company in the approved form.

(2) Subject to subparagraph (3), a certificate of re-registration is conclusive evidence that

- (a) all the requirements of this Schedule as to re-registration have been complied with; and
- (b) the company is re-registered under this Act on the date specified in the certificate of re-registration.

Automatic re-registration of former Act companies

4. (1) Subject to the provisions of this paragraph, every former Act company
- (a) that, on 31st December 2006, is on the appropriate Register maintained under the Companies Act or the International Business Companies Act; and
 - (b) that has not made application to be re-registered under paragraphs 2 on or before the last day of the transition period;

shall be deemed to be re-registered under this Act on 1st January 2007.

(2) The Registrar shall determine every application made under paragraph 2 on or before 28th February 2007.

(3) In the case of a certificate of re-registration issued by the Registrar on or after 1st January 2007 in respect of an application made on or before the last day of the transition period, the re-registration shall have effect on 31st December 2006 and the certificate of re-registration shall be dated accordingly.

(4) If the Registrar refuses or fails to determine an application made on or before the last day of the transition period by 28th February 2007, the company that made the qualifying application shall be deemed to have been automatically re-registered on 1st January 2007 under subparagraph (1).

(5) Where a company is automatically re-registered under this paragraph, the Registrar shall, as soon as is practicable, enter the name of the company on the Register and allot a unique number to the company.

(6) Where a company is re-registered automatically under this paragraph, its memorandum and articles is deemed to have been amended to the extent required to comply with this Act with effect from 1st January 2007.

(7) Regulations may provide for the amendments deemed to be made to companies' memoranda under subparagraph (6).

Certificate of registration where former Act company re-registered automatically

5. (1) Where a former Act company is automatically re-registered under paragraph 4, the Registrar shall not be required to issue a certificate of re-registration to the company unless it applies for a certificate and pays the appropriate fee.

(2) A certificate of re-registration issued under subparagraph (1) shall state that the former Act company was automatically re-registered under this Act.

Effect of re-registration under this Act

6. (1) A former Act company that is re-registered, whether by the Registrar pursuant to an application made under paragraph 2 or whether automatically under paragraph 4, continues in existence as a legal entity and its re-registration under this Act, whether under the same or a different name, does not

- (a) prejudice or affect its identity;
- (b) affect its assets, rights or obligations; or
- (c) affect the commencement or continuation of proceedings by or against the company.

(2) Subject to subparagraph (1), a former Act company that is re-registered under this Schedule shall, from the date of its re-registration, be treated as a company incorporated under this Act.

Restoration of former Act companies struck off a register maintained under a former Act

7. Every application to restore a former Act company to the Registrar made on or after 1st January 2006, whether to the Registrar or to the Court, shall be made under, and determined in accordance with, this Act as if the former Act company had been a company struck off the Register under this Act.

Registrar and Deputy and Assistant Registrars of Companies.

8. The person holding office as Registrar of Companies under the Companies Act (Cap.285) and every person holding office as a Deputy Registrar of Companies or an Assistant Registrar of Companies under that Act, immediately before the commencement of this Act, is deemed to have been appointed as Registrar of Corporate Affairs or as a Deputy or an Assistant Registrar of Corporate Affairs, as the case may be, in accordance with section 229(1) on the same terms as they were appointed under that Act.

References to companies in other enactments

9. A reference in any enactment to a company incorporated or registered under a former Act shall, unless the context otherwise requires, be read as including a reference to a company incorporated or re-registered under this Act.

International business companies authorised to issue bearer shares

10. (1) This paragraph applies in respect of a former Act company re-registered under this Act that, immediately before its re-registration,

- (a) was an international business company; and
- (b) was authorised by its memorandum to issue bearer shares, convert registered shares to bearer shares or exchange registered shares for bearer shares.

(2) Paragraph 2 of Part III of Schedule 1 shall have no application to a company to which this paragraph applies during the period from 1st January 2005 to 31st December 2007.

