



# BVI BUSINESS COMPANIES ACT

**Revised Edition**  
showing the law as at 30 June 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014.

This edition contains a consolidation of the following laws—

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**SEE STATUTORY INSTRUMENTS BOOKLET**





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**BVI BUSINESS COMPANIES ACT**  
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## **BVI BUSINESS COMPANIES ACT**

*(Acts 16 of 2004, 26 of 2005, 12 of 2006, 1 of 2008 and 5 of 2012 and S.I.s 84/2006, 44/2007, 80/2007, 13/2009, 7/2012, 12/2013 and 36/2013)*

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.

### **Commencement**

*[1 January 2005]*

### PART I

#### PRELIMINARY PROVISIONS

#### **Short title**

1. This Act may be cited as the BVI Business Companies Act.

#### **Interpretation**

2. In this Act, unless the context otherwise requires—

“affiliate”, in relation to a company, bears the same meaning as an “affiliated company” specified in the Regulations and shall be construed accordingly; *(Inserted by Act 5 of 2012)*

“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;

“business day” means any day other than a Saturday, Sunday or public holiday in the Virgin Islands; *(Inserted by Act 5 of 2012)*

- “Cabinet” means the Cabinet of the Virgin Islands established under section 47 of the Virgin Islands Constitution Order; (*Inserted by Act 5 of 2012*)
- “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;
- “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;
- “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 character name” means a foreign character name approved by the Registrar under section 20; (*Inserted by Act 5 of 2012*)
- “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);
- “Listed Companies and Funds Regulations” means the Regulations made under section 240A; (*Inserted by Act 5 of 2012*)
- “listed company” means a company, any securities of which are approved for listing on a recognised exchange; (*Inserted by Act 5 of 2012*)
- “member”, in relation to a company, means a person who is—
- (a) a shareholder;
  - (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;
- “name” in relation to a company, means the name of the company, but excludes its foreign character name; (*Inserted by Act 5 of 2012*)
- “Official Receiver” means the Official Receiver appointed under section 488 of the Insolvency Act;
- “parent” in relation to a company, foreign company or other body corporate, has the meaning specified in the Regulations; (*Inserted by Act 5 of 2012*)
- “prescribed” means prescribed by the Regulations;
- “recognised exchange” has the meaning specified in section 2(1) of the Securities and Investment Business Act; (*Inserted by Act 5 of 2012*)
- “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” (*Repealed by Act 5 of 2012*)

“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 or continuation as having restricted purposes in accordance with section 8(1); (*Amended by Act 5 of 2012*)

“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;

“subsidiary”, in relation to a company, foreign company or other body corporate, has the meaning specified in the Regulations; (*Inserted by Act 5 of 2012*)

“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);

“unlimited member” has the meaning specified in section 78; and (*Inserted by Act 5 of 2012*)

“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; 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. *(Repealed by Act 5 of 2012)*

## 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) except in the case of an unlimited company that is not authorised to issue shares, articles that are signed by the proposed registered agent, as incorporator; *(Amended by Act 26 of 2005)*
- (c) a document in the approved form signed by the proposed registered agent signifying his or her 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.

### **Incorporation of a company**

7. (1) If he or she 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)—

- (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.

### **Registration of company as restricted purposes company**

8. (1) If the memorandum of a company limited by shares, as filed under section 6, or section 181 contains the statements specified in section 10(1) and(2)—

- (a) the company shall be registered on incorporation or continuation as having restricted purposes; and
- (b) the certificate of incorporation or continuation 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 or continuation shall not subsequently be registered as a restricted purposes company.

*(Amended by Act 5 of 2012)*

## **Division 2**

### *Memorandum and Articles*

### **Memorandum**

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

- (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 or that the company is authorised to issue an unlimited number of shares; and (*Amended by Act 26 of 2005*)
    - (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 or she 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) (*Repealed by Act 26 of 2005*)



(4) The Regulations may require the memorandum of a company to contain a statement, in the form specified in the Regulations, as to any limitations on the business that the company may carry on. (*Substituted by Act 26 of 2005*)

### **Additional matters to be stated in memorandum of restricted purposes company**

**10.** (1) The memorandum of a company limited by shares may state that the company is a 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 purposes, capacity, rights, powers or privileges of the company. (*Amended by Act 26 of 2005*)

### **Effect of memorandum and articles**

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

(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.

### **Amendment of memorandum and articles**

**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.

(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, by resolution, to amend the memorandum or articles of the company. (*Amended by Act 26 of 2005*)

(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 10 days after the date of the order. (*Amended by Act 5 of 2012*)

(6) If a notice of amendment or restated memorandum or articles is not filed within the period specified in a Court order made under subsection (5), the order ceases to have effect and subsection (2) applies as if the order had never been made. (*Inserted by Act 5 of 2012*)

**Amendment of memorandum with respect to restricted purposes**

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.

(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.

**Restated memorandum or articles**

15. (1) A company may, at any time, file a 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 and that, under any provision of this Act, are deemed to have been made. *(Amended by Act 12 of 2006)*

(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 or that, under any provision of this Act, are deemed to have been made. *(Amended by Act 12 of 2006)*

**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 include the designation “Segregated Portfolio Company” or “SPC” placed immediately before one of the endings specified in subsection (1), or a permitted abbreviation thereof. (*Substituted by Act 26 of 2005*)

(4A) The name of a segregated portfolio company that is a restricted purposes company shall include the designation “(SPV)” immediately before or immediately after the designation specified in subsection (4). (*Substituted by Act 26 of 2005*)

(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.

### **Exemption from section 17**

**17A.** (1) Application may be made to the Commission in the approved form for authorisation to—

- (a) incorporate a company under a name; or
- (b) change the name of a company to a name;

that, in either case, does not include an ending specified in section 17(1).

(2) On an application made under subsection (1), the Commission may authorise the registration of the company under a name that does not include an ending specified in section 17(1) if—

- (a) the memorandum of the company—
  - (i) limits the objects of the company to the pursuit of wholly charitable or non-commercial purposes and requires the company to apply its income solely in promoting those purposes; and
  - (ii) prohibits the company from making any distributions to its members; and
- (b) the Commission is satisfied that the activities of the company will, following authorisation, be carried out principally within the Virgin Islands.

(3) An authorisation under subsection (2) shall be subject to such conditions as the Commission may impose whether on the granting of the authorisation or subsequently.

(4) A company having the benefit of an authorisation granted under subsection (2) shall notify the Commission as soon as practicable if—

- (a) its memorandum is amended such that it no longer complies with subsection (2)(a);
- (b) its activities cease to be carried on principally in the Virgin Islands;
- (c) it breaches or, for any reason, is no longer in compliance with any conditions specified by the Commission under subsection (3);
- (d) it pursues purposes that are not wholly charitable or non-commercial or applies its income other than in promoting its purposes; or
- (e) it makes any distribution to its members.

(5) If an event that requires notification by a company under subsection (4) occurs, the Commission may, whether or not the company has provided notification to the Commission as required by that subsection, by notice in writing—

- (a) revoke the authorisation granted under subsection (2); and
- (b) direct the company to change its name to a name acceptable to the Registrar that includes an ending specified in section 17(1) on or before a date specified in the notice, which shall be not less than 14 days after the date of the notice.

(6) Where the Commission issues a notice under subsection (5), section 22(2) and (3) apply as if the notice was a notice issued by the Registrar under section 22(1).

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

*(Inserted by Act 12 of 2006)*

### **Restrictions on company names**

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

- (a) subject to section 26A, the use of which would contravene another enactment or the Regulations; *(Amended by Act 5 of 2012)*
- (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
  - (ii) 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; *(Amended by Act 26 of 2005)*
- (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, phrase or abbreviation, unless the Commission has given its prior written consent to the use of the word, phrase or abbreviation; (*Amended by Act 5 of 2012*)

(e) that, in the opinion of the Registrar, is offensive, objectionable or contrary to public policy or to the public interest. (*Amended by Act 5 of 2012*)

(2) For the purposes of subsection (1)(d), the Commission may, by notice published in the *Gazette*, specify words, phrases or abbreviations as restricted words, phrases or abbreviations. (*Substituted by Act 5 of 2012*)

(3) Notwithstanding subsection (1)(b)(ii), the Registrar may register a company under a name that is similar to the name of another company if both companies are affiliates. (*Inserted by Act 5 of 2012*)

### **Company number as company name**

**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.

### **Foreign character name**

**20.** (1) A company may be registered with an additional foreign character name approved by the Registrar. (*Amended by Act 26 of 2005 and substituted by 5 of 2012*)

(2) The Regulations may provide for—

(a) the approval, registration, change and use of foreign character names;

(b) the deregistration of foreign character names by the Registrar for cause or on application by companies that have registered them; and

(c) the Registrar to direct a company to change its foreign character name.

(*Substituted by Act 5 of 2012*)

### **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 or she 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 or she 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 or she 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 the 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. *(Amended by Act 26 of 2005)*

(2) Where the name of a company is changed under section 21 or 22, the company's memorandum and articles are deemed to be amended to state the new name with effect from the date of the change of name certificate. *(Amended by Act 26 of 2005)*

### Re-use of company names

24. The Regulations may provide for the re-use of names previously used by companies that—

- (a) are or have been registered under this Act, or a former Act, or by former Act companies, that have—
  - (i) changed their name;
  - (ii) been struck off the Register, or off a register maintained under a former Act, but not dissolved; or
  - (iii) been dissolved under this Act or a former Act; or
- (b) have been registered under this Act but, in respect of which, the Registrar has issued a certificate of discontinuance under section 184(4)(a).

*(Substituted by Act 5 of 2012)*

**Reservation of name**

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.

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

**Use of company name**

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—

(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.

**Rights and interest in names**

26A. (1) Nothing in this Division requires the Registrar, when determining whether to incorporate or continue a company under a name, to register a change of name or to direct a change of name, to—

(a) make a determination of any person's interest in a name, or the rights of any person concerning a name or the use of a name, whether the interest or rights are alleged to arise under a Virgin Islands enactment or rule of law or an enactment or rule of law in a jurisdiction other than the Virgin Islands; or

(b) to take account of any trade or service mark, or equivalent right, whether registered in the Virgin Islands or in a jurisdiction other than the Virgin Islands.

(2) Subsection (1) does not prevent the Registrar taking into account any matter specified in that subsection when determining whether, in his or her opinion, the registration of a company name is, or would be, objectionable or contrary to public policy or to the public interest.

(3) The registration of a company under this Act with a company name does not give the company any interest in, or rights over, the name that it would not have, apart from this Division.

*(Inserted by Act 5 of 2012)*



## Division 4

### Capacity and Powers

#### Separate legal personality

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

#### Capacity and powers

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

- (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 that in either case is not authorised to issue 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;  
(Amended by Act 26 of 2005)
- (b) issue debt obligations of every kind and grant options, warrants and rights to acquire debt obligations; (Amended by Act 26 of 2005)
- (c) guarantee a liability or obligation of any person and secure any obligations by mortgage, pledge or other charge, of any of its assets for that purpose; and (Amended by Act 5 of 2012)
- (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 the purposes of subsection (2)(d), the directors may cause the company to transfer any of its assets in trust to one or more trustees, each of which may be an individual, 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 of the trust. (Substituted by Act 26 of 2005)

(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.** (1) 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.

(2) Subsection (1) does not apply with respect to a restricted purposes company. (*Inserted by Act 26 of 2005*)

### **Personal liability**

**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 or she may be liable for his or her own conduct or acts.

### **Dealings between company and other persons**

**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—

- (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 or her 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 or at the office of its registered agent. *(Amended by Act 26 of 2005)*

(2) Subsection (1) does not apply—

- (a) in relation to a document filed under Part VIII; or
- (b) to a document relating to a restricted purposes company.  
*(Inserted by Act 26 of 2005)*

(3) A person is deemed to have notice of a document specified in subsection (2), that has been registered by the Registrar under this Act, and the provisions and contents of any such document. *(Inserted by Act 5 of 2012)*

## 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).

### Series of shares

35. Subject to its memorandum and articles, a company may issue a class of shares in one or more series. (*Amended by Acts 26 of 2005 and 12 of 2006*)

### Types of shares

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

(a) be redeemable;

(b) confer no rights, or preferential rights, to distributions; (*Amended by Act 26 of 2005*)

(c) confer special, limited or conditional rights, including voting rights;

(d) confer no voting rights;

(e) participate only in certain assets of the company; and (*Inserted by Act 26 of 2005*)

(f) where issued in, or converted to, one class or series, be convertible to another class or series, in the manner specified in the memorandum and articles of association. (*Inserted by Act 5 of 2012*)

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

### Par value and no par value shares

37. (1) Subject to the memorandum and articles of a company—

(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.

### Bearer shares

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—

(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 this Act or 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. *(Amended by Act 5 of 2012)*

(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) Subject to its memorandum and articles, a company may issue fractional shares. *(Substituted by Act 26 of 2005)*

(2) Subject to its memorandum and articles, a fractional share in a company has the corresponding fractional rights, obligations and liabilities of a whole share of the same class. *(Amended by Act 26 of 2005)*

### **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.

### **Division and combination of shares**

**40A.** (1) Subject to its memorandum and articles, a company may—

- (a) divide its shares, including issued shares, into a larger number of shares; or
- (b) combine its shares, including issued shares, into a smaller number of shares.

(2) A division or combination of shares, including issued shares, of a class or series shall be for a larger or smaller number, as the case may be, of shares in the same class or series.

(3) A company shall not divide its shares under subsection (1)(a) or (2) if it would cause the maximum number of shares that the company is authorised to issue by its memorandum to be exceeded.

(4) Where par value shares are divided or combined under this section, the aggregate par value of the new shares must be equal to the aggregate par value of the original shares. *(Amended by Act 5 of 2012)*

*(Inserted by Act 26 of 2005)*

## 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 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. (*Amended by Act 26 of 2005*)

(3) (*Repealed by Act 26 of 2005*)

(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.

## Register of members as evidence of legal title

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.

(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.

### Rectification of register of members

#### 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,

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 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. (*Amended by Act 26 of 2005*)

(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 or her name entered in or omitted from the register of members, whether the question arises between—

- (a) 2 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 certificate

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 by such other person who may be authorised by the memorandum or articles to sign share certificates; or (*Amended by Act 26 of 2005*)
- (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 other persons. *(Amended by Act 26 of 2005)*

(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.

#### **Consideration for shares**

**47.** (1) Subject to subsection (2), a share may be issued for consideration in any form, including money, a promissory note, or other written obligation to contribute money or property, real property, personal property (including goodwill and know-how), services rendered or a contract for future services. *(Amended by Act 26 of 2005)*

(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.

#### **Shares issued for consideration other than money**

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

- (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.

### **Consent to issue of shares**

**49.** The issue by a company of a share that—

- (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 transferor has failed to pay an amount due in respect of those shares. (*Amended by Act 26 of 2005*)

(8) The transfer of a registered share is effective when the name of the transferee is entered in the register of members. (*Amended by Act 26 of 2005*)

(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.

### **Transfer of bearer share**

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

## Division 4

### Distributions

#### Meaning of solvency test and distribution

56. For the purposes of this Division—

- (a) a company satisfies the solvency test if—
  - (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—
  - (i) the direct or indirect transfer of an asset, other than the company's own shares, to or for the benefit of the member; or
  - (ii) the incurring of a debt to or for the benefit of a member, in relation to shares held by a shareholder, or to the entitlements to distributions of a member who is not a shareholder, and whether by means of the purchase of an asset, the purchase, redemption or other acquisition of shares, a transfer of indebtedness or otherwise, and includes a dividend.

*(Substituted by Act 26 of 2005)*

#### 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 to members at such time and of such an amount, as they think fit if they are satisfied, on reasonable grounds, that the company will, immediately after the distribution, satisfy the solvency test. *(Amended by Acts 26 of 2005 and 12 of 2006)*

(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 or her 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.

### **Company may purchase, redeem or otherwise acquire its own shares**

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

(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 specified in the company's memorandum or articles. (*Amended by Act 26 of 2005*)

(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 purchase, redemption or other acquisition. (*Amended by Act 26 of 2005*)

### **Process for purchase, redemption or other acquisition of own shares**

**60.** (1) The directors of a company may make an offer to purchase, redeem or otherwise acquire shares issued by the company, if the offer is—

(a) an offer to all shareholders to purchase, redeem or otherwise 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 purchase, redeem or otherwise 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 purchase, redeem or otherwise 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 purchase, redeem or otherwise acquire, the number of additional shares shall be reduced rateably.  
*(Amended by Act 26 of 2005)*

### **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)(ii) unless they have passed a resolution stating that, in their opinion—

- (a) the purchase, redemption or other 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.

*(Amended by Acts 26 of 2005 and 5 of 2012)*

(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 purchase, redemption or other acquisition of shares under section 60(1)(b) on the grounds that—

- (a) the purchase, redemption or other 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.

*(Amended by Act 26 of 2005)*

### **Shares redeemed otherwise than at option of company**

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

- (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.

### **Purchases, redemptions or other acquisitions deemed not to be a distribution**

**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—

- (a) the company redeems the share or shares under and in accordance with section 62;
- (b) the company redeems the share or shares pursuant to a right of a shareholder to have his or her shares redeemed or to have his or her shares exchanged for money or other property of the company; or (*Amended by Act 26 of 2005*)
- (c) the company purchases, redeems or otherwise acquires the share or shares by virtue of the provisions of section 176 or 179. (*Amended by Act 5 of 2012*)

### **Treasury shares**

**64.** (1) A company may hold shares that have been purchased, redeemed or otherwise acquired under section 59 as treasury shares if—

- (a) the memorandum or articles of the company do not prohibit it from holding treasury shares;
- (b) the directors resolve that shares to be purchased, redeemed or otherwise acquired shall be held as treasury shares; and

- (c) the number of shares purchased, redeemed or otherwise 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.

*(Amended by Act 26 of 2005)*

(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.

### **Transfer of treasury shares**

**65.** Treasury shares may be transferred by the company and the provisions of this Act and the memorandum and articles that apply to the issue of shares apply to the transfer of treasury shares. *(Amended by Act 26 of 2005)*

### **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 distributions in respect of the shares; and (*Substituted by Act 26 of 2005*)
- (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) Subject to subsection (7A), where the governing law of a mortgage or charge of shares in a company is the law of the Virgin Islands, 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.

(*Substituted by Act 26 of 2005 and amended by Act 5 of 2012*)

(7A) Where the governing law of a mortgage or charge of shares in a company is the law of the Virgin islands, if the instrument creating the mortgage or charge so provides, the remedies referred to in subsection (5) are exercisable immediately on a default occurring. (*Inserted by Act 5 of 2012*)

(8) In the case of a 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. (*Amended by Act 26 of 2005*)

(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;

“BVI authorised custodian” means a custodian approved under section 50A(1) of the Financial Services Commission Act; *(Inserted by Act 5 of 2012)*

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

“foreign authorised custodian” means a custodian approved under section 50A(2) of the Financial Services Commission Act; *(Inserted by Act 5 of 2012)*

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

**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 distribution and an entitlement to a share in the assets of the company on its winding up or on its dissolution. *(Amended by Act 26 of 2005)*

(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).

**Issue of bearer shares and conversion of registered shares**

**69.** (1) Where a company issues a bearer share or transfers 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. *(Amended by Act 26 of 2005)*

(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.

(3) The delivery of a bearer share to a custodian in accordance with this Division does not constitute the custodian as a shareholder of the company, in relation to the bearer share, notwithstanding that the custodian may exercise voting and other rights on behalf of the beneficial owner of the bearer share. *(Inserted by Act 5 of 2012)*

### **Bearer shares not held by custodian disabled**

**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.

(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 or she 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, or foreign authorised 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, or foreign authorised 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 subsection (1)(a) to (c).  
(Amended by Act 5 of 2012)

### **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 a BVI authorised custodian 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 (Amended by Act 5 of 2012)

(ii) in the case of a foreign authorised custodian at such office as may be approved by the Commission in writing; and  
(Amended by Act 5 of 2012)

(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.

### **Transfer of bearer shares**

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

(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 or she shall—

- (a) make a copy of all notices provided to him or her 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).

### **Procedure on a person ceasing to be a custodian**

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

- (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 or she 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 or she has ceased to be an authorised or recognised custodian; and
- (b) deliver to the registered agent of the company, within 14 days of his or her ceasing to be a custodian—
  - (i) the bearer share in the company; and
  - (ii) all original notices provided to him or her 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 or she 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 or she 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 or she —

- (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.

### **Notification of person having right to entitlements carried by bearer share**

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.

(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 and the right to consent to written resolutions of members. *(Amended by Act 26 of 2005)*

(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.

### **Registered agent to maintain register of bearer shares.**

**76A.** (1) In this section, “bearer share company” means a company which—

- (a) is of a type specified in section 5(a), (c) or (e); and
- (b) is not prohibited by its memorandum from issuing bearer shares, converting registered shares to bearer shares and exchanging registered shares for bearer shares.

(2) The registered agent of a bearer share company shall maintain a register of the company’s bearer shares, specifying in relation to each bearer share—

- (a) the identifying number of the bearer shares certificate representing the bearer share;
- (b) the full name of the beneficial owner of the share;
- (c) the full name of any other person that has an interest in the bearer share, whether by virtue of a charge on the share or otherwise; and
- (d) the name and address of the custodian of the bearer share.

*(Inserted by Act 5 of 2012)*

### **Regulations**

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

- (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

### **Meaning of “shareholder”, “guarantee member” and “unlimited member”**

**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;

“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) Subject to subsection (1A), a company shall at all times have one or more members. *(Amended by Act 26 of 2005)*

(1A) Subsection (1) does not apply during the period from the incorporation of the company to the appointment of its first directors under section 113(1). *(Inserted by Act 26 of 2005)*

(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 and where the company is authorised to issue shares, a guarantee member may also be a shareholder. *(Amended by Act 26 of 2005)*

(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 and where the company is authorised to issue shares, an unlimited member may also be a shareholder. *(Amended by Act 26 of 2005)*

### **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);
- (b) any other liability expressly provided for in the memorandum or articles of the company; and
- (c) any liability to repay a distribution under section 58(1). *(Inserted by Act 26 of 2005)*

(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 majority of in excess of 50% 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. *(Amended by Act 26 of 2005)*

(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 an unlimited member is entitled to one vote on any resolution on which he or she is entitled to vote.  
*(Amended by Act 26 of 2005)*

**Meetings of members**

**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—

- (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 30% 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 or she 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) Subject to the memorandum and articles, the following apply where shares are jointly owned—

- (a) if 2 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 or she may vote on behalf of all of them; and
- (c) if 2 or more are present in person or by proxy, they must vote as one. *(Amended by Act 26 of 2005)*

### 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 7 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% majority, or such other majority as may be specified in the memorandum or articles, of the total voting rights on all the matters to be considered at the meeting have waived notice of the meeting and, for this purpose, the presence of a member at the meeting shall be deemed to constitute a waiver on his or her part. *(Amended by Acts 26 of 2005 and 5 of 2012)*

(a) *(Repealed by Act 26 of 2005)*

(b) *(Repealed by Act 26 of 2005)*

(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 50% of the votes. *(Amended by Act 26 of 2005)*

### Voting trusts and members' agreements

**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—

(a) *(Repealed by Act 26 of 2005)*

- (b) the agreement may contain any other provisions not inconsistent with the purpose of the agreement; *(Amended by Act 26 of 2005)*
- (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 or she may be liable for his or her own conduct or acts;
- (i) where 2 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 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 such additional period as is stated in the written agreement; and *(Amended by Act 26 of 2005)*
- (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 or her 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) *(Repealed by Act 26 of 2005)*

(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.

### **Court may call meeting of members**

**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—

- (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.

### **Proceedings at meetings of members**

**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.

### **Written resolutions**

**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.

(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.

### Service of notice on members

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

- (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 by mail addressed to each member at the address shown in the register of members; or where the member consents, by and in accordance with such electronic means as may be permitted by the Regulations; and (*Amended by Act 5 of 2012*)
  - (b) in the case of members holding bearer shares, by personal service on, or by mail addressed to, each custodian of bearer shares in the company at the address shown in the register of members. (*Amended by Act 26 of 2005*)
- (2) (*Repealed by Act 26 of 2005*)
- (3) (*Repealed by Act 26 of 2005*)

## 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.

### Registered agent

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

(2) Unless the last registered agent of the company has resigned in accordance with sections 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—

- (a) holds a licence under the Company Management Act; or
- (b) holds a licence under the Banks and Trust Companies Act, that authorises it to provide registered agent services.

*(Substituted by Act 12 of 2006)*

(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. *(Amended by Act 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.

### Appointment of a registered agent

**91A.** (1) If at any time a company does not have a registered agent it shall forthwith, by resolution of members or directors, appoint a registered agent.

(2) A resolution to appoint a registered agent may be passed—

- (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.

(3) A notice of appointment of registered agent shall be endorsed by the registered agent with his or her agreement to act as registered agent and filed by the registered agent.

(4) The appointment of the registered agent takes effect on the registration by the Registrar of the notice filed under subsection (3).

*(Inserted by Act 5 of 2012)*

### **Change of registered office or registered agent**

**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—

- (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 company that wishes to change its registered office or registered agent shall file a notice in the approved form. *(Substituted by Act 26 of 2005)*

(3) A notice of change of registered agent shall be endorsed by the new registered agent with his or her 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.

(4A) The Regulations may specify circumstances in which a legal practitioner is not entitled to file a notice of change of registered office or registered agent on behalf of a company. *(Inserted by Act 5 of 2012)*

(5) For the purposes of subsection (4A), 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 (2). *(Amended by Act 26 of 2005)*

(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.

### **Change of registered office where registered agent changes address**

**92A.** (1) This section applies in relation to a company where—

- (a) the registered office of the company is located at the principal office of its registered agent in the Virgin Islands; and
- (b) the company's registered agent changes the location of its principal office within the Virgin Islands.

(2) Where this section applies to a company, its registered agent may change the registered office of the company to the changed location of its principal office in the Virgin Islands by filing a notice in the approved form with the Registrar—

(a) stating that—

(i) the registered agent has moved the location of its Principal office in the Virgin Islands; and

(ii) the company intends its registered office to continue to be the principal office of the registered agent; and

(b) specifying the new address of its principal office in the Virgin Islands.

(3) A change of registered office under this section takes effect on the registration by the Registrar of the notice filed under subsection (2).

(4) A person who acts as the registered agent for more than one company may file a single notice which combines one or more notices specified in subsection (2).

*(Inserted by Act 5 of 2012)*

### **Deemed amendment of memorandum, where registered agent changes address**

**92B.** (1) This section applies in relation to a company where—

(a) the memorandum of the company states the address of its registered agent; and

(b) the company's registered agent changes the location of its principal office within the Virgin Islands.

(2) Where this section applies to a company, its registered agent may file a notice in the approved form—

(a) stating that—

(i) the registered agent has moved the location of its principal office in the Virgin islands; and

(ii) the memorandum of the company states the registered agent's address; and

(b) specifying the new address of its principal office in the Virgin Islands.

(3) On the registration of a notice referred to in subsection (2), the company's memorandum is deemed to be amended to state the changed address of the registered agent's principal office in the Virgin Islands with effect from the date of registration of the notice.

(4) A person who acts as the registered agent for more than one company may file a single notice which combines one or more notices specified in subsection (2).

*(Inserted by Act 5 of 2012)*



**Deemed amendment of memorandum, where registered agent changes company name**

**92C.** (1) This section applies in relation to a company where—

- (a) the company's registered agent changes its company name; and
- (b) that registered agent is stated in the memorandum to be the registered agent of the company, whether as the first or a subsequent registered agent.

(2) Where this section applies to a company, its registered agent may file a notice in the approved form—

- (a) stating that—
  - (i) the registered agent has changed its registered name; and
  - (ii) the registered agent is stated in the memorandum to be the registered agent of the company, whether as the first or a subsequent registered agent; and
- (b) specifying the new company name of the registered agent.

(3) On the registration of a notice referred to in subsection (2), the company's memorandum is deemed to be amended to state the company's new name with effect from the date of registration of the notice.

(4) A person who acts as the registered agent for more than one company may file a single notice which combines one or more notices specified in subsection (2).

*(Inserted by Act 5 of 2012)*

**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 or her intention to resign as registered agent of the company on the date specified in the notice to a person specified in subsection (3);
- (b) indicate in writing on the written notice that the list of all approved registered agents in the Virgin Islands with their names and addresses may be found on the Commission's Internet site; and *(Amended by Act 5 of 2012)*
- (c) file a copy of the written notice. *(Amended by Act 5 of 2012)*

(2A) For the purpose of subsection (2)(b), the reference to the Commission's Internet site means the principal public access Internet site for the time being maintained by, or on behalf of, the Commission. *(Inserted by Act 5 of 2012)*

(3) A written notice under subsection (2) 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. (*Amended by Act 5 of 2012*)

(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.

(6) A registered agent wishing to rescind a notice of his or her intention to resign (the "rescission notice") shall—

(a) give at least 14 days written notice of his or her intention to rescind the resignation notice on the date specified in the notice to the person to whom he or she sent the resignation notice; and

(b) file the notice (the "rescission notice").

(7) A rescission notice may not be filed—

(a) if the company has, by the time of filing, changed its registered agent; or

(b) 14 days or less prior to the date specified in subsection (2).

(8) The rescission notice takes effect on the date specified in the rescission notice unless the company has changed its registered agent before that date.

*(Inserted by Act 5 of 2012)*

### **Registered agent ceasing to be eligible to act**

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

(a) the person ceases to hold a licence under the Company Management Act or the Banks and Trust Companies Act; or

(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 or she 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 or she 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 or she 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 which is sent a notice under subsection (2) through a director or other person specified in subsection (3) shall, within 90 days of the date of the notice, change its registered agent in accordance with section 92. *(Substituted by Act 5 of 2012)*

(4A) A person who has ceased to be eligible to act as a registered agent ceases to be the registered agent of each company to which it has sent a notice under subsection (2), through a director or other person specified in subsection (3), on the earlier of—

- (a) the date that the company changes its registered agent in accordance with subsection (4); or
- (b) the first day following the expiry of the notice period specified in subsection (4). *(Inserted by Act 5 of 2012)*

(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 or she ceases to be eligible to act as a registered agent; and
- (b) after ceasing to be eligible to act, he or she continues to be the registered agent of a company during the period from the date he or she 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, or the Banks and Trust Companies Act; 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
- (ii) the reason for his or her 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*

#### **Documents to be kept at office of registered agent**

**96.** (1) A company shall keep the following documents at the office of its 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 10 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 14 days of the change of location.

(3A) The Listed Companies and Funds Regulations may disapply or modify the requirements of this section in relation to listed companies, public funds, private funds and professional funds and, for the purpose of this subsection, public funds, private funds and professional funds have the

respective meanings specified in the Securities and Investment Business Act.  
(*Inserted by Act 5 of 2012*)

(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 subsection (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 14 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.

### **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;
- (c) at 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 or she is a member,

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

(3) Subject to the memorandum and articles, 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. (*Amended by Act 26 of 2005*)

(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 or she 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.

### **Service of process, etc. on company**

**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—

- (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; and
- (b) copies of all resolutions consented to by—
  - (i) directors;
  - (ii) members;
  - (iii) committees of directors; and
  - (iv) committees of members.

*(Amended by Act 26 of 2005)*

(2) A company shall have a common seal and an imprint of the seal shall be kept at the office of the registered agent of the company. *(Amended by Act 26 of 2005)*

(2A) Where a company has a foreign character name, the common seal—

- (a) shall contain its name; and
- (b) may, in addition, contain its foreign character name. *(Inserted by Act 5 of 2012)*

(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.

(4) Notwithstanding subsection (1)(a), an instrument is validly executed by a company as a deed or an instrument under seal if it is either—

- (a) sealed with the common seal of the company and witnessed by a director of the company or such other person who is authorised by the memorandum and articles to witness the application of the company's seal; or (*Inserted by Act 26 of 2005*)
- (b) it is expressed to be, or is expressed to be executed as, or otherwise makes clear on its face that it is intended to be, a deed and it is signed by a director or by a person acting under the express or implied authority of the company. (*Inserted by Act 26 of 2005*)

(5) The provisions of subsection (3) shall be without prejudice to the validity of any instrument under seal validly executed before, on or after the date on which this section comes into force. (*Inserted by Act 26 of 2005*)

### Contracts before incorporation

**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—

- (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.

### Notes and bills of exchange

**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—

- (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 or she was appointed binds the company.

(3) An instrument appointing an attorney under subsection (1) may either be—

(a) executed as a deed; or

(b) signed by a person acting under the express or implied authority of the company. *(Inserted by Act 26 of 2005)*

### 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) *(Repealed by Act 26 of 2005)*

### 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) Subject to subsection (4A), a company shall, at all times, have one or more directors. *(Substituted by Act 26 of 2005)*

(4A) Subsection (4) does not apply during the period between the incorporation of the company and the appointment of the first directors by the registered agent under section 113(1). *(Inserted by Act 26 of 2005)*

(5) Subject to subsection (4), the number of directors of a company may be fixed by, or in the manner provided in, the articles of the company. *(Amended by Act 26 of 2005)*

(6) If at any time a company does not have a director, any person who manages, or who directs or supervises the management of, the business and affairs of the company is deemed to be a director of the company for the purposes of this Act. *(Inserted by Act 26 of 2005)*

### Committees of directors

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

- (a) designate one or more committees of directors, each consisting of one or more directors; and
- (b) delegate any one or more of their powers, including the power to affix the common seal of the company, to the committee. *(Amended by Act 26 of 2005)*

(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 or remove directors; *(Amended by Act 26 of 2005)*
- (e) to appoint or remove an agent; *(Amended by Act 26 of 2005)*
- (f) to approve a plan or merger, consolidation or arrangement;
- (g) to make a declaration of solvency for the purposes of section 198(1)(a) or approve a liquidation plan; or *(Amended by Act 26 of 2005)*
- (h) to make a determination under section 57(1) that the company will, immediately after a proposed distribution, satisfy the solvency test. *(Inserted by Act 26 of 2005)*

(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.

(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 or alternate director of a company, or nominated as a reserve director, unless he or she has consented in writing to be a director or alternate director or to be nominated as a reserve director.

*(Amended by Acts 26 of 2005 and 5 of 2012)*

#### **Appointment of directors**

**113.** (1) The first registered agent of a company shall, within 6 months of the date of incorporation of the company, appoint one or more persons as the first directors of the company. *(Amended by Act 26 of 2005)*

(1A) If, before a company has any members, a sole director, or all the directors, appointed under subsection (1), resign or die, or in the case of a director that is not an individual, ceases to exist, the registered agent may appoint one or more persons as directors of the company. *(Inserted by Act 5 of 2012)*

(2) Subsequent directors of a company may be appointed—

- (a) unless the memorandum or articles provide otherwise, by the members; or *(Amended by Act 26 of 2005)*
- (b) where permitted by the memorandum or articles, by the directors.

(3) A director is appointed for such term as may be specified on his or her appointment. *(Amended by Act 5 of 2012)*

(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 in the case of a director that is not an individual, ceases to exist, or otherwise ceases to hold office as a director prior to the expiration of his or her term of office; and (*Amended by Act 5 of 2012*)
- (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 or her successor takes office or until his or her earlier death, resignation or removal.

(7) Where a company has only one member who is an individual and that member is also the sole director of the company, notwithstanding anything contained in the memorandum or articles, that sole member/director may, by instrument in writing, nominate a person who is not disqualified from being a director of the company under section 111(1) as a reserve director of the company to act in the place of the sole director in the event of his or her death. (*Inserted by Act 26 of 2005*)

(8) The nomination of a person as a reserve director of the company ceases to have effect if—

- (a) before the death of the sole member/director who nominated him or her—
  - (i) he or she resigns as reserve director; or
  - (ii) the sole member/director revokes the nomination in writing; or
- (b) the sole member/director who nominated him or her ceases to be the sole member/director of the company for any reason other than his or her death.

*(Inserted by Act 26 of 2005)*

### **Removal of directors**

**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.

(2) Subject to the memorandum and articles, 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 75% of the votes of the members of the company entitled to vote.

*(Amended by Acts 26 of 2005 and 5 of 2012)*

(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 a resolution of the directors. *(Amended by Act 26 of 2005)*

(5) Subject to the memorandum and articles, subsections (2) and (3) apply to a resolution of directors passed under subsection (4) with the substitution, in subsection (3), of “directors” for “members”. *(Inserted by Act 26 of 2005)*

### **Resignation of Director**

**115.** (1) A director of a company may resign his or her office by giving written notice of his or her 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. *(Amended by Act 26 of 2005)*

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

### **Liability of former directors**

**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 or she was a director.

### **Validity of acts of director**

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

- (a) the person’s appointment as a director was defective; or
- (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 or who have been nominated as reserve directors of the company; *(Amended by Act 26 of 2005)*
- (b) the date on which each person whose name is entered in the register was appointed as a director, or nominated as a reserve director, of the company; *(Amended by Act 26 of 2005)*
- (c) the date on which each person named as a director ceased to be a director of the company; *(Amended by Act 26 of 2005)*
- (ca) the date on which the nomination of any person nominated as a reserve director ceased to have effect; and *(Inserted by Act 26 of 2005)*
- (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.

### **Annual return for unlimited company not authorised to issue shares**

**118A.** (1) An unlimited company that is not authorised to issue shares shall, on or before 31 March of each year, file an annual return in the approved form of its directors made up to 31 December of the previous year.

(2) An annual return filed under subsection (1) shall be certified as correct by a director of the company or by its registered agent.

*(Inserted by Act 26 of 2005)*

### **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 or her powers or performing his or her 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 or she believes is in the best interests of that company's parent even though it may not be in the best interests of the company. *(Amended by Act 5 of 2012)*

(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 parent act in a manner which he or she believes is in the best interests of that company's parent even though it may not be in the best interests of the company. *(Amended by Act 5 of 2012)*

(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 or she believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company. *(Amended by Act 26 of 2005)*

### **Powers to be exercised for proper purpose**

**121.** A director shall exercise his or her 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.

### **Standard of care**

**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—

- (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. (*Amended by Act 26 of 2005*)

### **Reliance on records and reports**

**123.** (1) Subject to subsection (2), a director of a company, when exercising his or her powers or performing his or her 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—

- (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 or her 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 or she 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 may prescribe 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. (*Amended by Act 26 of 2005*)

(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.

(6) 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. (*Amended by Act 26 of 2005*)

(7) A director who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000. (*Amended by Act 26 of 2005*)

### **Avoidance by company of 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—

- (a) disclosed to the board in accordance with section 124 prior to the company entering into the transaction; or
- (b) not required to be disclosed by virtue of section 124(3).  
(*Inserted by Act 26 of 2005*)

(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 or her 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*

#### Meetings of directors

**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.

(1A) Subject to the memorandum and articles, any one or more directors may convene a meeting of directors. (*Inserted by Act 26 of 2005*)

- (2) A director shall be deemed to be present at a meeting of directors if—
- (a) he or she 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 or her 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 for 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.

### Directors' resolutions

**129.** (1) A resolution of directors may be passed—

- (a) at a meeting of directors; or
- (b) subject to the memorandum and articles, as a written resolution.

(2) Subject to the memorandum and articles, a resolution of directors is passed at a meeting of directors by a majority of the votes cast by directors who are present at the meeting and entitled to vote on the resolution.

(3) A written resolution is a resolution consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice—

- (a) by such majority of the votes of the directors entitled to vote on the resolution as may be specified in the memorandum or articles; or
- (b) in the absence of any provisions in the memorandum or articles, by all of the directors entitled to vote on the resolution.

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

*(Substituted by Act 5 of 2012)*

### Appointment of alternate directors

**130.** (1) Subject to the memorandum and articles of a company, a director of the company may appoint as an alternate any other director or any other person who is not disqualified for appointment as a director under section 111 to—

- (a) exercise the appointing director's powers; and
- (b) carry out the appointing director's responsibilities,

in relation to the taking of decisions by the directors in the absence of the appointing director.

(2) The appointing director may, at any time, terminate the alternate's appointment.

(3) The appointment of an alternate director and its termination shall be in writing and written notice of the appointment and termination shall be given by the appointing director to the company—

- (a) within such period as may be specified in the memorandum of articles; or
- (b) if no period is specified in the memorandum or articles, as soon as reasonably practicable.

(4) The termination of the appointment of an alternate director does not take effect until written notice of the termination has been given to the company.

(5) An alternate director—

(a) has no power to appoint an alternate, whether of the appointing director or of the alternate director; and

(b) does not act as an agent of or for the appointing director. (*Inserted by Act 5 of 2012*)

(*Substituted by Act 5 of 2012*)

### **Rights and duties of alternate directors**

**130A.** (1) An alternate director has the same rights as the appointing director in relation to any directors' meeting and any written resolution circulated for written consent.

(2) Any exercise by the alternate director of the appointing director's powers in relation to the taking of decisions by the directors, is as effective as if the powers were exercised by the appointing director.

(3) An alternate director is liable for his or her own acts and omissions as an alternate director and Division 3 applies to a person appointed as an alternate director, when acting as such.

(*Inserted by Act 5 of 2012*)

### **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 following—

(a) to amend the memorandum or articles;

(b) to change the registered office or agent;

(c) to designate committees of directors;

(d) to delegate powers to a committee of directors;

(e) to appoint or remove directors;

(f) to appoint or remove an agent;

(g) to fix emoluments of directors;

(h) to approve a plan of merger, consolidation or arrangement;

(i) to make a declaration of solvency for the purposes of section 198(1)(a) or to approve a liquidation plan;

(j) to make a determination under section 57(1) that the company will, immediately after a proposed distribution, satisfy the solvency test; or

(k) to authorise the company to continue as a company incorporated under the laws of a jurisdiction outside the Virgin Islands.