(3) Paragraph 2 of Part III of Schedule 1 shall apply to a company to which this paragraph applies during the period from 1st January 2008 to 31st December 2010 with the following amendments:

- (a) it shall apply only in respect of an annual fee due under section 236;
- (b) the fee of \$450.00 specified in subparagraph (a)(i) is reduced to \$250.00;
- (c) the fee of \$750.00 specified in subparagraph (a)(i) is reduced to \$450.00; and
- (d) subparagraph (b) is deleted.

(4) Paragraph 2 of Part III of Schedule 1 shall apply to a company to which this paragraph applies from 1st January 2011, except that it shall apply only in respect of an annual fee due under section 236.

SCHEDULE 3
[Section 250]

ENACTMENTS REPEALED OR AMENDED

NO.	ENACTMENT	EXTENT OF AMENDMENT OR REPEAL	DATE THAT AMENDMENT OR REPEAL IS EFFECTIVE
1.	Companies Act (Cap. 285)	<p>1. In section 2, delete the definition of “Registrar” and substitute the following:</p> <p style="padding-left: 40px;">““Registrar” means the Registrar of Corporate Affairs appointed under section 229 of the BVI Business Companies Act;”</p> <p>2. Section 5 is repealed.</p> <p>3. Section 203 is repealed.</p> <p>4. Section 207 is repealed.</p> <p>5. Part IX is repealed.</p> <p>6. In section 240, subsections (2), (3) and (4) are repealed.</p> <p>7. The Companies Act (Cap. 285) is repealed.</p>	<p>1 January 2005</p> <p>1 January 2006</p> <p>1 January 2006</p> <p>1 January 2005</p> <p>1 January 2006</p> <p>1 January 2006</p> <p>1 January 2007</p>
2.	Insolvency Act No.	<p>1. In section 2, delete the definition of “Registrar” and substitute the following:</p> <p style="padding-left: 40px;">““Registrar” means the Registrar of Corporate Affairs appointed under section 229 of the BVI Business Companies Act;”</p> <p>2. In section 3</p> <p style="padding-left: 20px;">(a) in paragraph (a), delete “or” after the semi colon;</p> <p style="padding-left: 20px;">(b) in paragraph (b), delete the full</p>	<p>1 January 2005</p> <p>1 January 2005</p>

		<p>stop and substitute “: or”; and</p> <p>(c) insert after paragraph (b) the following paragraph:</p> <p>“(c) a company within the meaning specified in section 3(1) of the BVI Business Companies Act 2004.</p>	
		<p>3. In section 13(1)(a)</p> <p>(a) in subparagraph (ii), delete “or” after the comma;</p> <p>(b) in subparagraph (iii), delete the semi colon and substitute “, or”; and</p> <p>(c) insert after subparagraph (iii) the following subparagraph:</p> <p>“(iv) the BVI Business Companies Act 2004;”</p>	1 January 2005
		<p>4. In section 163(3)(b), insert after “Companies Act” the words “or Part XI of the BVI Business Companies Act 2004”.</p>	1 January 2005
		<p>5. In section 195(2)(a), delete “or the International Business Companies Act” and substitute “, the International Business Companies Act or the BVI Business Companies Act 2004”.</p>	1 January 2005
		<p>6. In section 234(1)</p> <p>(a) in paragraph (a), delete “or” after the semi colon;</p> <p>(b) in paragraph (b), delete the full stop and substitute “; or”; and</p> <p>(c) insert after paragraph (b) the following paragraph:</p> <p>“(c) the Register of Companies maintained by the Registrar under the BVI Business</p>	1 January 2005