*(Amended by Act 26 of 2005)*

(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 or her under subsection (2).

### Indemnification

**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—

(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 body corporate or a partnership, joint venture, trust or other enterprise.  
*(Amended by Act 26 of 2005)*

(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 or she 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 or her conduct was unlawful.

(2A) For the purposes of subsection (2), a director acts in the best interests of the company if or she acts in the best interests of—

(a) the company's parent; or *(Amended by Act 5 of 2012)*

(b) a shareholder or shareholders of the company,

in either case, in the circumstances specified in section 120(2), (3) or (4), as the case may be.

*(Inserted by Act 26 of 2005)*

(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 or her conduct was unlawful.

(3A) Expenses, including legal fees, incurred by a director in defending any legal, administrative or investigative proceedings may be paid by the company in advance of the final disposition of such proceedings upon receipt of an undertaking by or on behalf of the director to repay the amount if it shall

ultimately be determined that the director is not entitled to be indemnified by the company in accordance with subsection (1). *(Inserted by Act 26 of 2005)*

(3B) Expenses, including legal fees, incurred by a former director in defending any legal, administrative or investigative proceedings may be paid by the company in advance of the final disposition of such proceedings upon receipt of an undertaking by or on behalf of the former director to repay the amount if it shall ultimately be determined that the former director is not entitled to be indemnified by the company in accordance with subsection (1) and upon such other terms and conditions, if any, as the company deems appropriate. *(Inserted by Act 26 of 2005)*

(3C) The indemnification and advancement of expenses provided by, or granted pursuant to, this section is not exclusive of any other rights to which the person seeking indemnification or advancement of expenses may be entitled under any agreement, resolution of members, resolution of disinterested directors or otherwise, both as to acting in the person's official capacity and as to acting in another capacity while serving as a director of the company. *(Inserted by Act 26 of 2005)*

(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 shall not indemnify a person in breach of subsection (2) and any indemnity given in breach of that section is void and of no effect. *(Amended by Act 26 of 2005)*

## **Insurance**

**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 was serving as a director of, or in any other capacity is or was acting for, another body corporate 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. *(Amended by Act 26 of 2005)*

## 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 liquidation order” means an order made under section 152;

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

“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*

#### **Incorporation or registration as segregated portfolio company**

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

- (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; (*Amended by Act 1 of 2008*)
- (b) is, or on its incorporation will be, recognised as a professional or private fund or registered as a public fund under the Securities and Investment Business Act; 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.

(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).

#### **Application for approval of Commission**

**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.

(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.

### **Commission may approve 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.

(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.

### **Termination and reinstatement of segregated portfolios**

**138A.** (1) Where a segregated portfolio has no segregated portfolio assets or liabilities of the segregated portfolio company attributable to it, the segregated portfolio company may terminate the segregated portfolio.

(2) Where a segregated portfolio company was required to obtain the approval of the Commission for the creation of a segregated portfolio under section 138(4), the segregated portfolio company shall, within 7 days of its termination under subsection (1), give written notice to the Commission of the termination of the segregated portfolio.

(3) Subject to subsection (4), a segregated portfolio company may reinstate a segregated portfolio which has been terminated under subsection (1).

(4) Where a segregated portfolio company was required to obtain the approval of the Commission for the creation of a segregated portfolio that has been terminated under subsection (1), the company shall not reinstate the portfolio unless it has obtained the prior written approval of the Commission.

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

*(Inserted by Act 5 of 2012)*

### **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.

### **Segregated portfolio distributions and dividends**

**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.

(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.

### **Company to act on behalf of portfolios**

**142.** (1) 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. *(Amended by Act 5 of 2012)*

(2) If a segregated portfolio company contravenes subsection (1), the directors shall, as soon as they become aware of the contravention—

(a) make any necessary enquiries to determine the correct segregated portfolio or segregated portfolios to which the relevant act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement should be attributed;

(b) make the correct attribution; and

(c) notify in writing all persons who are party to the act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement that was executed, or which may be adversely affected by any such attribution, of that attribution and the parties' rights under subsection (3).

*(Inserted by Act 5 of 2012)*

(3) Any person notified under subsection 2(c), or who should have been so notified, who objects to an attribution by the directors under subsection (2) may, within 30 days of receiving written notice under that subsection in the case of persons who received such notice, apply to the Court for a re-attribution. *(Substituted by Act 5 of 2012)*

(4) The Court may, upon hearing an application under subsection (3), and taking account of the intention of the parties and such other factors as it considers relevant, order that the act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement is considered to be attributed to a particular segregated portfolio or portfolios or to the general assets, if applicable in particular proportions or on a particular basis, and may make such ancillary orders as it considers appropriate. *(Inserted by Act 5 of 2012)*

### **Assets**

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

### General liabilities and 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.

(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.

## Financial statements

**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—

- (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.

## Limitation on transfer of segregated portfolio assets from segregated portfolio company

**149.** (1) The segregated portfolio assets attributable to any segregated portfolio of a segregated portfolio company may only be transferred to another person in accordance with, or as permitted by, this section. (*Substituted by Act 26 of 2005*)

(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) Subject to subsections (8) and (9), 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. (*Amended by Act 26 of 2005*)

(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; or
- (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.

(10) Section 175 shall not apply to a transfer of segregated portfolio assets attributable to a segregated portfolio of a segregated portfolio company made in compliance with this section. (*Inserted by Act 26 of 2005*)

### Division 3

#### *Liquidation, Portfolio Liquidation Orders and Administration*

#### **Meaning of “liquidator”**

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

#### **Liquidation of segregated portfolio company**

**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—

- (a) shall be bound to deal with the company's assets in accordance with the requirements set out in section 143(5); and (*Amended by Act 26 of 2005*)
- (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 company 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. (*Amended by Act 5 of 2012*)

### **Portfolio liquidation orders**

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

- (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 or her 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.

### **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.

### **Conduct of portfolio liquidation**

**154.** (1) The portfolio liquidator of a portfolio of a segregated portfolio company—

- (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 or her 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 or she is fraudulent, reckless, negligent, or acts in bad faith.

(4) Any person dealing with the portfolio liquidator in good faith is not concerned to enquire whether the portfolio liquidator is acting within his or her 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 or she 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—

- (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.

### **Discharge and variation of portfolio liquidation orders**

**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.

(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 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. (*Amended by Act 26 of 2005*)

(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 segregated portfolio. (*Amended by Act 26 of 2005*)

### **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 of the segregated portfolio assets attributable to any other segregated portfolio.  
(Amended by Act 26 of 2005)

### **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.

(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 Cabinet 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 financial statements of segregated portfolio companies and the audit requirements applicable with respect to such financial statements; (*Amended by Act 26 of 2005*)
  - (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.
- (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—

(a) in the case of a former Act company, the date that it is re-registered as a BVI business company under Schedule 2; (*Substituted by Act 26 of 2005*)

(aa) in the case of a company that is continued under this Act, the date of its continuation; or (*Inserted by Act 5 of 2012*)

(b) in any other case, 1 January 2005; (*Inserted by Act 26 of 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.

## Registration of charges

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

- (a) the company, or a legal practitioner in the Virgin Islands authorised to act on its behalf; or (*Amended by Act 5 of 2012*)
- (b) the chargee, or a person authorised to act on his or her 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 or she 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 or her 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 legal practitioner in the Virgin Islands authorised to act on its behalf; or (*Amended by Act 5 of 2012*)
- (b) the chargee, or a person authorised to act on his or her 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.

**Satisfaction or release of charge**

**165.** (1) A notice of satisfaction or release in the approved form may be filed under this section if—

- (a) all liabilities secured by the charge registered under section 163 have been paid or satisfied in full; or
- (b) a charge registered under section 163 has ceased to affect the property, or any part of the property, of a company. (*Inserted by Act 5 of 2012*)

(2) A notice of satisfaction or release shall—

- (a) state whether the charge has been paid or satisfied in full or whether the charge has ceased to affect the property, or any part of the property, of the company; and
- (b) if the charge has ceased to affect the property, or any part of the property of the company, specify the property of the company that has ceased to be affected by the charge, stating whether this is the whole or part of the company's property. (*Inserted by Act 5 of 2012*)

(2A) A notice of satisfaction or release may be filed by—

- (a) the company or a legal practitioner in the Virgin Islands authorised to act on its behalf; or
- (b) a person qualified to act as the registered agent of a company in accordance with section 91(3), or a legal practitioner in the Virgin Islands, acting on behalf of the chargee. (*Inserted by Act 5 of 2012*)

(2B) If the notice of satisfaction or release is filed by or on behalf of the company it shall be—

- (a) signed by the chargee;
- (b) signed by a legal practitioner in the Virgin Islands, or a registered agent, acting on behalf of the chargee; or
- (c) accompanied by a statutory declaration in the approved form verifying the matters stated in the notice. (*Substituted by Act 5 of 2012*)

(3) If he or she is satisfied that a notice filed under subsection (1) is correctly completed, complies with subsection (2) and, if filed by or on behalf of the company, subsection (2B) has been complied with the Registrar shall forthwith—

- (a) register the notice; and
- (b) issue a certificate of the satisfaction, release or partial release of the charge 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).

*(Amended by Act 5 of 2012)*

### **Filing of application under section 163 or 164 by or on behalf of chargee**

**165A.** (1) An application for the registration of a charge under section 163 or for the variation of a charge under section 164 made by the chargee, or a person authorised to act on the chargee's behalf, may only be filed by—

- (a) a person qualified to act as the registered agent of a company in accordance with section 91(3); or
- (b) a legal practitioner in the Virgin Islands, acting on behalf of the chargee or authorised person.

(2) Subject to subsection (3), an application or notice referred to in subsection (1) shall be accompanied by a written notice in the approved form stating the full name and address of a person in the Virgin Islands who is authorised by the charge to accept, on its behalf, documents required to be sent by the Registrar to the chargee under this Part.

(3) Subsection (2) does not apply to a chargee if the chargee is—

- (a) a company incorporated or continued under this Act;
- (b) a foreign company registered under Part X1;
- (c) a limited partnership formed under the Partnership Act; or
- (d) an individual resident in the Virgin Islands.

(4) A chargee may give the Registrar written notice in the approved form of a change in the person in the Virgin Islands authorised by the chargee to accept, on its behalf, documents required to be sent by the Registrar to the chargee under this Part.

(5) A notice under subsection (4) may be filed only by a person specified in subsection (1)(a) or (b).

(6) The Registrar complies with the requirements of this Part in relation to the sending of documents to a chargee by sending the documents to the person in the Virgin Islands most recently notified to the Registrar as the person authorised by the chargee to accept documents on its behalf.

*(Inserted by Act 5 of 2012)*

### **Priority of relevant charges**

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

- (a) a relevant charge on the property that is subsequently registered in accordance with section 163; and *(Amended by Act 26 of 2005)*
- (b) a relevant charge on the property that is not registered in accordance with section 163. *(Amended by Act 26 of 2005)*



(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.

### **Priority of other charges**

**167.** Charges created prior to the commencement date shall continue to rank in the order in which they would have ranked had section 166 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. (*Amended by Act 26 of 2005*)

### **Exceptions to sections 166 and 167**

**168.** Notwithstanding 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.** (1) In this Part—

“consolidated company” means the new company that results from the consolidation of 2 or more constituent companies;

“consolidation” means the consolidating of 2 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 2 or more constituent companies into one of the constituent companies;

“parent company” means a company that owns at least 90% of the outstanding shares of each class of shares in another company;

“subsidiary company” means a company at least 90% 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.

(2) The definitions of “subsidiary” and “parent” specified in the Regulations do not apply to this Part. (*Inserted by Act 5 of 2012*)

### **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 assets, or a combination thereof; and (*Amended by Act 26 of 2005*)
- (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; and
- (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.

*(Amended by Act 26 of 2005)*

### **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; and
- (c) the manner in which the merger or consolidation was authorised with respect to each constituent company.

*(Amended by Act 26 of 2005)*

(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 or she 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.

**Merger with subsidiary**

**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.

(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;
- (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 or she 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, memorandum and articles filed with the articles of consolidation are the memorandum and articles of the consolidated company; (*Amended by Act 26 of 2005*)
  - (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, officer or agent thereof, is released or impaired by the merger or consolidation; and (*Amended by Act 26 of 2005*)
  - (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, officer 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.

*(Amended by Act 26 of 2005)*

(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.

### **Merger or consolidation with foreign company**

**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.

(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 or consolidation is

issued by the appropriate authority of the foreign jurisdiction, then, such evidence of the merger or consolidation as the Registrar considers acceptable. (*Amended by Act 26 of 2005*)

(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.

### **Disposition of assets**

**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% 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—

- (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 or she 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 or she is entitled to consent to the sale, transfer, lease, exchange or other disposition.

### **Redemption of minority shares**

**176.** (1) Subject to the memorandum or articles of a company—

- (a) members of the company holding 90% of the votes of the outstanding shares entitled to vote; and
- (b) members of the company holding 90% 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 2 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 paragraphs (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 or her 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 in the approved form certifying that the articles of arrangement have been registered. *(Amended by Act 26 of 2005)*

(10) *(Repealed by Act 26 of 2005)*

(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 or her 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% 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 or her 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 or her 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 or her 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 in writing to, the proposed action. (*Amended by Act 26 of 2005*)

(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 or her decision to elect to dissent, stating—

- (a) his or her name and address;
- (b) the number and classes of shares in respect of which he or she dissents; and

(c) a demand for payment of the fair value of his or her shares; and a member who elects to dissent from a merger under section 172 shall give to the company a written notice of his or her 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 or her in accordance with section 172.

(6) A member who dissents shall do so in respect of all shares that he or she 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 or her 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 or her 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 or her shares, the company shall pay to the member the amount in money upon the surrender of the certificates representing his or her 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 2 designated appraisers together shall designate an appraiser;
- (c) the 3 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 or her of the certificates representing his or her 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 or her entitlement under this section excludes the enforcement by the member of a right to which he or she might otherwise be entitled by virtue of his or her 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.

### **Schemes of arrangement**

**179A.** (1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them, the Court may, on the application of a person specified in subsection (2), order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be summoned in such manner as the Court directs.

(2) An application under subsection (1) may be made by—

- (a) the company;
- (b) a creditor of the company;
- (c) a member of the company;
- (d) if the company is in administration within the meaning of the Insolvency Act, by the administrator;
- (e) if the company is in voluntary liquidation within the meaning of section 202, by the voluntary liquidator; or
- (f) if an Insolvency Act liquidator has been appointed, by that liquidator.

(3) If a majority in number representing 75% in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the Court, is binding on all the creditors or class of creditors, or the members or class of members, as the case may be, and also on the company or, in the case of a company in voluntary liquidation or in liquidation under the Insolvency Act, on the liquidator and on every person liable to contribute to the assets of the company in the event of its liquidation.

(4) An order of the Court made under subsection (3) shall have no effect until a copy of the order has been filed with the Registrar.

(5) A copy of an order of the Court made under subsection (3) shall be annexed to every copy of the company's memorandum issued after the order has been made.

(6) In this section, "arrangement" includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

(7) The Regulations may provide for the information and explanations to be contained in, or to accompany, a notice calling a meeting under this section.

(8) Where the Court makes an order with respect to a company under this section, sections 169 to 179 shall not apply to the company.

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

*(Inserted by Act 26 of 2005)*

## PART X

### CONTINUATION

#### **Foreign company may continue under this Act**

**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 permit it to continue in another jurisdiction, including the Virgin Islands. *(Amended by Act 26 of 2005)*

(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 into an arrangement with its creditors, that has not been concluded; or *(Amended by Act 26 of 2005)*
- (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.

#### **Application to continue under this Act**

**181.** (1) An application by a foreign company to continue under this Act shall be made by filing—

- (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. *(Amended by Act 26 of 2005)*

(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 state the matters specified in section 9(2). (*Amended by Act 26 of 2005*)

(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 or she 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 in the approved form. (*Amended by Act 26 of 2005*)

(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.

(3) Notwithstanding the provisions of section 180 and this section, the Registrar may refuse to continue a foreign company under this Part if he or she is of the opinion that it would be contrary to the public interest to do so. (*Inserted by Act 12 of 2006*)

### Effect of continuation

**183.** (1) When a foreign company is continued under this Act—

- (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.

### **Continuation under foreign law**

**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.

(2) A company that continues as a company incorporated under the laws of a 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 may file a notice of the company's continuance in the approved form. (*Substituted by Act 26 of 2005*)

(4) If the Registrar is satisfied that the requirements of this Act in respect of the continuation of a company under the laws of a foreign jurisdiction have been complied with, he or she shall—

- (a) issue a certificate of discontinuance of the company in the approved form;
- (b) strike the name of the company off the Register of Companies with effect from the date of the certificate of discontinuance; and
- (c) publish the striking off of the company in the *Gazette*.  
(Substituted by Act 26 of 2005)

(4A) A certificate of discontinuance issued under subsection (4) is *prima facie* evidence that—

- (a) all the requirements of this Act in respect of the continuation of a company under the laws of a foreign jurisdiction have been complied with; and
- (b) the company was discontinued on the date specified in the certificate of discontinuance.  
(Inserted by Act 26 of 2005)

(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 XA

### MEMBERS' REMEDIES

#### **Interpretation for this Part**

**184A.** In this Part, “member”, in relation to a company, means—

- (a) a shareholder or a personal representative of a shareholder;



- (b) a guarantee member of a company limited by guarantee; or
  - (c) an unlimited member of an unlimited company.
- (Inserted by Act 26 of 2005)*

### **Restraining or compliance order**

**184B.** (1) If a company or a director of a company engages in, or proposes to engage in, or has engaged in conduct that contravenes this Act or the memorandum or articles of the company, the Court may, on the application of a member or a director of the company, make an order directing the company or director to comply with, or restraining the company or director from engaging in conduct that contravenes, this Act or the memorandum or articles. *(Amended by Act 5 of 2012)*

(2) If the Court makes an order under subsection (1), it may also grant such consequential relief as it thinks fit.

(3) The Court may, at any time before the final determination of an application under subsection (1), make, as an interim order, any order that it could make as a final order under that subsection.

*(Inserted by Act 26 of 2005)*

### **Derivative actions**

**184C.** (1) Subject to subsection (3), the Court may, on the application of a member of a company, grant leave to that member to—

- (a) bring proceedings in the name and on behalf of that company; or
- (b) intervene in proceedings to which the company is a party for the purpose of continuing, defending or discontinuing the proceedings on behalf of the company.

(2) Without limiting subsection (1), in determining whether to grant leave under that subsection, the Court must take the following matters into account—

- (a) whether the member is acting in good faith;
- (b) whether the derivative action is in the interests of the company taking account of the views of the company's directors on commercial matters;
- (c) whether the proceedings are likely to succeed;
- (d) the costs of the proceedings in relation to the relief likely to be obtained; and
- (e) whether an alternative remedy to the derivative claim is available.

(3) Leave to bring or intervene in proceedings may be granted under subsection (1) only if the Court is satisfied that—

- (a) the company does not intend to bring, diligently continue or defend, or discontinue the proceedings, as the case may be; or
- (b) it is in the interests of the company that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders or members as a whole.

(4) Unless the Court otherwise orders, not less than 28 days notice of an application for leave under subsection (1) must be served on the company and the company is entitled to appear and be heard at the hearing of the application.

(5) The Court may grant such interim relief as it considers appropriate pending the determination of an application under subsection (1).

(6) Except as provided in this section, a member is not entitled to bring or intervene in any proceedings in the name of or on behalf of a company.

*(Inserted by Act 26 of 2005)*

### **Costs of derivative action**

**184D.** (1) If the Court grants leave to a member to bring or intervene in proceedings under section 184C, it shall, on the application of the member, order that the whole of the reasonable costs of bringing or intervening in the proceedings must be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.

(2) If the Court, on an application made by a member under subsection (1), considers that it would be unjust or inequitable for the company to bear the whole of the reasonable costs of bringing or intervening in the proceedings, it may order—

(a) that the company bear such proportion of the costs as it considers to be reasonable; or

(b) that the company shall not bear any of the costs.

*(Inserted by Act 26 of 2005)*

### **Powers of Court when leave granted under section 184C**

**184E.** The Court may, at any time after granting a member leave under section 184C, make any order it considers appropriate in relation to proceedings brought by the member or in which the member intervenes, including—

(a) an order authorising the member or any other person to control the proceedings;

(b) an order giving directions for the conduct of the proceedings;

(c) an order that the company or its directors provide information or assistance in relation to the proceedings; and

(d) an order directing that any amount ordered to be paid by a defendant in the proceedings must be paid in whole or in part to former and present members of the company instead of to the company.

*(Inserted by Act 26 of 2005)*

### **Compromise settlement or withdrawal of derivative action**

**184F.** No proceedings brought by a member or in which a member intervenes with the leave of the Court under section 184C may be settled or compromised or discontinued without the approval of the Court. *(Inserted by Act 26 of 2005)*

### Personal actions by members

**184G.** A member of a company may bring an action against the company for breach of a duty owed by the company to him or her as a member. *(Inserted by Act 26 of 2005)*

### Representative actions

**184H.** Where a member of a company brings proceedings against the company and other members have the same or substantially the same interest in relation to the proceedings, the Court may appoint that member to represent all or some of the members having the same interest and may, for that purpose, make such order as it thinks fit, including an order—

- (a) as to the control and conduct of the proceedings;
- (b) as to the costs of the proceedings; and
- (c) directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the members represented.

*(Inserted by Act 26 of 2005)*

### Prejudiced members

**184I.** (1) A member of a company who considers that the affairs of the company have been, are being or are likely to be, conducted in a manner that is, or any act or acts of the company have been, or are, likely to be oppressive, unfairly discriminatory, or unfairly prejudicial to him or her in that capacity, may apply to the Court for an order under this section.

(2) If, on an application under this section, the Court considers that it is just and equitable to do so, it may make such order as it thinks fit, including, without limiting the generality of this subsection, one or more of the following orders—

- (a) in the case of a shareholder, requiring the company or any other person to acquire the shareholder's shares;
- (b) requiring the company or any other person to pay compensation to the member;
- (c) regulating the future conduct of the company's affairs;
- (d) amending the memorandum or articles of the company;
- (e) appointing a receiver of the company;
- (f) appointing a liquidator of the company under section 159(1) of the Insolvency Act on the grounds specified in section 162(1)(b) of that Act;
- (g) directing the rectification of the records of the company; and
- (h) setting aside any decision made or action taken by the company or its directors in breach of this Act or the memorandum or articles of the company.

(3) No order may be made against the company or any other person under this section unless the company or that person is a party to the proceedings in which the application is made.

*(Inserted by Act 26 of 2005)*

## PART XI

### FOREIGN COMPANIES

#### **Meaning of “carrying on business”**

**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.

(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.

#### **Registration of foreign company**

**186.** (1) A foreign company shall not carry on business in the Virgin Islands unless—

- (a) it is registered under this Part; or
- (b) it has applied to be so registered and the application has not been determined.

(1A) If a foreign company is registered under this Part under an alternate name, it shall carry on business in the Virgin Islands under, or using, the alternate name under which it is registered in place of its corporate name.

*(Inserted by Act 12 of 2006)*

(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, address and date of appointment of each director; (*Substituted by Act 12 of 2006*)
- (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 or her 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) or subsection (1A) commits an offence and is liable on summary conviction to a fine of \$10,000. (*Amended by Act 12 of 2006*)

### Registration

**187.** (1) Subject to subsection (2), where the Registrar receives an application complying with section 186(1A) he or she shall register the foreign company in the Register of Foreign Companies and issue a certificate of registration as a foreign company in the approved form. (*Amended by Acts 26 of 2005 and 12 of 2006*)

(2) If he or she considers that the corporate name of a foreign company is undesirable, the Registrar shall not register the company under subsection (1) unless the company applies to be registered under an alternate name that is acceptable to him or her. (*Inserted by Act 12 of 2006*)

### 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; (*Amended by Act 12 of 2006*)
- (e) its registered agent; or
- (f) such other particulars as may be prescribed. (*Inserted by Act 12 of 2006*)

(2) A notice of change of registered agent shall be endorsed by the new registered agent with his or her 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.

(3A) Where the Registrar receives a notice of change in particulars under subsection (3) that complies with this section, he or she shall register the change in the Register of Foreign Companies. (*Inserted by Act 12 of 2006*)

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

### **Foreign company to have registered agent**

**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.

(2) No person shall act, or agree to act, as the registered agent of a foreign company unless that person—

- (a) holds a licence under the Company Management Act or under the Banks and Trust Companies Act; and
- (b) 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.

### **Resignation of registered agent**

**189A.** (1) A person may resign as the registered agent of a foreign company only in accordance with this section.

(2) A person wishing to resign as the registered agent of a foreign company shall—

- (a) give not less than 30 days written notice of his or her intention to resign as registered agent of the foreign company on the date specified in the notice to a person specified in subsection (3);
- (b) together with the written notice, provide the foreign company with 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) the principal place of business of the foreign company in the Virgin Islands, if any; and

(b) a director of the foreign company at the director's last known address or, if the registered agent is not aware of the identity of any director of the foreign company, to the person from whom the registered agent last received instructions concerning the foreign company.

(4) If a foreign company does not appoint a new registered agent on or before the date specified in the notice given under subsection (2), the registered agent may file a notice of resignation as the foreign company's registered agent.

(5) Unless the foreign 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.

*(Inserted by Act 5 of 2012)*

### **Registered agent ceases to be eligible to act**

**189B.** (1) For the purposes of this section, a person ceases to be eligible to act as a registered agent if—

- (a) the person ceases to hold a licence under the Company Management Act or the Banks and Trust Companies Act; or
- (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 foreign company of which he or she 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 foreign company that he or she is no longer eligible to be its registered agent;
  - (ii) advising the foreign company that it must appoint a new registered agent within 60 days of the date of the notice; and
  - (iii) specifying that on the expiration of the period specified in subparagraph (ii), he or she 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) the principal place of business of the foreign company in the Virgin Islands, if any; and
- (b) a director of the foreign company at the director's last known address or, if the registered agent is not aware of the identity of any director of the foreign company, to the person from whom the registered agent last received instructions concerning the foreign company.

(4) A foreign company which is sent a notice under subsection (2) in accordance with subsection (3) shall, within 60 days of the date of the notice, change its registered agent in accordance with section 188.

(5) A person who has ceased to be eligible to act as a registered agent ceases to be the registered agent of each company to which it has sent a notice under subsection (2) in accordance with subsection (3), on the earlier of—

- (a) the date that the foreign company changes its registered agent in accordance with subsection (4); or
- (b) the first day after the expiry of the notice period specified in subsection (4).

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

(7) A person does not commit an offence under subsection (6) by reason only of the fact that—

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

*(Inserted by Act 5 of 2012)*

### **Control over names of foreign companies**

**190.** (1) Where the Registrar is satisfied that the corporate name of, or where the company is registered under an alternate name, the alternate name of, or a name being used by, a foreign company carrying on business in the Virgin Islands is undesirable, he or she 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. *(Amended by Act 12 of 2006)*

(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) Where a notice under subsection (1) relates to the corporate name of a foreign company, or where it is registered under an alternate name, to its alternate name, the company shall, within 30 days after the date of service of the notice, apply to the Registrar to be registered under an alternate name that is acceptable to the Registrar. *(Substituted by Act 12 of 2006)*

(4A) If he or she is of the opinion that the alternate name with which a foreign company is applying to be registered under subsection (4) is acceptable to him or her, the Registrar shall register the foreign company under the alternate name. *(Substituted by Act 12 of 2006)*



(5) A foreign company that contravenes subsection (3) or subsection (4) commits an offence and is liable on summary conviction to a fine of \$5,000. *(Amended by Act 12 of 2006)*

### **Use of name of foreign company**

**191.** (1) Subject to subsections (2), (3) and (4), a foreign company that carries on business in the Virgin Islands shall ensure that its full corporate name, or where it is registered under this Part under an alternate name, that alternate 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.

*(Amended by Act 12 of 2006)*

(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.

(3) Where a foreign company is registered under this Part under an alternate name, the company shall state in every communication and document specified in subsection (1)(a) and (b) that the alternate name under which it is registered is not the corporate name under which the company is registered in the country of its incorporation. *(Inserted by Act 12 of 2006)*

(4) The Regulations may provide for circumstances in which a company may, or shall, set out its full corporate name in a communication or document specified in subsection (1)(a) or (b) in addition to, or in place of, the alternate name under which it is registered. *(Inserted by Act 12 of 2006)*

(5) A foreign company that contravenes subsections (1) or (3) commits an offence and is liable on summary conviction to a fine of \$5,000. *(Inserted by Act 12 of 2006)*

### **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.

(3) A foreign company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000. *(Inserted by Act 12 of 2006)*

### **Foreign company ceasing to carry on business in the Virgin Islands**

**193.** (1) A foreign company shall, within 7 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.

### Removal of name by Registrar

**193A.** (1) The Registrar may remove a foreign company from the Register of Foreign Companies if—

- (a) he or she has reasonable cause to believe that—
  - (i) the foreign company is not carrying on business authorised in the Virgin Islands;
  - (ii) the foreign 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
  - (iii) the foreign company no longer has status as a legal entity in the jurisdiction in which it is or was incorporated, registered or formed;
- (b) the foreign company does not have a registered agent;
- (c) the foreign company fails to—
  - (i) file any return, notice or document required to be filed under this Act; or
  - (ii) pay any fee or penalty payable under this Act by the due date; or
- (d) he or she is of the opinion that the removal of the foreign company from the Register of Foreign Companies would be in the public interest.

(2) Before removing a foreign company from the Register of Foreign Companies on the grounds specified in subsection (1), the Registrar shall—

- (a) send the company a notice stating that—
  - (i) he or she intends to remove the foreign company from the Register of Foreign Companies on one of the grounds specified in subsection (1), specifying the ground; and
  - (ii) unless the foreign company shows cause to the contrary, it will be removed from the Register of Foreign Companies on a date specified in the notice, which shall be no less than 30 days after the date of the notice;
- (b) publish a notice of his or her intention to remove the foreign company from the Register of Foreign Companies in the *Gazette*.

(3) After the expiration of the time specified in the notice, unless the foreign company has shown cause to the contrary, the Registrar may remove the foreign company from the Register of Foreign Companies.

(4) The Registrar shall publish a notice of the removal of a foreign company from the Register of Foreign Companies in the *Gazette*.

(5) A foreign company is removed from the Register of Foreign Companies and the foreign company ceases to be registered under this Part on the date specified in the notice sent to the company under subsection (2)(a).

(6) The removal of a foreign company from the Register of Foreign Companies is not affected by any failure on the part of the Registrar to serve a notice on the registered agent of the foreign company or to publish a notice in the *Gazette* under subsection (2). (*Inserted by Act 5 of 2012*)

### **Subsequent registration of foreign company**

**193B.** (1) This section applies where—

- (a) a foreign company has been removed from the Register of Foreign Companies, whether under section 193 or section 193A; and
- (b) the foreign company subsequently applies under section 186 to be registered under this Part.

(2) The Registrar shall not register a foreign company to which subsection (1) applies unless the foreign company has paid all fees and penalties that were due to the Registrar at the date that the foreign company was removed from the Register of Foreign Companies.

(3) Where a foreign company to which subsection (1) applies has, at any time in the period between its removal from the Register of Foreign Companies and its subsequent application to be registered under section 186, carried on business in the Virgin Islands, it shall not be entitled to be registered under section 187 unless it pays—

- (a) the fees that it was or would have been liable for at the time of its removal from the Register of Foreign Companies; and
- (b) the penalties that would have been payable for the non-payment of those fees.

(4) The registration of a foreign company to which subsection (1) applies takes effect from the date of its registration, not the date of its removal from the Register of Foreign Companies. (*Inserted by Act 5 of 2012*)

### **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.

### **Validity of transactions not affected**

**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.

**196.** (*Repealed by Act 26 of 2005*)

**Interpretation for this Part**

**196A.** (1) In this Part, unless the context otherwise requires—

“creditor” has the meaning specified in the Insolvency Act;

“liability” has the meaning specified in the Insolvency Act;

“licensed insolvency practitioner” means a person holding a licence to act as an insolvency practitioner issued under section 476 of the Insolvency Act;

“private fund” has the meaning specified in the Securities and Investment Business Act;

“professional fund” has the meaning specified in the Securities and Investment Business Act;

“public fund” has the meaning specified in the Securities and Investment Business Act;

“regulated person” has the meaning specified in the Insolvency Act and, subject to subsection (2), includes a person that at any time has been a regulated person;

“secured creditor” has the meaning specified in the Insolvency Act; and

“unsecured creditor” has the meaning specified in the Insolvency Act.

(2) For the purposes of this Part, a company is not considered to be a regulated person if it has, at any time in the 12 months prior to the appointment of a voluntary liquidator under this Part, been a professional or private fund.

(3) Subsection (2) does not apply if, at any time during the period specified in that section, the company has been a public fund.

*(Inserted by Act 5 of 2012)*

**Filing of notices by voluntary liquidators**

**196B.** Where any notice or other document is required under this Part to be filed by a voluntary liquidator, if the voluntary liquidator is an individual who is not resident in the Virgin Islands, the document may only be filed by—

(a) a person qualified to act as the registered agent of a company in accordance with section 91(3); or

(b) a legal practitioner in the Virgin Islands, acting on behalf of the voluntary liquidator.

*(Inserted by Act 5 of 2012)*

## 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 and the value of its assets equals or exceeds its liabilities. *(Amended by Act 5 of 2012)*

**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—
  - (i) the company is and will continue to be able to discharge, pay or provide for its debts as they fall due; and
  - (ii) the value of the company's assets equals or exceeds its liabilities;

*(Substituted by Act 5 of 2012)*

- (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 or she 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 or her actions or transactions.

(2) Subject to section 204(2), a declaration of solvency has no effect for the purposes of this Division unless—

- (a) it is made on a date no more than 4 weeks earlier than the date of the resolution to appoint a voluntary liquidator; and
- (b) it has attached to it a statement of the company's assets and liabilities as at the latest practical date before the making of the declaration.

*(Amended by Act 12 of 2006)*

(2A) A statement of the company's assets and liabilities shall be in the approved form. (*Inserted by Act 12 of 2006*)

(3) A liquidation plan has no effect for the purposes of section 203(1)(e) unless it is approved by the directors no more than 6 weeks prior to the date of the resolution to appoint a voluntary liquidator. (*Amended by Act 26 of 2005*)

(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.

### **Appointment of voluntary liquidator**

**199.** (1) Subject to section 200, a voluntary liquidator or two or more joint voluntary liquidators may be appointed in respect of a company—

(a) by a resolution of directors passed under subsection (2); or

(b) by a resolution of members passed under subsection (3).

(*Inserted by Act 5 of 2012*)

(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.

(4A) Where 2 or more joint voluntary liquidators are appointed, whether under this section or as a result of an appointment under section 205A, the functions and powers of the voluntary liquidator may be performed or exercised by any one of the voluntary liquidators or by any 2 or more of them together, except so far as the resolution of appointment otherwise provides. *(Inserted by Act 5 of 2012)*

(5) The Regulations may provide for descriptions or categories of individuals who are eligible to be appointed or act, as the voluntary liquidator of a company. *(Inserted by Act 26 of 2005)*

### **Appointment of voluntary liquidator of regulated person**

**200.** (1) *(Repealed by Act 5 of 2012)*

(2) *(Repealed by Act 5 of 2012)*

(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, 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.

*(Amended by Act 5 of 2012)*

(3A) The Regulations may specify that, in relation to certain specified categories or descriptions of regulated persons, the voluntary liquidator or, where joint voluntary liquidators are appointed, at least one of the voluntary liquidators, shall be a licensed insolvency practitioner. *(Inserted by Act 5 of 2012)*

(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 or her records and accounts in respect of the liquidation; and
- (b) any reports that he or she 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—

- (a) send to the Commission a copy of every document that he or she is required under this Division to file with the Registrar or to send to the directors or members; and
  - (b) give the Commission such further information, explanations and assistance in relation to the liquidation and to any documents sent or provided to the Commission as the Commission may require.
- (Substituted by Act 5 of 2012)*

### **Duration of liquidation**

**202.** The liquidation of a company under this Division commences at the time at which the notice of the voluntary liquidator's appointment is filed and continues until it is terminated in accordance with section 207A or section 208 and throughout this period, the company is referred to as being in voluntary liquidation. *(Amended by Acts 26 of 2005 and 5 of 2012)*

### **Circumstances in which liquidator may not be appointed**

**203.** (1) A voluntary liquidator may not be appointed under section 199 by the directors or the members of a company if—

- (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 or her 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)(ii).

(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 or her appointment.

(4) A resolution to appoint a voluntary liquidator is void and of no effect unless the voluntary liquidator files notice of his or her appointment on or before the 14th day following the date of the resolution. *(Inserted by Act 5 of 2012)*

### **Notice and advertisement of liquidation**

**204.** (1) Where a voluntary liquidator is appointed under section 199 the liquidator shall—

- (a) within 14 days of the date of his or her appointment file the following documents—
  - (i) a notice of his or her appointment in the approved form;*(Amended by Act 12 of 2006)*



- (ii) the declaration of solvency made by the directors, or an extract complying with the Regulations; and
  - (iii) a copy of the liquidation plan; and
- (b) within 30 days of commencement of the liquidation, advertise notice of his or her appointment in the manner prescribed.  
(Amended by Act 5 of 2012)

(2) Subsection (1)(a)(ii) does not require the liquidator to file the statement of the company's assets and liabilities required under section 198(2) to be attached to the declaration of solvency, although the statement may be filed.  
(Inserted by Act 12 of 2006)

(3) A copy of the declaration of solvency, with the statement of the company's assets and liabilities attached, must be kept at the office of the registered agent of the company. (Inserted by Act 12 of 2006)

(4) A company that contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of \$5,000. (Inserted by Act 12 of 2006)

### **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; and
- (b) exercise such powers as the liquidator, by written notice, may authorise them to exercise. (Amended by Act 12 of 2006)

### **Appointment of additional voluntary liquidator**

**205A.** (1) The members of a company may, by resolution, appoint an eligible individual as an additional voluntary liquidator to act jointly with the voluntary liquidator or voluntary liquidators already appointed.

(2) The members of a company that is a regulated person shall not pass a resolution appointing an additional liquidator unless the Commission has given its prior written consent to the appointment, and any resolution passed in contravention of this subsection is void and of no effect.

*(Inserted by Act 5 of 2012)*

### **Resignation of voluntary liquidator**

**205B.** (1) A voluntary liquidator may only resign in accordance with this section.

(2) Subject to subsection (4), the voluntary liquidator shall give not less than 14 days' notice of his or her intention to resign to each member and director of the company.

(3) The notice of intention to resign shall be accompanied by a summary of the liquidation accounts and a report of the voluntary liquidator's conduct of the liquidation.

(4) The directors and members of the company may resolve to accept less than 14 days' notice of the voluntary liquidator's resignation.

(5) On the expiration of the notice period specified in the notice, or such shorter period of notice that may be accepted by the members and directors under subsection (4), the liquidator may send notice of his or her resignation to each member and director of the company.

(6) Where a voluntary liquidator resigns, he or she shall file a notice of his or her resignation and, subject to subsection (7), his or her resignation takes effect from the date of filing.

(7) The resignation of the voluntary liquidator of a regulated person does not take effect unless the Commission has approved his or her resignation.

*(Inserted by Act 5 of 2012)*

### **Removal of voluntary liquidator**

**205C.** (1) A voluntary liquidator may only be removed in accordance with this section.

(2) The Court may, on application by a person specified in subsection (3), remove the voluntary liquidator of a company from office if—

(a) the voluntary liquidator—

- (i) was not eligible to be appointed, or is not eligible to act, as the voluntary liquidator of the company; or
- (ii) fails to comply with any direction or order of the Court made in relation to the liquidation of the company; or

(b) the Court has reasonable grounds for believing that—

- (i) the voluntary liquidator's conduct of the liquidation is below the standard that may be expected of a reasonably competent liquidator;
- (ii) the voluntary liquidator has an interest that conflicts with his or her role as voluntary liquidator; or

(iii) for some other reason, he or she should be removed as voluntary liquidator.

(3) An application to the Court to remove a voluntary liquidator may be made by—

- (a) a director, member or creditor of the company;
- (b) where the company is a regulated person, the Commission; or
- (c) the Official Receiver.

(4) The Court may require an applicant specified in subsection (3)(a) to give security for the costs to be incurred by the voluntary liquidator on the application.

(5) The voluntary liquidator and, where the company is a regulated person, the Commission, shall be given no less than 14 days' notice of an application under this section.

(6) On the hearing of an application under this section, the Court may make such interim or other order it considers appropriate, including the appointment of a voluntary liquidator to replace the voluntary liquidator removed by the order.

(7) Where the Court removes a voluntary liquidator, the applicant shall file a copy of the order with the Registrar.

*(Inserted by Act 5 of 2012)*

### **Vacancy in office of liquidator**

**205D.** (1) If a vacancy occurs in the office of voluntary liquidator, whether because of the death, resignation or removal of the liquidator, unless at least one liquidator remains in office, an eligible individual shall be appointed as replacement voluntary liquidator by resolution of the members.

(2) Where the company is a regulated person, no individual may be appointed replacement voluntary liquidator under this section unless the Commission had given its prior written consent to the appointment, and any appointment made in contravention of this subsection is void and of no effect.