		Companies Act 2004.”	
		7. In section 259, repeal subsection (1) and substitute the following: “ (1) In this Part “voluntary liquidator” means (a) a liquidator appointed by the directors or members of an international business company under Part IX of the International Business Companies Act; or (b) a voluntary liquidator within the meaning specified in section 2 of the BVI Business Companies Act.”.	1 January 2005
		8. In section 263(d)(i), delete “or the International Business Companies Act” and substitute “, the International Business Companies Act or the BVI Business Companies Act 2004”.	1 January 2005
		9. In section 263(f), insert after “International Business Companies Act” the words “or sections 209 or 210 of the BVI Business Companies Act 2004”.	1 January 2005
		10. In section 409, delete the definition of “voluntary liquidator” and substitute the following: ““voluntary liquidator” means (a) a liquidator appointed by the directors or members of an international business company under Part IX of the International Business Companies Act; or (b) a voluntary liquidator within the meaning specified in section 2 of the BVI Business	1 January 2005

		Companies Act.”.	
		11. In section 474(1), by inserting after paragraph (b) the following paragraph: “(ba) by acting as portfolio liquidator appointed under section 152 of the BVI Business Companies Act 2004;”.	1 January 2005
		12. In section 503 (a) delete the marginal note and substitute the following: “Provisions of other enactments not to apply.” (b) delete “does not apply” and substitute “and section 101 of the BVI Business Companies Act 2004 do not apply”	1 January 2005
3.	International Business Companies Act (Cap. 291)	1. In section 2, delete the definition of “Registrar” and substitute the following: ““Registrar” means the means the Registrar of Corporate Affairs appointed under section 229 of the BVI Business Companies Act;”	1 January 2005
		2. Section 3 is repealed.	1 January 2006
		3. Section 104 is amended (a) in paragraph (a), by deleting “\$300.00” and substituting “\$350.00”; (b) in paragraph (b), by deleting “\$1,000.00” and substituting “\$1,100.00”; (c) in paragraph (ca), by deleting “\$700.00” and substituting “\$750.00”; (d) in paragraph (d), by deleting	1 January 2005

		<p>“\$700.00” and substituting “\$750.00” and by deleting “\$1,000.00” in both places it occurs and substituting “\$1,100.00”;</p> <p>(e) in paragraph (e), by deleting “\$700.00” and substituting “\$750.00” and by deleting “\$1,000.00” in both places it occurs and substituting “\$1,100.00”;</p> <p>(f) in paragraph (g), by deleting “\$1,000.00” in both places it occurs and substituting “\$1,100.00”;</p> <p>(g) in paragraph (i) , by deleting “\$1,000.00” in both places where it occurs and substituting “\$1,100.00”; and</p> <p>(h) in paragraph (u) , by deleting “\$700.00” and substituting “\$750.00”.</p> <p>4. Section 105 is amended</p> <p>(a) in subsection (1), by deleting “A company that is” and substituting “Subject to section 105A, a company that is”;</p> <p>(b) in subsection (1)(a), by deleting “\$300.00” and substituting “\$350.00”;</p> <p>(c) in subsection (1)(b), by deleting “\$1,000.00” and substituting “\$1,100.00”;</p> <p>(d) in subsection (2), by deleting “A company that is” and substituting “Subject to section 105A, a company that is”;</p> <p>(e) in subsection (2)(a), by deleting “\$300.00” and substituting “\$350.00”; and</p>	<p>1 January 2005</p>
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		<p>(f) in subsection (1)(b), by deleting “\$1,000.00” and substituting “\$1,100.00”.</p> <p>5. The following section is inserted after section 105:</p> <p>“105A. Notwithstanding section 105, the annual fee payable by a company that, on the 31st December 2004, was not prohibited by its memorandum from issuing bearer shares is</p> <p>(a) \$1,100.00 if, on the licence fee payment date, its authorised capital exceeds \$50,000; or</p> <p>(b) in any other case, \$350.00.”.</p> <p>6. The International Business Companies Act (Cap. 291) is repealed.</p>	<p>1 January 2005</p> <p>1 January 2007</p>
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Passed by the Legislative Council this 21st day of December, 2004.

V. INEZ ARCHIBALD,
Speaker.

ALVA McCALL,
Acting Clerk of the Legislative Council.