(3) An individual appointed as voluntary liquidator under this section shall—

- (a) within 7 days of his or her appointment, file a notice of appointment in the approved form; and
- (b) within 30 days of his or her appointment, advertise notice of his or her appointment in the manner prescribed.

*(Inserted by Act 5 of 2012)*

### **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).

### **Powers of voluntary liquidator**

**207.** (1) In order to perform the duties imposed on him or her 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—

- (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 or her 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 2 years.

### Termination of voluntary liquidation

**207A.** (1) The Court may, at any time after the appointment of a voluntary liquidator under section 199, make an order terminating the liquidation if it is satisfied that it would be just and equitable to do so. *(Inserted by Act 26 of 2005)*

(2) An application for an order under subsection (1) may be made by—

- (a) the voluntary liquidator of the company;
  - (b) a director, member or creditor of the company; or
  - (c) where the company is a regulated person, by the Commission.
- (Substituted by Act 5 of 2012)*

(3) Before making an order under subsection (1), the Court may require the voluntary liquidator to file a report with respect to any matters relevant to the application. *(Amended by Act 12 of 2006)*

(3A) An application for an order under subsection (1) shall be served—

- (a) if made by a person other than the voluntary liquidator, on the voluntary liquidator; and
- (b) if made in respect of a company that is a regulated person and made by a person other than the Commission, on the Commission, and the voluntary liquidator or the Commission, as the case may be, is entitled to appear and be heard on the hearing of the application.

*(Substituted by Act 5 of 2012)*

(4) An order under subsection (1) may be made subject to such terms and conditions as the Court considers appropriate and, on making the order or at any time thereafter, the Court may give such supplemental directions or make such other order as it considers fit in connection with the termination of the liquidation. *(Inserted by Act 26 of 2005)*

(5) Where the Court makes an order under subsection (1), the company ceases to be in voluntary liquidation and the voluntary liquidator ceases to hold office with effect from the date of the order or such later date as may be specified in the order. *(Inserted by Act 26 of 2005)*

(6) Where the Court makes an order under subsection (1), the person who applied for the order shall, within 5 days of the date of the order—

- (a) serve a sealed copy of the order—
  - (i) if that person is not the voluntary liquidator, on the voluntary liquidator; and
  - (ii) if the order is made in respect of a company that is a regulated person and that person is not the Commission, on the Commission; and

*(Substituted by Act 5 of 2012)*

(b) file a sealed copy of the order. *(Inserted by Act 12 of 2006)*

(7) A person who contravenes subsection (6) commits an offence and is liable on summary conviction to a fine of \$1,000. (*Inserted by Act 12 of 2006*)

### **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 in the approved form certifying that the company has been dissolved. (*Amended by Act 26 of 2005*)

(2) Where the Registrar issues a certificate of dissolution under subsection (1), the dissolution of the company is effective from the date of the issue of the certificate.

- (a) (*Repealed by Act 26 of 2005*)
- (b) (*Repealed by Act 26 of 2005*)  
(*Amended by Act 26 of 2005*)

(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 or she shall forthwith send a written notice in the approved form—

- (a) to the Official Receiver; and
- (b) if the company is a regulated person, to the Commission.  
(*Substituted by Act 5 of 2012*)

(3) A voluntary liquidator who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of \$25,000.

#### **Liquidator to call meeting of creditors**

**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 21 days of the date of the notice.

(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.

(3) Without affecting any acts carried out by the voluntary liquidator appointed under Division 1 prior to his or her 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 or she 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 herself 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.

### **Insolvency Act to apply**

**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 or she shall conduct the liquidation as if he or she had been appointed liquidator under the Insolvency Act.

(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.

### **Application by creditor, company insolvent**

**211A.** (1) The Court may, on the application of a creditor of a company, appoint an eligible insolvency practitioner as liquidator of the company in place of the voluntary liquidator, if the Court is satisfied that the company is insolvent.

(2) If the Court makes an order under subsection (1), it may make such other orders as it considers necessary to give effect to the liquidation of the company.

(3) Where a liquidator is appointed under subsection (1)—

- (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 is deemed to have commenced on the date of the appointment of the liquidator under Division 1.  
(*Inserted by Act 5 of 2012*)

### **Division 3**

#### *Striking Off and Dissolution*

#### **Interpretation for this Division**

**212.** In this Division, “Register” means the Register of Companies.

#### **Striking company off Register**

**213.** (1) The Registrar may strike the name of a company off the Register if—

- (a) the company—
  - (i) does not have a registered agent; or (*Inserted by Act 5 of 2012*)
  - (ii) fails to file any return, notice or document required to be filed under this Act;
- (b) he or she 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 or she 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 or her 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* under subsection (3). (*Amended by Act 26 of 2005*)



## Appeal

**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.

(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 or she considers appropriate, pending the determination of the appeal.

## Effect of striking off

**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—

- (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, 7 years it is dissolved with effect from the last day of that period. (*Amended by Act 5 of 2012*)

**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), or the struck off company does not have a registered agent the Registrar shall not restore the company to the Register unless—

(a) he or she is satisfied that a licensed person has agreed to act as registered agent of the company; and

(b) he or she is satisfied that it would be fair and reasonable for the name of the company to be restored to the Register.

*(Amended by Act 5 of 2012)*

(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, or 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. *(Amended by Act 26 of 2005)*

(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.

(7) Where a company to which subsection (2) applies is restored to the Register, it shall forthwith appoint a registered agent under section 91A. *(Inserted by Act 5 of 2012)*

**Declaration that dissolution void and restoration of name to register by court**

**218.** (1) Application may be made to the Court to restore a dissolved company to the Register by—

(a) a creditor, former director, former member or former liquidator of the company; or

(b) any person who can establish an interest in having the company restored to the Register.

(2) An application under subsection (1) may not be made more than 10 years after the date that the company was dissolved.

(3) Notice of the application shall be served on—

(a) the Registrar of Companies;

- (b) the Financial Secretary; and
- (c) the Commission, if at any time prior to its dissolution the company was a regulated person,

each of whom is entitled to appear and be heard on the hearing of the application.

*(Substituted by Act 5 of 2012)*

### **Court's powers on hearing**

**218A.** (1) Subject to subsection (2), on an application under section 218, the Court may—

- (a) restore the company to the Register subject to such conditions as it considers appropriate; and
- (b) give such directions or make such orders as it considers necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the company had not been dissolved or struck off the Register.

(2) Where the company was dissolved following the completion or termination of its voluntary liquidation under this Act or its liquidation under the Insolvency Act, the Court shall not restore the company to the Register unless—

- (a) the applicant nominates a person to be liquidator of the company, if it is restored to the Register;
- (b) the person nominated as liquidator consents to act, and is eligible to act, as liquidator of the company on its restoration; and
- (c) satisfactory provision has been made or will be made for the expenses and remuneration of the liquidator, if appointed.

(3) For the purpose of subsection (2)(b), a person is eligible to act as the liquidator of a company—

- (a) in the case of a company that was dissolved following the completion or termination of its voluntary liquidation, if he or she would be eligible to be appointed voluntary liquidator of the company under this Act;
- (b) in the case of a company that was dissolved following the completion or termination of its liquidation under the Insolvency Act, if he or she is a licensed insolvency practitioner who would be eligible to act in relation to the company in accordance with section 482 of that Act.

(4) Where the Court makes an order restoring a company to which subsection (2) applies, it shall appoint as liquidator of the company—

- (a) the person nominated by the applicant; or
- (b) some other person who is eligible to act as liquidator of the company.

*(Inserted by Act 5 of 2012)*

### **Effect of restoration**

**218B.** (1) Where the Court makes an order restoring a company to the Register, a sealed copy of the Order shall be filed with the Registrar—

(a) in the case of a company to which section 218(2) applies, by the person appointed to be liquidator of the company under section 218A(4); and

(b) in any other case, by the applicant for the Order.

(2) On receiving a filed copy of a sealed order under subsection (1), the Registrar shall restore the company to the Register with effect from the date and time that the copy of the sealed order was filed.

(3) Where the company was dissolved following the completion or termination of its voluntary liquidation under this Act or its liquidation under the Insolvency Act—

(a) the company is restored as a company in liquidation under this Act or the Insolvency Act; and

(b) the person appointed by the Court as liquidator is constituted liquidator of the company with effect from the time that the company is restored to the Register.

(4) Subject to subsection (5), a company is restored to the Register with the name that it had immediately before it was dissolved.

(5) If the name of a company has been reused in accordance with Regulations made under section 24(c), the company is restored to the Register with its company number name.

(6) A company that is restored to the Register is deemed to have continued in existence as if it had not been dissolved or struck off the Register.

*(Inserted by Act 5 of 2012)*

### **Appointment of Official Receiver as liquidator of company struck off**

**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.

(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.

### **Property of dissolved company**

**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.

(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.

### Disclaimer

**221.** (1) In this section, “onerous property” means—

- (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 or her to decide whether he or she will or will not disclaim the property, within 3 months of the date upon which he or she 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

#### **Definition of “inspector”**

**222.** In sections 223 to 228, “inspector” means an inspector appointed by an order made under section 223(2).

#### **Investigation order**

**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.

(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 or she shall give the Registrar reasonable notice of it, and the Registrar is entitled to appear and be heard at the hearing of the application.

(4) The Regulations may define an affiliated company for the purposes of this Part. (*Inserted by Act 26 of 2005*)

(5) An applicant under this section shall not be required to give security for costs. (*Inserted by Act 26 of 2005*)

### Court's powers

**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.

(2) The Court may, at any time, make any order it considers appropriate with respect to the investigation, including but not limited to making any one or more of the following orders, that is to—

- (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;
- (j) require an inspector to discontinue an investigation; or
- (k) require the company to pay the costs of the investigation in part or in full.

*(Inserted by Act 26 of 2005)*

(3) The inspector shall file a copy of every report he or she 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 or her; 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 and has a right to be represented by a legal practitioner appointed by him or her for the purpose. (*Amended by Act 26 of 2005*)

(3) No person shall publish anything relating to any proceedings under this Part except with the authorisation of the Court.

**Incriminating evidence**

**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 or her to any proceeding or penalty, but the evidence may not be used or received against him or her in any proceeding thereafter instituted against him or her, other than a prosecution for perjury in giving the evidence.

**Privilege**

**228.** (1) An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

(2) Nothing in this Part affects the legal privilege that exists in respect of a legal practitioner and his or her client. (*Inserted by Act 26 of 2005*)

## PART XIV

## ADMINISTRATION AND GENERAL

**Company Law Review Advisory Committee**

**228A.** (1) The Minister shall, with the advice of the Commission, establish a committee to be known as the “Company Law Review Advisory Committee”. (*Inserted by Act 26 of 2005*)

(2) The Minister shall, with the advice of the Commission, appoint as members of the Committee such persons having knowledge and experience of company law as it considers appropriate. (*Inserted by Act 26 of 2005*)

(3) The functions of the Company Law Review Advisory Committee shall be—

- (a) to keep this Act, and such other enactments relevant to company law as may be specified by the Commission, under review;
- (b) to make such recommendations as it considers appropriate to the Commission for changes to this Act and to any other enactments specified by the Commission under paragraph (a); and



- (c) to make such recommendations as it considers appropriate to the Commission for the development and reform of company law in the Virgin Islands.

*(Inserted by Act 26 of 2005)*

(4) The Chairman of the Committee shall be the Managing Director of the Commission or such other person as he or she may designate. *(Inserted by Act 26 of 2005)*

(4A) Subject to subsection (4C), the membership of a member of the Committee, other than the Chairman, is automatically terminated if he or she is absent from three consecutive meetings of the Committee without an excuse which, in the opinion of the Chairman, is reasonable. *(Inserted by Act 5 of 2012)*

(4B) The automatic termination of the membership of a member takes effect on the 15<sup>th</sup> day following the third meeting for which he or she is absent. *(Inserted by Act 5 of 2012)*

(4C) The absence of a member from a meeting of the Committee shall be taken into account for the purposes of subsections (4A) and (4B) unless, within 14 days of the meeting, the Chairman certifies in writing that, in his or her opinion, the member had a reasonable excuse for not attending the meeting. *(Inserted by Act 5 of 2012)*

(5) The Regulations shall specify rules of procedure for the Committee. *(Inserted by Act 26 of 2005)*

### **Registrar of Corporate Affairs**

**229.** (1) The Commission—

- (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 or her authority to do so.

### **Registers**

**230.** (1) The Registrar shall maintain—

- (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 or 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.

*(Amended by Act 26 of 2005)*

(3) The Registrar may establish systems and facilities enabling the filing of documents and the provision of information to the Registrar in electronic form and the issuance of certificates and other documents in electronic form.  
*(Substituted by Act 5 of 2012)*

(3A) The Regulations may—

(a) provide that specified qualifying documents, specified types or descriptions of qualifying documents, qualifying documents filed by specified persons or by specified types or descriptions of persons or all qualifying documents may only be filed by electronic means; and

(b) specify requirements concerning—

(i) the keeping by the Registrar of the Registers, and of documents filed, in electronic or any other form;

(ii) the filing of documents in both paper and electronic form; and

(iii) the issuance by the Registrar of certificates and other documents in electronic form.

*(Inserted by Act 5 of 2012)*

(3B) Regulations shall not be made under subsection (3A)(a) in relation to a qualifying document or documents unless the Registrar has established systems and facilities that enable the specified document or documents to be filed in electronic form.  
*(Inserted by Act 5 of 2012)*

(4) The Registrar—

(a) shall retain every qualifying document filed; and

(b) shall not retain any document filed that is not a qualifying document.

(5) For the purposes of subsection (4) of this section 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; and

- (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.

*(Amended by Acts 26 of 2005 and 5 of 2012)*

### **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).

(5) Subsection (6) applies where a company—

- (a) had elected to cease registration of changes in a register under subsection (3); and  
(b) subsequently elects under subsection (1) to file changes in the same register for registration.

*(Inserted by Act 5 of 2012)*

(6) Where this subsection applies to a company—

- (a) the company shall file for registration all changes made to the Register during the period commencing on the date that the company filed a notice under subsection (3) and ending on the date that it files a subsequent notice under subsection (1); and  
(b) subsection (4) applies in relation to any period specified in paragraph (a).

*(Inserted by Act 5 of 2012)*

### **Filing of documents**

**232.** (1) 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—

- (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.

(2) The Regulations may provide for the filing and registration of documents, or certain specified types of document, on public holidays. (*Inserted by Act 5 of 2012*)

### **Inspection of Registers and documents filed**

**233.** (1) Except as otherwise provided in this Act, the Regulations or any other enactment, a person may—

- (a) inspect the Registers maintained by the Registrar;
- (b) inspect any document retained by the Registrar in accordance with section 230(4);
- (c) require a certified or uncertified copy or extract certificate of incorporation, merger, consolidation, arrangement, continuation, discontinuance, 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 or she has custody, to be certified by the Registrar; and a certificate of incorporation, merger, consolidation, arrangement, continuation, discontinuance, dissolution or good standing or a certified copy or extract is *prima facie* evidence of the matters contained therein. (*Amended by Act 26 of 2005*).

(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.

(3) Subsection (2) applies whether the copy or extract is obtained from a document filed in paper form or is a copy of, or extract from, a document filed in electronic form or is an extract from any Register maintained by the Registrar in electronic form. (*Inserted by Act 5 of 2012*)

(4) An extract certified by the Registrar as containing particulars of a registered document filed in electronic form is, in the absence of proof to the contrary, conclusive evidence of the filing and registration of those particulars. (*Inserted by Act 5 of 2012*)

### **Form of certificate**

**234.** Any certificate or other document required to be issued by the Registrar under this Act shall be in the approved form.

### **Certificate of good standing**

**235.** (1) The Registrar shall, upon request by any person, issue a certificate of good standing in the approved form certifying that a company is of good standing if the Registrar is satisfied that—

- (a) the company is on the Register of Companies; and
- (b) the company has paid all fees, annual fees and penalties due and payable.

(*Amended by Act 26 of 2005*)

(2) (*Repealed by Act 5 of 2012*)

(2A) The certificate of good standing issued under subsection (1) shall contain such statements as are specified in the Regulations. (*Substituted by Act 5 of 2012*)

### **Issue of miscellaneous certificates**

**235A.** The Registrar may, upon request by any person, issue a certificate confirming—

- (a) information recorded on the Register in relation to a company; or
- (b) the status of a company.

(*Inserted by Act 5 of 2012*)

### **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.

(2) Parts I and II of Schedule 1 are subject to the provisions contained in Part III of that Schedule.

(3) Unless this Act or the Regulations provide otherwise, the registered agent is the only person authorised to pay a fee to the Registrar under this section, and the Registrar shall not accept a fee paid by any other person. (*Inserted by Act 26 of 2005*)

### **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 or her under this Act for which a fee is prescribed until all fees have been paid.

### **Companies Regulations**

**240.** (1) The Cabinet 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.

### Listed Companies and Funds Regulations

**240A.** (1) In this section, “private fund”, “professional fund” and “public fund” each have the meaning specified in the Securities and Investment Business Act.

(2) The Cabinet may, on the advice of the Commission, make Regulations concerning the application of this Act to listed companies, public funds, private funds and professional funds.

(3) Without limiting subsection (2), Regulations made under that subsection may provide that the provisions of this Act shall apply in relation to listed companies, public funds, private funds or professional funds, or any class or description of listed companies, public funds, private funds or professional funds, or their securities or fund interests, subject to such exceptions, adaptations and modifications as may be specified in the Regulations.

(4) The Regulations made under this section may—

(a) make different provision in relation to different persons, circumstances and cases; and

(b) provide, subject to subsection (5), for offences and penalties for any contravention of or failure to comply with specified requirements of the regulations.

(5) A penalty provided for an offence under the Regulations made under this section shall not exceed—

(a) in the case of a fine, the sum of \$20,000; and

(b) in the case of a period of imprisonment, the term of 2 years.

*(Inserted by Act 5 of 2012)*

### Approval of forms by Commission

**241.** (1) Where this Act or the Regulations require a document to be in “the approved form”, the Commission shall, by publication in the prescribed manner, approve a form to be used for the document.

(2) The Commission may, with respect to any other document required or permitted to be filed, issued or produced under this Act or the Regulations, approve a form to be used for the document.

(3) Where, pursuant to subsection (1) or (2), the Commission has published an approved form with respect to a document to be filed, issued or produced under this Act or the Regulations, the document shall—

(a) be in the form of, and contain the information specified in, the approved form; and

(b) have attached to it such documents as may be specified by the approved form.

*(Substituted by Act 12 of 2006)*

**Exemptions from tax**

**242.** (1) Notwithstanding any provision of the Income Tax Ordinance—

- (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 authorised, 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

**244.** *(Repealed by Act 5 of 2012)*

**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 or her duties in the subject matter of the application.

**Judge in Chambers**

**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.

**Transitional provisions**

**248.** The transitional provisions set out in Schedule 2 apply.

**Amendment of Schedules**

**249.** (1) The Cabinet may, on the advice of the Commission, by order amend the Schedules to this Act in such manner as it considers necessary.

(2) An order made under subsection (1) shall be subject to a negative resolution of the House of Assembly.

**250.** *(Omitted)*

**Act binding on Crown**

**251.** This Act is binding on the Crown.



**SCHEDULE 1***(Section 236)***FEES AND PENALTIES****PART I****FEES**

<b>COLUMN 1 SECTION</b>	<b>COLUMN 2 NATURE OF FEE</b>	<b>COLUMN 3 Fee (\$)</b>
7(1)	For the incorporation of—  (a) a company specified in section 5(a), (c) or (e) that is authorised to issue no more than 50,000 shares  (b) a company specified in section 5(a), (c) or (e) that is authorized to issue more than 50,000 shares  (c) company specified in section 5(b) or (d) <i>(Amended by Act 26 of 2005)</i>  (d) a company specified in paragraph (a) or (c) above, the memorandum of which states that it is a private trust company (in place of the fee specified in respect of the relevant paragraph) <i>(Inserted by S.I. 44/2007 and amended by S.I. 12/2013)</i>  (e) a company specified in paragraph (b) above, the memorandum of which states that it is a private trust company (in place of the fee specified in respect of that paragraph) <i>(Inserted by S.I. 44/2007 and amended by S.I. 12/2013)</i>  (f) a company specified in paragraph (a) or (c) above, the memorandum of which states that it is a private trust company (in place of the fee specified in respect of the relevant paragraph) <i>(Amended by S.I. 36/2013)</i>  (g) a company specified in paragraph (b) above the memorandum of which states that it is a private trust company (in place of the fee specified against that paragraph) <i>(Inserted by S.I. 44/2007 and amended by S.I. 36/2013)</i>	\$350  \$1,100  \$350  \$1,250  \$2,500  \$1,250  \$2,500
8(1)	For the incorporation of a company as a restricted purposes company	\$5,000
13	For the registration of a notice of amendment of the memorandum or articles or of a restated memorandum or articles—	

COLUMN 1 SECTION	COLUMN 2 NATURE OF FEE	COLUMN 3 Fee (\$)
13(1)	(a) filed within 30 days after the date of the resolution	\$25
13(1)	(b) filed more than 30 days but less than 61 days after the date of the resolution	\$50
13(1)	(c) filed more than 60 days but less than 91 days after the date of the resolution	\$75
13(1)	(d) filed more than 90 days after the date of the resolution	\$100
13(5)	(e) filed pursuant to an order made by the court under section 13(5)	\$100
15	For the registration of a restated memorandum and/or articles	\$25
18(1)(d)	For an application for consent to use a restricted word or phrase	\$100
20	For an application to register an additional foreign character name	\$25
20	For the registration of an additional foreign character name	\$25
20	For an application to change a foreign character name	\$25
20	For the registration to change a foreign character name	\$25
20	For an application to deregister a foreign character name	\$25
20	For the deregistration of an additional foreign character name <i>(Inserted by Act 5 of 2012)</i>	\$25
21(2)	For the application for a change of name— (a) where the application is to include the abbreviation (PTC) immediately before the ending permitted by section 17(1)(a), (b) or (c)	\$425
	(b) in any other case <i>(Substituted by S.I. 44/ 2007)</i>	\$25
21(2)	For the issuance of certificate of change of name	\$25
25	For the reservation of a name	\$25

COLUMN 1 SECTION	COLUMN 2 NATURE OF FEE	COLUMN 3 Fee (\$)
40	For filing a notice of change in the number of shares a company is authorised to issue— (a) where the number of shares is increased from 50,000 or less to more than 50,000 (b) in any other case (Amended by S.I. 84/2006)	\$750 \$25
91A	For filing a notice of appointment of a registered agent	\$50
92A 92B	For filing notices under subsection (2) in relation to one or more companies, or a combined notice under subsection (4) for— 1 – 1,000 companies 1,001 – 10,000 companies 10,001 – 50,000 companies 50,001 – 100,000 companies 100,001 companies or more	\$1,000 \$2,000 \$3,000 \$4,000 \$5,000
92C	For filing notices under subsection (2) in relation to one or more companies, or a combined notice under subsection (4), for— 1 – 1,000 companies 1,001 – 10,000 companies 10,001 – 50,000 companies 50,001 – 100,000 companies 100,001 companies or more (Inserted by Act 5 of 2012)	\$1,000 \$2,000 \$3,000 \$4,000 \$5,000
118A	For filing annual return by unlimited company not authorised to issue shares	\$50
163(4)	For the registration of a charge	\$100
164(3)	For the registration of a variation of a registered charge	\$50
165(3)	For the registration of a notice that a registered charge has ceased to affect property of a company For the registration of articles of merger or consolidation—	\$50 \$50
171(3) and 172(7)	(a) where, the consolidated or surviving company is a company specified in section 5(a), (c) or (e) authorized to issue no more than 50,000 shares	\$600

COLUMN 1 SECTION	COLUMN 2 NATURE OF FEE	COLUMN 3 Fee (\$)
171(3)	(b) where, in the case of a consolidation, the consolidated company is a company specified in section 5(a), (c) or (e) that is authorized to issue more than 50,000 shares	\$800
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 (e) that, as a result of the merger is authorized to issue more than 50,000 shares	\$800
171(3) and 172(7)	(d) where, the consolidated or surviving company is a company specified in section 5(b) or (d)	\$600
174(2)(b)	For filing documents specified where surviving company or consolidated company is to be incorporated outside the virgin islands ( <i>Inserted by S.I. 44/2007</i> )	\$500
177(8)	For the registration of articles of arrangement—	
	(a) in the case of a company specified in section 5(a), (c) or (e) authorised to issue no more than 50,000 shares	\$600
	(b) in the case of a company specified in section 5(a), (c) or (e) authorised to issue more than 50,000 shares	\$800
	(c) in the case of a company specified in section 5(b) or (d)	\$600
182(1)	For the continuation of a company as—	
	(a) a company specified in section 5(a), (c) or (e) authorized to issue no more than 50,000 shares	\$500
	(b) a company specified in section 5(a), (c) or (e) authorized to issue more than 50,000 shares	\$1,100
	(c) a company specified in section 5(b) or (d)	\$500
184(3)	For the registration of a notice of continuation out of the Virgin Islands	\$250
187	For the registration of a company as a foreign company carrying on business in the virgin islands	\$300
188	For the registration of a change of particulars of foreign company	\$50
192(1)	For filing annual return by foreign company ( <i>Inserted by Act 26 of 2005</i> )	\$50

COLUMN 1 SECTION	COLUMN 2 NATURE OF FEE	COLUMN 3 Fee (\$)
204  Completion of liquidation	For the registration of a notice of appointment of voluntary liquidator	\$75
207A	For the registration of a Court Order terminating a voluntary liquidation ( <i>Inserted by S.I. 84/2006</i> )	\$100
208	For the issue of a certificate of dissolution	\$25
217          Declaration that dissolution void and restoration of name to register by court	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  (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	\$375          \$775
218	For the restoration of the name of a company to the register pursuant to an order of the Court	\$750
231(1)	For the initial registration by the Registrar of a copy of a register of members or a register of directors	\$50
231(2)	For the registration of a change in a register of members or a register of directors	\$50
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

COLUMN 1 SECTION	COLUMN 2 NATURE OF FEE	COLUMN 3 Fee (\$)
233	<p>For inspecting the records on the Register of Companies relating to a company or on the Register of Foreign Companies relating to a foreign company—</p> <p>(a) where the inspection takes place at the office of the Registrar, whether the inspection is of electronic or paper records;</p> <p>(b) in any other case.</p> <p><i>(Substituted by Act 5 of 2012)</i></p> <p>For inspecting the Register of Charges <i>(Substituted by Act 5 of 2012)</i></p>	<p>\$15</p> <p>\$30</p> <p>\$15</p>
235	<p>For a certificate of good standing</p> <p>Annual fee, payable on the date specified in Part III of this Schedule, for a company which, on the date that the fee is due, is—</p> <p>(a) a company specified in section 5(a), (c) or (e) authorised to issue no more than 50,000 shares</p> <p>(b) a company specified in section 5(a), (c) or (e) authorised to issue more than 50,000 shares</p> <p>(c) a company specified in section 5(b) or (d)</p> <p>(d) a restricted purposes company</p> <p>For the registration of any document required or permitted to be registered under this Act for which a charge is not specified above.</p>	<p>\$350</p> <p>\$1,100</p> <p>\$350</p> <p>\$5,000</p> <p>\$50</p>
235A	<p>For issuing a certificate confirming information on the Register in relation to a company or the status of a company <i>(Inserted by Act 5 of 2012)</i></p>	<p>\$25</p>

## PART II

## PENALTIES

**Penalties payable by company for late payment of annual fee**

1. If a company fails to pay the annual fee payable under Part I of this Schedule or under paragraph 31 or 48 of Schedule 2 on or before the date on which the annual fee is due, it shall, in addition to the annual fee, be liable to pay a penalty calculated as follows—

- (a) if the fee is paid before the expiration of 2 months after the date when the fee is due, the penalty payable shall be equal to 10% of the annual fee due; or

- (b) if the fee is paid on or after the expiration of 2 months after the date when the fee is due, the penalty payable shall be equal to 50% of the annual fee due. *(Inserted by S.I. 84/2006)*

#### **Penalty payable by foreign company for late payment of annual fee**

2. If a foreign company fails to pay the annual fee payable under Part I of this Schedule on or before 31 March in any year it shall, in addition to the annual fee, be liable to pay a penalty calculated as follows—

- (a) if the fee is paid on or before 31 May in that year, the penalty payable shall be \$30; or
- (b) if the fee is paid on or after 1 June in that year, the penalty payable shall be \$150. *(Inserted by S.I. 84/2006)*

### PART III

#### ADDITIONAL PROVISIONS WITH REGARD TO FEES AND PENALTIES

#### **Interpretation for this Part**

3. In this Part—

“CapCo” means a former Act company that was incorporated under the Companies Act and that has not been continued under the International Business Companies Act; *(Amended by S.I. 44/2007)*

“IBC” means a former Act company that was incorporated, continued or registered as a consolidated company under the International Business Companies Act; and

“private trust company” has the meaning specified in Schedule 1, Part 1 of the Financial Services (Exemptions) Regulations. *(Inserted by S.I.44/2007)*

#### **Date annual fee due, foreign company**

4. The annual fee of a foreign company registered under Part XI of the Act is due on 31 March in each year, commencing in the year following its registration.

#### **Date annual fee due, company**

5. Subject to paragraphs 7 and 8, the date when the annual fee payable by a company is due shall be determined as follows—

- (a) if the company was incorporated or continued, or in the case of a consolidated company, the articles of consolidation were registered, between 1 January and 30 June in any year, the annual fee shall be due on the 31 May of each year, commencing in the year following its incorporation, continuation or consolidation;
- (b) if the company was incorporated or continued, or in the case of a consolidated company, the articles of consolidation were registered, between 1 July and 31 December in any year, the annual fee shall be due on the 30 November of each year, commencing in the year following its incorporation, continuation or consolidation.

**Meaning of annual fee**

6. For the purposes of paragraph 5, the annual fee payable by a company is the annual fee specified in Part I of this Schedule or in paragraph 31 or 48 of Schedule 2, as the case may be.

**Application of paragraph 5 to former Act companies**

7. Paragraph 5 applies to a former Act company re-registered under Schedule 2, whether on application under Part II or automatically under Part III of that Schedule, with the following modifications—

- (a) the relevant date for determining whether the company falls within paragraph 5(a) or 5(b), is—
  - (i) in the case of an IBC, the date of its incorporation, continuation or consolidation under the International Business Companies Act; and
  - (ii) in the case of a CapCo, the date of its incorporation under the Companies Act; and subject to paragraph 8, the liability of a former Act company that is re-registered under Schedule 2 to pay the annual fee due under this Act shall commence in the year of its re-registration.

**Exception to paragraph 7**

8. A former Act company re-registered on application under Part II of Schedule 2 shall not be liable to pay an annual fee in the year of its re-registration if the annual licence fee payable by the company under the applicable former Act for that year became due on or before the date of its re-registration.

**Interpretation for paragraphs 10 to 12**

9. For the purposes of paragraphs 10 to 12—

- (a) a company is a bearer share company if—
  - (i) it is of a type specified in section 5(a), (c) or (e); and
  - (ii) the company is not prohibited by its memorandum from issuing bearer shares, converting registered shares to bearer shares and exchanging registered shares for bearer shares;
- (b) a company is a “grandfathered bearer share company” if it is a former Act company that meets all of the following conditions—
  - (i) as at 31 December 2004, it was on the Register of International Business Companies maintained under the International Business Companies Act;
  - (ii) its memorandum, as at 31 December 2004, did not prohibit it from issuing bearer shares;
  - (iii) it is a company that was re-registered automatically under Part III of Schedule 2;
  - (iv) a notice to disapply Part IV of Schedule 2 has not been registered with respect to the company; and



- (v) its memorandum has not, at any time since 31 December 2004, been amended to prohibit it from issuing bearer shares, converting registered shares to bearer shares or exchanging registered shares for bearer shares;
- (c) the following fees are specified fees—
  - (i) the fee for the incorporation of a company under section 7(1);
  - (ii) the fee for the registration of articles of consolidation under section 171(3);
  - (iii) the fee for the continuation of the company under section 182(1); and
  - (iv) the annual fee payable under Part I of this Schedule or under paragraph 31 or 48 of Schedule 2.

#### **Increased fee payable by bearer share company**

**10.** (1) Subject to paragraphs 11 and 12, any specified fee payable by, or in respect of a company that, on the date that the applicable fee is due, is a bearer share company is increased as follows—

- (a) if the company is authorised to issue no more than 50,000 shares, by \$750; or
- (b) if the company is authorised to issue more than 50,000 shares, by \$250.

(2) For the avoidance of doubt, this paragraph applies to the annual fee payable by an IBC that is re-registered automatically under Part III of Schedule 2 and that has not elected to disapply Part IV of that Schedule, but with the modification specified in paragraph 30(2) of that Schedule.

#### **Reduced annual fee payable where all bearer shares held by qualifying custodian**

**11.** The annual fee payable by a bearer share company is increased, in the case of a company specified in paragraph 10(1)(a) by \$450 and in the case of a company specified in paragraph 10(1)(b) by \$150, in place of the figures of \$750 and \$250 specified in those paragraphs, if—

- (a) every bearer share in the company in issue on the date that the annual fee is due (the due date) is held by an authorised custodian, the registered office and head office of which are situated in the Virgin Islands (a qualifying custodian); and
- (b) every bearer share in the company that has been in issue at any time during the period of 12 months prior to the due date has at all times during that period been held by a qualifying custodian.

#### **Grandfathered bearer share companies**

**12.** (1) This paragraph applies to a company that, on the date that the applicable fee is due, is a grandfathered bearer share company, in place of paragraphs 10 and 11, for each of the years 2007 to 2009. (*Amended by S.I. 44 of 2007*)

(2) The annual fee payable by a grandfathered bearer share company shall not be subject to any increase in the years 2007 to 2009. (*Amended by S.I. 44 of 2007*)

- (3) (*Repealed by S.I. 44/2007*)

- (4) *(Repealed by S.I. 44/2007)*  
*(Amended by S.I. 44/2007)*

**Memorandum ceases to prohibit issue of bearer shares etc.**

13. If by reason of an amendment of its memorandum, its merger with another company or an arrangement, the memorandum of a company no longer prohibits the company from issuing bearer shares, converting registered shares to bearer shares or exchanging registered shares for bearer shares, in circumstances where the memorandum contained such a prohibition 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.

**Fee payable by restricted purposes company**

14. Where a company is incorporated as a restricted purposes company, the incorporation fee specified in the table in Part I of this Schedule in respect of section 8(1) is payable instead of, and not in addition to, the incorporation fee specified in the table in respect of section 7(1).

**Insolvency Act liquidator appointed**

15. 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.

**Company authorised to issue unlimited number of shares**

16. For the purposes of this Schedule, a company that is authorised to issue an unlimited number of shares shall be regarded as a company that is authorised to issue more than 50,000 shares. *(Substituted by S.I. 44 of 2007)*

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**SCHEDULE 2**

*(Section 248)*

**TRANSITIONAL PROVISIONS**

**PART I**

**PRELIMINARY PROVISIONS**

**Interpretation**

1. In this Schedule—

“bearer share company” and “grandfathered bearer share company” have the meaning specified in paragraph 9 of Schedule 1;

“CapCo” means a former Act company that was incorporated under the Companies Act and that has not been continued under the International Business Companies Act; and

“IBC” means a former Act company that was incorporated, continued or registered as a consolidated company under the International Business Companies Act.  
(*Substituted by S.I. 44 of 2007*)  
(*Substituted by S.I. 84/2006*)

## PART II

### APPLICATION TO RE-REGISTER FORMER ACT COMPANIES

#### **Application by former Act company to re-register under this Act**

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 relevant period, apply to the Registrar to re-register as a company under this Act.

(2) For the purposes of subparagraph (1), “relevant period” means—

- (a) in the case of a CapCo, the period from 1 January 2005 to 16.00 hours on 30 November 2008; and (*Amended by S.I. 80/2007*)
- (b) in the case of an IBC, the period from 1 January 2005 to 16.00 hours on 30 November 2006.

(3) An application for the re-registration of a former Act company as a company under this Act shall be filed by the registered agent and shall—

- (a) be, and contain the information specified, in the approved form; and
- (b) be accompanied by—
  - (i) a memorandum that, subject to subparagraphs (4), (5), (6), and (7), complies with section 9 and by articles complying with this Act (“the new memorandum and articles”);
  - (ii) a document in the approved form signed by the registered agent signifying his or her consent to act as the registered agent of the company on its re-registration;
  - (iii) in the case of an application made on or after 1 December 2006, where the new memorandum does not prohibit the company from issuing bearer shares, converting registered shares to bearer shares and exchanging registered shares for bearer shares, a declaration that, as at the date of the application—
    - (A) all the bearer shares in the company in issue on the date of the application have been delivered to, and are in the custody of, a custodian, or;
    - (B) there are no bearer shares of the company in issue;
  - (iv) such other documents as may be prescribed.

(4) The new memorandum and articles shall be signed by the registered agent as the applicant to re-register.

(5) In subparagraphs (3) and (4), “registered agent” means—

- (a) in the case of a CapCo, the person named in the new memorandum as the first registered agent of the company, who shall be a person qualified to act as registered agent under section 91(3); and
  - (b) in the case of an IBC, the registered agent of the company at the date of the application.
- (6) In addition to the matters required under section 9, the new memorandum shall state—
- (a) the date that the company was first incorporated or, in the case of an IBC if appropriate, the date with effect from which it was continued or registered as a consolidated company 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 by the International Business Companies Act.
- (7) The new memorandum shall state—
- (a) in the case of a CapCo, the name of the first registered agent of the company and the address of the registered office of the company at the time of the application to re-register under this paragraph; and
  - (b) in the case of an IBC, the name of the registered agent, and the address of the registered office, at the time of the application to re-register under this paragraph.
- (8) Subject to subparagraph (9), an application to re-register under this paragraph shall be authorised, and the new memorandum and articles shall be approved, by—
- (a) in the case of a CapCo, a resolution of the members of the company; and
  - (b) in the case of an IBC, a resolution of the members of the company or, unless the original memorandum or articles provide otherwise, by a resolution of directors.
- (9) The directors of an IBC shall not have any power to approve 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.

### **Regulations may prescribe model articles**

3. The Regulations may prescribe one or more model articles which may be adopted by a CapCo making application to re-register under this Part.

### **Circumstances where adoption of new memorandum by CapCo not reduction capital**

4. (1) Where the members of a CapCo that is limited by shares, or that has a capital divided into shares, adopt a new memorandum compliant with section 9, the fact that the new memorandum does not contain a statement of the capital of the company does not, of itself, constitute a reduction of capital for which the approval of the Court is required under the Companies Act, provided that—

- (a) the resolution to adopt the new memorandum is passed by the members unanimously;
- (b) the number of shares in issue is not reduced;
- (c) the maximum number of shares that the company is authorised to issue under the new memorandum is equal to or greater than the number of shares into which the capital is divided under the Companies Act; and
- (d) the par value of the shares remains the same.

(2) For the purposes of subparagraph (1)(c), “capital” has the same meaning as in section 20 of the Companies Act.

### **Re-registration by the Registrar**

5. (1) If he or she is satisfied that the requirements of this Act in respect of re-registration have been complied with, subject to subparagraph (2), 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) The Registrar may refuse to re-register a former Act company under this Part if the company is in default of any obligation under the former Act under which it is incorporated, registered or continued, including an obligation to pay any fee or penalty due on or before the date of its re-registration.

(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.

(4) The unique number allotted to a company under subparagraph (1) may be the number previously allocated by the Registrar to the company as a former Act company.

(5) Except as otherwise provided in this Act, a company that is re-registered under this Part shall be subject to this Act as if it was a company incorporated under this Act and the transitional provisions specified in Part IV or in Division 1 of Part VI of this Schedule do not apply to the company.

(6) For the avoidance of doubt, subject to subparagraph (7), a company that is re-registered under this Part is subject to Division 5 of Part III of this Act.

(7) In the case of a bearer share company, in respect of which the application to re-register the company under this Part was filed on or before 30 November 2006, every bearer share in the company shall, on or before 31 December 2006, be delivered to a custodian who has agreed to hold the share and section 70(1) shall not apply with respect to bearer shares in the company during the period commencing on the date of its re-registration and ending on 31 December 2006.

(8) A company to which subparagraph (7) applies shall, on or before 14 January 2007, file a declaration that, as at 1 January 2007—

- (a) all the bearer shares in the company in issue on 31 December 2006 have been delivered to, and are in the custody of, a custodian; or
- (b) there were no bearer shares in the company in issue on 31 December 2006.

*(Substituted by S.I. 84/2006)*

### PART III

#### AUTOMATIC RE-REGISTRATION OF FORMER ACT COMPANIES

##### **Former Act companies automatically re-registered under this Act**

6. (1) Subject to the provisions of this paragraph—
- (a) every IBC that, at midnight on 31 December 2006, is on the Register of International Business Companies maintained under the International Business Companies Act shall be deemed to be re-registered under this Act with effect from the 1 January 2007; and
  - (b) every CapCo that, at midnight on 31 December 2007, is on the Register of Companies maintained under the Companies Act shall be deemed to be re-registered under this Act with effect from the 1 January 2008; *(Repealed by S.I. 80/2007)*
  - (c) every CapCo that, at midnight on 31 December 2008, is on the Register of Companies maintained under the Companies Act shall be deemed to be reregistered under this Act with effect from 1 January 2009. *(Substituted by S.I. 80/2007)*
- (2) For the purposes of subparagraphs (3) and (4), “relevant date” means—
- (a) in the case of an IBC, 31 December 2006; and
  - (b) in the case of a CapCo, 31 December (2008). *(Amended by S.I. 80/2007)*
- (3) For the avoidance of doubt, if the Registrar does not determine an application for the re-registration of a former Act company on or before the relevant date applicable to that company, the company is deemed to be re-registered under this Act automatically in accordance with subparagraph (1).
- (4) No certificate of re-registration shall be issued by the Registrar under paragraph 5 after the relevant date.
- (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) Part IV of this Schedule applies to an IBC that is automatically re-registered under this Part.
- (7) Division 1 of Part VI of this Schedule applies to a CapCo that is automatically re-registered under this Part.
- (7A) Where a CapCo that is automatically re-registered pursuant to this Part was, prior to its automatic re-registration, liable to file an annual return—
- (a) the requirement for such filing shall continue to apply for the period up to 31 December 2008; and

- (b) any fee outstanding for the filing of the annual return shall cease to apply and shall not be required or collected by the Registrar.

*(Inserted by S.I. 13/2009)*

(7B) The annual return required to be filed for the year 2008 shall be filed by the new registered agent of the CapCo that is automatically re-registered and all obligations relating to the filing of the annual return shall apply notwithstanding the repeal of the Companies Act. *(Inserted by S.I. 13/2009)*

(7C) For the purposes of subparagraph (7B) and any provision of the Act that requires the filing of any document or the doing of any other act by a registered agent of a CapCo that is automatically re-registered “registered agent” shall be construed to mean the person—

(a) named in the new memorandum of the re-registered CapCo; or

(b) appointed by a resolution of directors or of members, as the first registered agent of the company, who shall be a person qualified to act as registered agent under section 91(3).

*(Inserted by S.I. 13/2009)*

(8) The unique number allotted to a company under subparagraph (5) may, at the discretion of the Registrar, be the number previously allocated by the Registrar to the company as a former Act company. *(Inserted by S.I. 84/2006)*

#### **IBC re-registered as a company limited by shares**

7. (1) An IBC that is re-registered automatically under this Part is re-registered as a company limited by shares.

(2) The company number allotted to an IBC that is re-registered automatically shall, unless the Registrar is of the opinion that there are good reasons to the contrary, be the number under which the company was registered under the International Business Companies Act immediately prior to its re-registration under this Act.

#### **Type of company on re-registration of CapCo**

8. The following apply to a CapCo that is re-registered automatically under this Part—

- (a) if at midnight on 31 December 2008, the company is a company limited by shares, it shall be re-registered under this Act as a company limited by shares;
- (b) if at midnight on 31 December 2008, the company is a company limited by guarantee, not having a capital divided into shares, it shall be re-registered under this Act as a company limited by guarantee that is not authorised to issue shares;
- (c) if at midnight on 31 December 2008, the company is a company limited by guarantee, having a capital divided into shares, it shall be re-registered under this Act as a company limited by guarantee that is authorised to issue shares;
- (d) if at midnight on 31 December 2008, the company is an unlimited company, having a capital divided into shares, it shall be re-registered under this Act as an unlimited company that is authorised to issue shares.

*(Amended by S.I. 80/2007)*

**Certificate of registration where former Act company re-registered automatically**

9. (1) Where a former Act company is automatically re-registered under this Part, the Registrar shall not be required to issue a certificate of re-registration to the company unless it applies for a certificate and pays a fee of \$25.

(2) A certificate of re-registration issued under subparagraph (1) shall—

- (a) state the former Act under which the company was first incorporated or, in the case of an IBC if appropriate, the date with effect from which it was continued or continued or registered as a consolidated company under the International Business Companies Act and the date of its incorporation, continuation or consolidation; and
- (b) that the former Act company was automatically re-registered under this Act and the date of its re-registration.  
*(Substituted by S.I. 84/2006)*

PART IV

TRANSITIONAL PROVISIONS APPLYING TO IBCS  
THAT ARE AUTOMATICALLY RE-REGISTERED UNDER PART III

**Division 1**

*Preliminary*

**Scope of this Part**

10. This Part applies to an IBC that is automatically re-registered under Part III of this Schedule.

**Interpretation for this Part**

11. In this Part, unless the context otherwise requires—

“authorised capital” of a company means the sum of the aggregate par value of all shares with par value which the company is authorised by its memorandum to issue plus the amount, if any, stated in its memorandum as authorised capital to be represented by shares without par value which the company is authorised by its memorandum to issue;

“capital” of a company means the sum of the aggregate par value of all outstanding shares with par value of the company and shares with par value held by the company as treasury shares plus—

- (a) the aggregate of the amounts designated as capital of all outstanding shares without par value of the company and shares without par value held by the company as treasury shares; and
- (b) the amounts as are from time to time transferred from surplus to capital by a resolution of directors;

“surplus”, in relation to a company, means the excess, if any, at the time of the determination, of the total assets of the company over the sum of its total liabilities, as shown in the books of account, plus its capital.



**Company may disapply this Part**

12. (1) A company to which this Part applies may elect to disapply this Part by filing—

- (a) a memorandum that, subject to subparagraphs (2), (3) and (4), complies with section 9 and articles that comply with this Act (“the new memorandum and articles”);
- (b) a notice in, and containing the information specified in, the approved form;
- (c) where the new memorandum does not prohibit the company from issuing bearer shares, converting registered shares to bearer shares and exchanging registered shares for bearer shares, a declaration that, as at the date of the notice—
  - (i) all the bearer shares in the company in issue have been delivered to, and are in the custody of, a custodian; or
  - (ii) there were no bearer shares in the company in issue; and
- (d) such other documents as may be prescribed.

(2) The new memorandum and articles shall be signed by the registered agent of the company.

(3) In addition to the matters required under section 9, the new memorandum shall state—

- (a) the date that the company was first incorporated or, if appropriate, the date with effect from which it was continued or registered as a consolidated company under the International Business Companies Act;
- (b) that, immediately prior to its automatic re-registration under this Act, it was governed by the International Business Companies Act.

(4) The new memorandum shall state the name of the registered agent, and the address of the registered office, at the date of the notice.

(5) Subject to subparagraph (6), a notice of election to disapply this Part shall be authorised, and the new memorandum and articles shall be approved, by a resolution of the members of the company or, unless the original memorandum or articles provide otherwise, by a resolution of directors.

(6) The directors shall not have any power to approve 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 notice (“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.

(7) An election under paragraph (1) takes effect from the date that the notice is registered by the Registrar and from that date—

- (a) the company shall be treated as if it was a company that had been re-registered on application under Part II;
- (b) this Part shall cease to apply to the company; and
- (c) for the avoidance of doubt, the company shall be subject to Division 5 of Part III of this Act.

(8) On the registration of a notice of election to disapply this Part, the Registrar shall issue a certificate in the approved form. (*Substituted by S.I. 84/2006*)

## **Division 2**

### *Memorandum*

#### **Memorandum**

**13.** (1) In place of the requirements specified in section 9, the memorandum of a company to which this Part applies must include the following—

- (a) the name of the company;
- (b) the address within the Virgin Islands of the registered office of the company;
- (c) the name and address within the Virgin Islands of the registered agent of the company;
- (d) the objects or purposes for which the company is to be incorporated;
- (e) the currency in which shares in the company shall be issued;
- (f) a statement of the authorised capital of the company setting forth the aggregate of the par value of all shares with par value that the company is authorised to issue and the amount, if any, to be represented by shares without par value that the company is authorised to issue;
- (g) a statement of the number of classes and series of shares, the number of shares of each such class and series and the par value of shares with par value and that shares may be without par value, if that is the case;
- (h) a statement of the designations, powers, preferences and rights, and the qualifications, limitations or restrictions of each class and series of shares that the company is authorised to issue, unless the directors are to be authorised to fix any such designations, powers, preferences, rights, qualifications, limitations and restrictions and in that case, an express grant of such authority as may be desired to grant to the directors to fix by a resolution any such designations, powers, preferences, rights, qualifications, limitations and restrictions that have not been fixed by the memorandum;
- (i) a statement of the number of shares to be issued as registered shares and the number of shares to be issued as bearer shares unless the directors are authorised to determine at their discretion whether shares are to be issued as registered shares or bearer shares and in that case an express grant of such authority as may be desired must be given to empower the directors to issue shares as registered shares or bearer shares as they may determine by resolution of directors;
- (j) whether registered shares may be exchanged for bearer shares and whether bearer shares may be exchanged for registered shares; and
- (k) if bearer shares are authorised to be issued, the manner in which a required notice to members is to be given to the holders of bearer shares.

(2) For the purposes of subparagraph (1)(d), if the memorandum contains a statement either alone or with other objects or purposes that the object or purpose of the company is to engage in any act or activity that is not prohibited under any law for the time being in force in the Virgin Islands, the effect of that statement is to make all acts and activities that are not illegal part of the objects or purposes of the company, subject to any limitations in the memorandum.

#### **Amendment of memorandum to prohibit issue etc. of bearer shares**

**14.** A company to which this Part applies that amends its memorandum to prohibit the company from issuing bearer shares, converting registered shares to bearer shares and exchanging registered shares for bearer shares, shall file, together with the notice of amendment, a declaration that the company has no bearer shares in issue on the date of the filing of the notice.

#### **Memorandum not required to be amended on change in registered office or registered agent**

**15.** (1) For the avoidance of doubt, section 92 applies to the change, by a company to which this Part applies, of the location of its registered office or of its registered agent.

(2) Unless the memorandum or articles of the company expressly provide otherwise, a company to which this Part applies is not required to amend its memorandum to reflect a change in the location of its registered office or of its registered agent. (*Substituted by S.I. 84/2006*)

### **Division 3**

#### *Capital, Redemptions and Dividends*

#### **Scope of this Division**

**16.** Paragraphs 17 to 29 apply to a company to which this Part applies in place of section 40A, section 51 and sections 56 to 65 of this Act.

#### **Shares to be fully paid**

**17.** No share in a company may be issued until the consideration in respect of the share is fully paid, and when issued the share is for all purposes fully paid and non-assessable save that a share issued for a promissory note or other written obligation for payment of a debt may be issued subject to forfeiture in the manner prescribed in paragraph 18.

#### **Forfeiture of shares**

**18.** (1) The memorandum or articles, or an agreement for the subscription of shares, of a company may contain provisions for the forfeiture of shares for which payment is not made pursuant to a promissory note or other written binding obligation for payment of a debt.

(2) Any provision in the memorandum or articles, or in an agreement for the subscription of shares of a company providing for the forfeiture of shares shall contain a requirement that written notice specifying a date for payment to be made be served on the member who defaults in making payment pursuant to a promissory note or other written binding obligation to pay a debt.

(3) The written notice referred to in subparagraph (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 notice has been issued under this paragraph and the requirements of the notice have not been complied with, the directors may, at any time before tender of payment, by resolution of directors 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 subparagraph (4) and that member shall be discharged from any further obligation to the company.

### **Amount of consideration for shares**

**19.** (1) Subject to the memorandum or articles, shares in a company may be issued for such amount as may be determined from time to time by the directors, except that in the case of shares with par value, the amount shall not be less than the par value; and, in the absence of fraud, the decision of the directors as to the value of the consideration received by the company in respect of the issue is conclusive, unless a question of law is involved.

(2) A share issued by a company upon conversion of, or in exchange for, another share or a debt obligation or other security in the company, shall be treated for all purposes as having been issued for money equal to the consideration received or deemed to have been received by the company in respect of the other share, debt obligation or security.

### **Authorised capital in several currencies**

**20.** (1) The authorised capital, if any, of a company may be stated in more than one currency in which case the par value of the shares, if any, shall be expressed in the same currencies.

(2) The Commission may issue guidelines with respect to the calculation of fees payable by companies with an authorised capital stated in a currency other than United States dollars.

### **Capital and surplus accounts**

**21.** (1) Upon the issue by a company of a share with par value, the consideration in respect of the share constitutes capital to the extent of the par value and the excess constitutes surplus.

(2) Subject to the memorandum or articles, upon the issue by a company of a share without par value, the consideration in respect of the share constitutes capital to the extent designated by the directors and the excess constitutes surplus, except that the directors must designate as capital an amount of the consideration that is at least equal to the amount that the share is entitled to as a preference, if any, in the assets of the company upon liquidation of the company.

(3) Upon the disposition by a company of a treasury share, the consideration in respect of the share is added to surplus.

**Dividend of shares**

22. (1) A share issued as a dividend by a company shall be treated for all purposes as having been issued for money equal to the surplus that is transferred to capital upon the issue of the share.

(2) In the case of a dividend of authorised but unissued shares with par value, an amount equal to the aggregate par value of the shares shall be transferred from surplus to capital at the time of distribution.

(3) In the case of a dividend of authorised but unissued shares without par value, the amount designated by the directors shall be transferred from surplus to capital at the time of the distribution, except that the directors must designate as capital an amount that is at least equal to the amount that the shares are entitled to as a preference, if any, in the assets of the company upon liquidation of the company.

(4) A division of the issued and outstanding shares of a class or series of shares into a larger number of shares of the same class or series having a proportionally smaller par value does not constitute a dividend of shares.

**Increase or reduction of share capital**

23. (1) Subject to the memorandum or articles, a company may amend its memorandum to increase or reduce its authorised capital, and in connection therewith, the company may—

- (a) increase or reduce the number of shares which the company may issue;
- (b) increase or reduce the par value of any of its shares; or
- (c) effect any combination under (a) and (b).

(2) Where a company reduces its authorised capital under subparagraph (1), then, for purposes of computing the capital of the company, any capital that immediately before the reduction was represented by shares but immediately following the reduction is no longer represented by shares shall be deemed to be capital transferred from surplus to capital.

(3) A company shall, in writing, inform the Registrar of any increase or decrease of its authorised capital.

**Division and combination**

24. (1) A company may amend its memorandum—

- (a) to divide the shares, including issued shares, of a class or series into a larger number of shares of the same class or series; or
- (b) to combine the shares, including issued shares, of a class or series into a smaller number of shares of the same class or series.

(2) Where shares are divided or combined under subparagraph (1), the aggregate par value of the new shares must be equal to the aggregate par value of the original shares.

**Acquisition of own shares**

25. (1) Subject to the memorandum or articles, a company may purchase, redeem or otherwise acquire and hold its own shares but only out of surplus or in exchange for newly issued shares of equal value.

(2) Subject to subparagraph (1), a company may not purchase, redeem or otherwise acquire its own shares without the consent of the member whose shares are to be purchased, redeemed or otherwise acquired, unless the company is permitted to purchase, redeem or otherwise acquire the shares without that consent by virtue of—

- (a) the provisions of the memorandum or articles of the company;
- (b) the designations, powers, preferences, rights, qualifications, limitations and restrictions with which the shares were issued; or
- (c) the subscription agreement for the issue of the shares.

(3) No purchase, redemption or other acquisition permitted under subparagraph (1) shall be made unless the directors determine that immediately after the purchase, redemption or other acquisition—

- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
- (b) the realisable value of the assets of the company will not be less than the sum of its total liabilities other than deferred taxes, as shown in the books of account, and its capital; and, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the company is conclusive.

(4) A determination by the directors under subparagraph (3) is not required where shares are purchased, redeemed or otherwise acquired—

- (a) pursuant to a right of a member to have his or her shares redeemed or to have his or her shares exchanged for money or other property of the company;
- (b) by virtue of a transfer of capital pursuant to paragraph 27(1)(b);
- (c) by virtue of the provisions of section 179; and
- (d) pursuant to an order of the court.

(5) Subject to the memorandum or articles, shares that a company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares unless the shares are purchased, redeemed or otherwise acquired by virtue of a reduction in capital, in which case they shall be cancelled but they shall be available for reissue; and upon the cancellation of a share, the amount included as capital of the company with respect to that share shall be deducted from the capital of the company.

(6) A company may purchase, redeem or otherwise acquire the shares of the company at a price lower than fair value if permitted by, and then only in accordance with, the terms of—

- (a) its memorandum or articles; or
- (b) a written agreement for the subscription for the shares to be purchased, redeemed or otherwise acquired.

**Treasury shares disabled**

26. Where shares in a company—

- (a) are held by the company as treasury shares; or
- (b) are held by another company of which the first company holds, directly or indirectly, shares having more than 50% of the votes in the election of directors of the other company, the shares of the first company are not entitled to vote or to have dividends paid thereon and shall not be treated as outstanding for any purpose under this Schedule except for purposes of determining the capital of the first company.

**Increase or reduction of capital**

27. (1) Subject to the memorandum or articles and subject to subparagraphs (2) and (3), the capital of a company may, by a resolution of members or by resolution of directors, be—

- (a) increased by transferring an amount out of the surplus of the company to capital; or
- (b) reduced by transferring an amount out of capital of the company to surplus.

(2) No reduction of capital shall be effected under subparagraph (1) that reduces the capital of the company to an amount that is less than the sum of—

- (a) the aggregate par value of—
  - (i) all outstanding shares with par value; and
  - (ii) all shares with par value held by the company as treasury shares; and
- (b) the aggregate of the amounts designated as capital of—
  - (i) all outstanding shares without par value; and
  - (ii) all shares without par value held by the company as treasury shares that are entitled to a preference, if any, in the assets of the company upon liquidation of the company.

(3) No reduction of capital shall be effected under subparagraph (1) unless the directors determine that immediately after the reduction—

- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
- (b) the realisable value of the assets of the company will not be less than its total liabilities, other than deferred taxes, as shown in the books of account, and its remaining capital,

and, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the company is conclusive.

**Dividends**

28. (1) Subject to the memorandum or articles, a company may, by a resolution of directors, declare and pay dividends in money, shares or other property.

(2) Dividends shall only be declared and paid out of surplus.

(3) No dividend shall be declared and paid unless the directors determine that immediately after the payment of the dividend—

- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
- (b) the realisable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its capital,

and, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the company is conclusive.

#### **Appreciation of assets**

**29.** Subject to the memorandum or articles, a company may, by a resolution of directors, include in the computation of surplus for any purpose under this Part the net unrealised appreciation of the assets of the company, and, in the absence of fraud, the decision of the directors as to the value of the assets is conclusive, unless a question of law is involved. (*Substituted by S.I. 84/2006*)

### **Division 4**

#### *Fees*

#### **Scope of this Division**

**30.** (1) The fees specified in paragraphs 31 and 32 are payable by a company to which this Part applies in place of the equivalent fees specified in Schedule 1.

(2) Except as specified in paragraphs 31 and 32, Schedule 1 applies to a company to which this Part applies with the following modifications—

- (a) any reference in the Schedule to the phrase “is authorised to issue no more than 50,000 shares” shall be deemed to be a reference to the phrase “has an authorised capital of no more than \$50,000”; and
- (b) any reference in the Schedule to the phrase “is authorised to issue more than 50,000 shares” shall be deemed to be a reference to the phrase “has an authorised capital of more than \$50,000”.

#### **Annual fee payable**

**31.** Subject to Parts II and III of Schedule 1, the annual fee payable by a company to which this Part applies is as follows—

- (a) \$350 if, on the date that the annual fee is due—
  - (i) the authorised capital of the company does not exceed \$50,000 and some or all of the shares in the company have a par value; or
  - (ii) the company has no authorised capital and all its shares have no par value; or
- (b) \$1,100 if, on the date that the annual fee is due the authorised capital of the company exceeds \$50,000.



**Notice of increase or decrease in authorised capital**

32. There shall be paid to the Registrar upon the filing of any notice of an increase or a decrease in authorised capital pursuant to paragraph 27 the following fees—

- (a) \$750 in the case of an increase of authorised capital from \$50,000 or less to more than \$50,000; and
- (b) in all other cases, \$25.

**Insolvency Act liquidator appointed**

33. Where an Insolvency Act liquidator is appointed in respect of a company to which this Part applies, the company is not liable for the annual fee payable under paragraph 31. (*Substituted by S.I. 84/2006*)

**Division 5***Bearer Shares in Grandfathered Bearer Share Companies***Interpretation for scope of this Division**

34. (1) In this Division—

“effective date” means 1 January 2005;

“existing bearer share” means a share in a bearer share company—

- (a) that was issued as or converted to a bearer share prior to the effective date and that remains a bearer share in the company on the effective date; and
- (b) that has not, prior to the re-registration of the company under this Part, ceased to be an existing bearer share by virtue of section 37E(5) of the International Business Companies Act; (*Amended by S.I.44/2007*)

“transition date” means 31 December 2009. (*Amended by S.I. 44/2007*)

(2) Division 5 of Part III of this Act is modified with respect to any existing (bearer) shares in a grandfathered bearer share company to the extent specified in this Division. (*Amended by S.I. 44/2007*)

**Deemed amendment of memorandum**

34A. (1) Subject to subparagraph (2), the memorandum of a grandfathered bearer share company is deemed to be amended with effect from midnight on the transition date to state that the company is not authorised to issue bearer shares, convert registered shares to bearer shares or exchange registered shares for bearer shares and with effect from that time, the company shall cease to be a bearer share company.

(2) A grandfathered bearer share company may, on or before 31 December 2009 elect to disapply subparagraph (1) by filing—

- (a) a notice to disapply subparagraph (1) in the approved form; and
- (b) a declaration that, as at the date of the notice—
  - (i) all the bearer shares in the company in issue have been delivered to a custodian; or

(ii) there are no bearer shares in the company in issue.

(3) Where a notice under subparagraph (2) is filed together with the required declaration, the Registrar shall register the notice with effect from the date that the notice was filed, and subparagraph (1) shall not apply to the company.

*(Inserted by S.I. 44/2007)*

### **Existing bearer shares**

**35.** (1) Every existing bearer share of a grandfathered bearer share company shall, on or before the transition date—

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

(b) be converted to, or exchanged for, a registered share.

(2) Subparagraph (1) does not apply to a bearer share that, before the transition date—

(a) is cancelled; or

(b) is redeemed, purchased or otherwise acquired by the company as a treasury share.

(3) An existing bearer share in a grandfathered bearer share company is deemed not to have been deposited with a custodian for the purposes of subparagraph (1) until the registered agent of the company has received—

(a) in the case of a bearer share deposited with an authorised custodian, notification of the deposit from the authorised custodian in accordance with section 72(1); or

(b) in the case of a bearer share deposited with a recognised custodian, the proof of the deposit of the share and the notice required to be sent by section 71(3).

(4) The Court may, on the application of the company or of a person interested in a bearer share, extend the period specified in subparagraph (1) by such further period or periods not exceeding one year in total as it considers fit.

(5) On an existing bearer share being deposited with a custodian in accordance with subparagraphs (1)(a) and (3), it shall for all purposes of this Division cease to be regarded as an existing bearer share and shall thereafter be treated as if it had been issued after the effective date.

(6) Section 70(1) shall not have effect with respect to an existing bearer share until after the transition date.

### **Redemption of existing bearer shares**

**36.** (1) Where an existing bearer share in a grandfathered bearer share company is not deposited with a custodian who has agreed to hold the share on or before the transition date, the company may, notwithstanding sections 59 to 62 or any provision in the memorandum or articles, in any shareholders' agreement or in any other agreement, redeem the share.

(2) Subject to subparagraph (3), sections 176(3) and 179 apply to the redemption of bearer shares under subparagraph (1).

(3) Where a grandfathered bearer share company is unable, on making reasonable enquiries, to ascertain the identity or address of the holder of a bearer share—

- (a) it is not required to give the member notice under section 176(3); and
- (b) the company shall hold the proceeds of redemption on trust for the owner of the bearer share.

#### **Application for appointment of liquidator**

**37.** Where, after the transition date, a company to which this Part applies has one or more existing bearer shares that have not been deposited with a custodian in accordance with this Division, the Commission may apply to the Court for the appointment of a liquidator of the company under the Insolvency Act.

*(Substituted by S.I. 84/2006)*

### PART V

#### TRANSITIONAL PROVISIONS APPLYING TO IBCS THAT ARE RE-REGISTERED UNDER PART II OR PART III

#### **Registration of charges created prior to commencement date**

**38.** (1) This Part applies to a company that is re-registered, on application, under Part II or automatically under Part III.

(2) Application may be made to register a charge created prior to the commencement date by a company to which this Part applies.

(3) Section 163 applies to an application made under subparagraph (1) as if the charge was a relevant charge.

(4) Where a charge is registered in accordance with this paragraph—

- (a) the charge shall be entered in the company's register of charges kept under section 162;
- (b) sections 164, 165, 166 and 168 apply with respect to the charge as if it was a relevant charge;
- (c) section 167 does not apply with respect to the charge, notwithstanding that it is a charge created prior to the commencement date.

#### **Charges registered prior to commencement date**

**38A.** (1) Where a company that, prior to its re-registration under this Act was an IBC, maintained a register of charges under section 70A of the International Business Companies Act, the repeal of that Act does not—

- (a) affect the validity of the register with respect to any charges registered on the register immediately before the commencement date; and
- (b) does not prevent the company amending the register to record amendments to such charges or their discharge.

(2) Where a company that, prior to its re-registration under this Act was an IBC, had, immediately prior to the commencement date, an election to submit its register of charges to the Registrar for registration under section 111A of the International Business

Companies Act in force, notwithstanding the repeal of that Act, sections 111A and 111B continue in effect with respect to any charges registered immediately prior to the commencement date. (*Inserted by S.I.44/2007*)

(*Substituted by S.I. 84/2006*)

## PART VI

### TRANSITIONAL PROVISIONS APPLYING TO CAPCOS RE-REGISTERED UNDER THIS SCHEDULE

#### Division 1

##### *CapCos Automatically Re-registered under Part III*

#### Scope of this Division

**39.** This Division applies to a CapCo that is automatically re-registered under Part III of this Schedule whether, immediately prior to its re-registration, the company was a private company or a public company.

#### Company may disapply this Division

**40.** (1) A company to which this Division applies may elect to disapply this Division, other than paragraph 44, and this paragraph by filing—

- (a) a memorandum that, subject to subparagraphs (2), (3) and (4), complies with section 9 and articles that comply with this Act (“the new memorandum and articles”);
- (b) a notice in, and containing the information specified in, the approved form;
- (c) where the new memorandum does not prohibit the company from issuing bearer shares, converting registered shares to bearer shares and exchanging registered shares for bearer shares, a declaration that, as at the date of the notice—
  - (i) all the bearer shares in the company in issue have been delivered to a custodian;
  - (ii) there are no bearer shares in the company in issue;
- (d) a certified copy of the resolution of the members of the company authorising the application; and
- (e) such other documents as may be prescribed.

(*Amended by S.I. 13/2009*)

(2) The new memorandum and articles shall be signed by the registered agent of the company as the applicant to re-register. (*Amended by S.I. 13/2009*)

(3) In addition to the matters required under section 9, the new memorandum shall state—

- (a) the date that the company was first incorporated under the Companies Act; and
- (b) that, immediately prior to its automatic re-registration under this Act, it was governed by the Companies Act.

(4) The new memorandum shall state the name of the registered agent, and the address of the registered office, at the date of the notice.

(5) Paragraph 4 of this Schedule applies where a company adopts a new memorandum for the purposes of filing an election to disapply this Division under this paragraph.

(6) A notice of election to disapply this Division shall be authorised, and the new memorandum and articles shall be approved, by a resolution of the members of the company.

(7) An election under paragraph (1) takes effect from the date that the notice is registered by the Registrar and from that date—

- (a) the company shall be treated as if it was a company that had been re-registered on application under Part II;
- (b) this Division shall cease to apply to the company; and
- (c) for the avoidance of doubt, the company shall be subject to Division 5 of Part III of this Act.

(8) On the registration of a notice of election to disapply this Division, the Registrar shall issue a certificate in the approved form.

#### **Memorandum and articles**

**41.** (1) In place of the requirements specified in section 9, the memorandum of a company to which this Division applies must include the matters specified in section 7, 8 or 9 of the Companies Act, as appropriate for the company's type immediately before its re-registration under this Act.

(2) For the avoidance of doubt, the terms "private company" and "public company" have no meaning in this Act and any reference to the terms in the memorandum or articles of a company to which this Division applies shall have no effect.

(3) The articles of a company to which this Division applies must include the matters specified in section 39 of the Companies Act, as appropriate for the company's type immediately before its re-registration under this Act.

(4) Where the articles of a company to which this Division applies incorporate all or any of the provisions contained in Table A in the First Schedule to the Companies Act, Table A continues to have effect with respect to that company, notwithstanding the repeal of the Companies Act.

#### **Companies having directors with unlimited liability**

**42.** Notwithstanding the repeal of the Companies Act, sections 15 to 19 of the Companies Act continue to apply to a company to which this Division applies.

#### **Provisions in former Act relating to reduction of capital to continue to have effect**

**43.** (1) Notwithstanding the repeal of the Companies Act, sections 20 and 21, sections 23 to 36A and section 38 of the Companies Act continue to apply to a company to which this Division applies in place of sections 56 to 65 with the following modifications—

- (a) in section 24, the words “winding up of the company” are deleted and the words “liquidation of the company under the Insolvency Act” are substituted;
- (b) in section 25(b), the words, “in the same manner as if the company were being wound up by the Court,” are deleted;
- (c) in section 26(3), the words “under his or her hand” are deleted;
- (d) in section 28—
  - (i) the words, “within the meaning of section 116” are deleted and the words, “on demand being made against it”, are substituted;
  - (ii) the words, “the company had commenced to be wound up” are deleted and the words, “a liquidator had been appointed with respect to the company under the Insolvency Act” are substituted; and
  - (iii) the words “the company being wound up” are deleted and the words “a liquidator being appointed with respect to the company” are substituted;
- (e) section 31(b) is deleted; and
- (f) in section 36, the words from “specify in the annual lists of members” to “the company shall also” are deleted.

(2) The power to issue redeemable shares conferred by section 36(1)(a) is, with respect to a company to which this Division applies, subject to the provisions of section 36A of the Companies Act.

### Shares

**44.** Every share in a company to which this Division applies, which has a capital divided into shares, shall be distinguished by its appropriate number.

### Notice of increase in capital and reserve capital

**45.** (1) Notwithstanding the repeal of the Companies Act, section 57 of that Act continues to apply to a company to which this Division applies.

(2) Notwithstanding the repeal of section 61 of the Companies Act, any resolution passed under that section prior to the automatic re-registration of the company under Part III shall have effect as if that section had not been repealed.

### Registered office and registered agent

**46.** (1) On the automatic re-registration of a company to which this Division applies, its registered office shall be the registered office of the company under the Companies Act immediately prior to its re-registration.

(2) A company to which this Division applies shall, within 6 months of its re-registration under Part III—

- (a) appoint a person qualified to act as registered agent under section 91(3) as its registered agent; and
- (b) file a notice of appointment of its registered agent in the approved form.  
*(Amended by S.I. 13/2009)*

(3) Where a company to which this Division applies fails to comply with the requirements of subparagraph (2) within the period specified in that subparagraph, the Registrar may strike the company off the register.

(4) The striking off of a company by the Registrar under subparagraph (3) shall be treated as if the failure by the company to appoint a registered agent or file a notice of appointment of a registered agent were in accordance with section 213(1)(a).

*(Inserted by S.I. 13/2009)*

#### **General meeting and special resolution**

**47.** (1) A company to which this Division applies shall hold a general meeting at least once each year.

(2) For the purposes of this Division and for the memorandum and articles of a company to which this Division applies—

- (a) “special resolution” has the meaning specified in section 90 of the Companies Act; and
- (b) sections 90 and 93 have effect with respect to special resolutions passed or to be passed by a company to which this Division applies.

#### **Annual fees payable by re-registered CapCo**

**48.** (1) Subject to Parts II and III of Schedule 1, the annual fee payable by a CapCo that is automatically re-registered under Part III of this Schedule is as follows—

- (a) \$350 if, on the date that the annual fee is due, the capital of the company does not exceed \$50,000;
- (b) \$1,100 if, on the date that the annual fee is due the capital of the company exceeds \$50,000.

(2) For the purposes of subparagraph (1), “capital” means the capital stated in the company’s memorandum or articles of association.

*(Substituted by S.I. 84/2006)*

### **Division 2**

#### *CapCos re-registered under Part II or III*

#### **Scope of this Division**

**49.** This Division applies to a CapCo that is re-registered under this Schedule, whether on application made under Part II or automatically under Part III.

#### **Dispensation for required part of company name**

**50.** (1) A licence granted under section 13 of the Companies Act directing the registration of a company with limited liability without the addition of the word “Limited” to its name which was in force with respect to a CapCo immediately prior to the re-registration of the company under Part II or Part III of this Schedule, continues in force notwithstanding the repeal of the Companies Act as if an authorisation had been granted with respect to the company under section 17A(1).

(2) Section 17A(2) to (7) apply to a company to which subparagraph (1) applies.

**Provisions of Companies Act continuing to have effect**

**51.** Notwithstanding the repeal of the Companies Act, the following provisions continue to have effect with respect to a CapCo re-registered under this Act, whether re-registered under Part II or Part III of this Schedule—

- (a) section 85 continues to have effect with respect to a promissory note or bill of exchange made, accepted or endorsed prior to the re-registration of the company under this Schedule;
- (b) the proviso to section 202 continues to have effect with respect to a company that is struck off the Register of Companies maintained under the Companies Act and dissolved on or before the transition end date;
- (c) sections 203A, 203B and 203C continue to have effect with respect to all property and rights that are subject to those sections with respect to a company that is dissolved under the Companies Act prior to the re-registration date.

*(Substituted by S.I. 84/2006)*

## PART VII

## VOLUNTARY LIQUIDATION AND STRIKE OFF

**Interpretation for this part**

**52.** For the purposes of this Part—

“CapCo Register” means the Register of Companies maintained under the Companies Act;

“IBC Register” means the Register of International Business Companies maintained under the International Business Companies Act; and

“re-registration date” means—

- (a) in the case of a CapCo, 1 January(2009); and *(Amended by S.I. 80/2007)*
- (b) in the case of an IBC, 1 January 2007.

**CapCo may enter into voluntary liquidation**

**53.** (1) A CapCo that has not been re-registered under Part II or Part III of this Schedule may be liquidated voluntarily if—

- (a) it has no liabilities; or
- (b) it is able to pay its debts as they fall due.

(2) Where a CapCo may be liquidated voluntarily under subparagraph (1), sections 198 to 211 of this Act apply to, and with respect to, the company and its liquidation as if the company was a company incorporated under that Act, with the following modifications—

- (a) in section 199, subsection (1)(a) and subsection (2) are deleted;
- (b) in section 200(3), the words “directors or” are deleted;
- (c) in section 203(1), the words “the directors or” are deleted;



- (d) in section 203(3), the words “the directors or the members, as the case may be,” are deleted and the words “the members” are substituted; and
- (e) where the voluntary liquidator files a statement under section 208(1), before the re-registration date, the words “Register of Companies” in subsection (1)(a) and subsection (3) are deleted, and the words “CapCo Register” are substituted.

#### **Winding up of unregistered companies**

**54.** Where an unregistered company is, on, 31 December 2008 being wound up under Part VIII of the Companies Act, that Part and Part IV of the Companies Act continue to apply in relation to any such winding up. (*Amended by S.I. 80/2007*)

#### **Winding up of IBC commenced before re-registration date**

**55.** Part IX of the International Business Companies Act shall continue to apply to the winding up and dissolution of an IBC after the repeal of that Act if, prior to the re-registration date—

- (a) articles of dissolution are registered by the Registrar pursuant to section 94(4) of the International Business Companies Act; and
- (b) either the company has not been dissolved under section 94(6) of that Act or the articles of dissolution have not been rescinded under section 95 of that Act.

#### **Dissolution of former Act companies**

**56.** (1) A CapCo that is struck off the CapCo Register under section 240 of the Companies Act and that remains struck off continuously for a period of 10 years following the date of its strike off, is deemed to be dissolved with effect from the later of—

- (a) the re-registration date; or
- (b) the last day of that period.

(2) Section 240(1) of the Companies Act has effect for the year 2007 subject to the modification that “31 December” is deleted and “28 December is substituted”.

(3) An IBC that is struck off the IBC register under section 99 of the International Business Companies Act, prior to the re-registration date, but that is not deemed to be dissolved prior to the re-registration date, if it remains struck off continuously for a period of 10 years, shall be deemed to be dissolved with effect from the last day of that period.

(4) Where this paragraph applies to a CapCo or an IBC, it applies in place of section 216.

#### **Order declaring dissolution of former Act company void**

**57.** (1) Application may be made to the Court for an order declaring the dissolution of a CapCo or an IBC to which subparagraph (2) applies to be void.

- (2) This paragraph applies, in place of section 218, where—
  - (a) in the case of a CapCo—

- (i) the company was struck off the CapCo Register and dissolved under section 202 of the Companies Act prior to the re-registration date; or
  - (ii) the company is deemed to be dissolved under paragraph 54; or
- (b) in the case of an IBC—
  - (i) the company was dissolved under the provisions of the International Business Companies Act prior to the re-registration date; or
  - (ii) is deemed to be dissolved under paragraph 56. (*Amended by Act 5 of 2012*)
- (3) An application under subparagraph (1)—
  - (a) may be made by the company or a creditor, member or liquidator of the company;
  - (b) shall be made within 10 years of the date that the company was dissolved; and
  - (c) may be made after the applicable re-registration date, or where the company has been struck off and dissolved prior to the applicable re-registration date, prior to that date.
- (4) On an application under subparagraph (1), the Court may declare the dissolution of the company void, subject to such conditions as it considers just.
- (5) Where the Court makes an order under subparagraph (4)—
  - (a) the company is deemed never to have been struck off the CapCo Register or the IBC Register, as the case may be, or to have been dissolved; and
  - (b) where the order is made on or after the applicable re-registration date, the company is deemed to have been automatically re-registered under this Act in accordance with Part III on the re-registration date.
- (6) Where the Court makes an order under this paragraph, the person who applied for the order must file a sealed copy of the order and, on receipt, the Registrar shall issue a certificate of restoration and re-registration to the company in the approved form and the restoration has effect from the date of the Court order or such other date as may be specified in the order.

### **Restoration of CapCo or IBC register**

- 58.** (1) Application may be made to the Registrar, prior to or after the applicable re-registration date, to restore and re-register—
- (a) a CapCo that was struck off the CapCo Register under section 240 of the Companies Act prior to the re-registration date, but is not deemed dissolved under paragraph 54; or
  - (b) an IBC that was struck off the IBC Register prior to the re-registration date, but that is not dissolved prior to the re-registration date or deemed to be dissolved under paragraph 54.
- (2) An application under subparagraph (1) may be made by the company or a creditor, member or liquidator of the company.

(3) Subject to subparagraphs (5) and (6), on receipt of an application under subparagraph (1), the Registrar may issue a certificate of restoration in the approved form if he or she is satisfied that—

- (a) a licensed person has agreed to act as the registered agent of the company; and
- (b) it would be fair and reasonable for the company to be restored.

(4) Where the Registrar issues a certificate of restoration under subparagraph (3), the company is deemed—

- (a) never to have been struck off the CapCo Register or the IBC Register, as the case may be; and
- (b) if the company is restored on or after the re-registration date, to have been automatically re-registered under this Act on the re-registration date.

(5) Where a company is restored on or after the applicable re-registration date, the certificate shall also state that the company has been re-registered under this Act.

(6) During the period from 1 January to 31 December 2006, the Registrar may restore an IBC or a CapCo under the applicable former Act without issuing a certificate of restoration.

(7) Where this paragraph applies, it applies in place of section 217.

#### **Struck off company liable for fees and penalties**

**59.** (1) A CapCo that is struck off the CapCo Register and an IBC that is struck off the IBC Register shall remain liable for—

- (a) all fees and penalties due under the applicable former Act; and
- (b) such fees and penalties that would have been payable under this Act had the company been automatically re-registered under Part III on the re-registration date.

(2) The Court shall not make an order declaring the dissolution of a company void under paragraph 55, and the Registrar shall not restore a company under paragraph 56, unless the following have been paid to the Registrar—

- (a) all fees and penalties for which the company is liable under subparagraph (1); and
- (b) the applicable restoration fee specified in Schedule 1.

#### **Sections of this Act having effect**

**60.** (1) Sections 215 and 219 of this Act apply to, and with respect to, a CapCo or an IBC that is struck off the CapCo Register or the IBC Register.

(2) Sections 220 and 221 apply to, and with respect to, a CapCo or an IBC and its property, if the company is struck off the CapCo Register or the IBC Register, as the case may be, prior to the re-registration date but is dissolved in accordance with paragraph 54 on or after the re-registration date.

(3) Any reference in sections 215 or 219 to 220 of this Act to “the Register” shall be taken as a reference to the CapCo Register or the IBC Register, as the case may be.

*(Substituted by S.I. 84/2006)*

## PART VIII

### MISCELLANEOUS PROVISIONS

#### **Effect of re-registration under this Act**

**61.** (1) A former Act company that is re-registered, whether by the Registrar pursuant to an application made under Part II or whether automatically under Part III, 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) A former Act company that is re-registered under this Schedule shall be subject to this Act except to the extent specified in this Schedule, to the extent that this Schedule is applicable to the company.

#### **Seals of re-registered companies**

**62.** Where, immediately before its re-registration under Part II or Part III of this Schedule, a former-Act company has a common seal, that common seal shall, for all purposes, be considered to be a valid common seal for the purposes of this Act.

#### **Registrar and Deputy and Assistant Registrars of Companies**

**63.** The person holding office as Registrar of Companies under the Companies Act 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**

**64.** A reference in any enactment to a company incorporated, continued or registered under a former Act shall, unless the context otherwise requires, be read as including a reference to a company incorporated, continued or re-registered under this Act.

*(Substituted by S.I. 84/2006)*