



GAZETTE EXTRAORDINARY

TURKS & CAICOS ISLANDS

Published by Authority

VOL.168 NO.32

JUNE 20, 2017

TABLE OF CONTENTS

NOTICES

Government Notices

Pages: 265 - 265

328. Notice of Assent: Companies Ordinance
2017

Non-Official Notices

Nil.

LEGAL SUPPLEMENTS

1. Ordinances

- Companies Ordinance 2017

2. Legal Notices

Nil

3. Bills

Nil

G.N. 328

NOTICE

COMPANIES ORDINANCE 2017

(ORDINANCE 8 OF 2017)

NOTICE is given that His Excellency the Governor assented to the Companies Ordinance 2017 on 20th June 2017. The Ordinance is published as a supplement to this Gazette.

Lydia Butterfield
Deputy Clerk to the House of Assembly
June 2017

TURKS AND CAICOS ISLANDS

COMPANIES ORDINANCE 2017

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

SECTION

1. Short title and commencement
- Interpretation*
2. Interpretation
 3. Meaning of “company” and “foreign company”
 4. Meaning of solvency test
 5. Meaning of Listing Rules
 6. Meaning of “ordinarily resident”

Types of company

7. Types of company
8. Non-profit companies

PART II

INCORPORATION, CONSTITUTION AND CAPACITY

Incorporation

9. Application for incorporation of company
10. Incorporation
11. Protected cell companies
12. International companies

Articles of incorporation

13. Form of articles of incorporation
14. Articles of a non-profit company
15. Effect of articles of incorporation
16. Amendment of articles of incorporation

17. Entrenched provisions
18. Filing of notice of amendment of articles
19. Application to Court to vary date amendment takes effect
20. Restated articles of incorporation
21. By-laws
22. Entitlement of members to copy of articles

Capacity and powers

23. Separate legal personality
24. Capacity and powers
25. Validity of acts of company
26. Dealings between company and other persons
27. Constructive notice
28. Personal liability
29. Companies that may not hold land etc.
30. Appointment of trustees of non-profit company's property

PART III

COMPANY NAMES

Restrictions and requirements

31. Restrictions on company names
32. Permitted characters and styles
33. Company number as company name
34. Required ending for company name

Change of name

35. Change of registered name
36. Registrar may direct change of registered name
37. Effect of change of name

Other matters relating to names

38. Reservation of name
39. Use of company name
40. Rights and interests in names
41. Regulations providing for re-use of company names

PART IV

REGISTERED OFFICE AND REGISTERED AGENT

42. Registered office
43. Person eligible for appointment as registered agent
44. Registered agent required
45. Appointment of registered agent
46. Change of registered office or registered agent
47. Resignation of registered agent
48. Registered agent ceasing to be eligible to act

PART V

SHARES

Nature and types of shares

49. Legal nature of shares
50. Rights attaching to shares
51. Classes and series of shares
52. Types of shares
53. Par value, bearer shares and other bearer instruments prohibited
54. Division and combination of shares

Issue of Shares

55. Issue of shares
56. Pre-emptive rights
57. Consideration for the issue of shares
58. Consideration to be determined by the board
59. Consent to issue of shares
60. Forfeiture of shares

Company acquiring and holding its own shares

61. Company may acquire its own shares
62. Process of acquisition of its own shares by company
63. Offer to one or more shareholders to acquire shares
64. Surrender of shares
65. Treasury shares
66. Transfer of treasury shares
67. Acquired shares not held as treasury shares cancelled

Redemption of shares

- 68. Redeemable shares
- 69. Shares redeemed at option of the company
- 70. Option exercised in relation to one or more shareholders
- 71. Shares redeemed at option of shareholder
- 72. Cancellation of redeemed shares
- 73. Certain redemptions deemed not to be a distribution

Transfer of shares

- 74. Shares may be transferred
- 75. Transfer of shares by operation of law
- 76. Transfer of shares
- 77. Form of transfer lost or destroyed
- 78. Transfer of listed shares

Distributions

- 79. Meaning of distribution
- 80. Authorisation of distributions
- 81. Recovery of distributions

Mortgages and charges on shares

- 82. Mortgage or charges on shares
- 83. Enforcement, mortgage or charge governed by the law of the Islands
- 84. Enforcement, mortgage or charge on shares governed by law of another country

PART VI

MEMBERS

Register of members

- 85. Register of members
- 86. Trust not to be entered on register
- 87. Register of members as evidence of legal title
- 88. Rectification of register of members

Members and their liability

- 89. Company must have at least one member

- 90. Liability of members
- 91. Company without members

Resolutions and meetings

- 92. Members' resolutions
- 93. Meetings of members
- 94. Notice of meetings of members
- 95. Quorum for meetings of members
- 96. Proceedings at meetings of members
- 97. Court may call meeting of members
- 98. Written resolutions

PART VII

DIRECTORS

Management by directors

- 99. Management by directors
- 100. Company to have at least one director
- 101. Committees of directors

Directors' duties

- 102. Duties of directors
- 103. Powers to be exercised for proper purpose
- 104. Standard of care
- 105. Reliance on records and reports

Conflict of interest

- 106. Disclosure of interest
- 107. Avoidance by company of transactions
- 108. Protection of third parties
- 109. Powers of interested director in relation to transactions

Appointment, removal and resignation of directors

- 110. Persons disqualified for appointment as director
- 111. Consent to act as director
- 112. Appointment of directors
- 113. Reserve directors
- 114. Removal of directors

- 115. Resignation of director
- 116. Liability of former directors
- 117. Validity of acts of director
- 118. Vacancies
- 119. Notice of change of directors

Miscellaneous provisions concerning directors

- 120. Register of directors
- 121. Emoluments of directors
- 122. Meetings of directors
- 123. Notice of meeting of directors
- 124. Quorum for meetings of directors
- 125. Directors' resolutions
- 126. Written resolutions of directors
- 127. Appointment of alternate directors
- 128. Rights and duties of alternate directors
- 129. Agents
- 130. Indemnification
- 131. Insurance

PART VIII

COMPANY ADMINISTRATION

Company records

- 132. Articles, registers and filed documents
- 133. Minutes and resolutions
- 134. Financial records
- 135. Requirements relating to records and documents
- 136. Inspection of records

Secretary, service and seal

- 137. Secretary
- 138. Service of process, etc. on company
- 139. Company seal

Contracts

- 140. Contracts generally
- 141. Pre-incorporation contracts
- 142. Notes and bills of exchange

- 143. Power of attorney
- 144. Authentication or attestation

PART IX

BENEFICIAL OWNERS OF COMPANIES

Preliminary

- 145. Scope of this Part

Identifying beneficial owners and registrable persons

- 146. Beneficial owners
- 147. Majority beneficial interests
- 148. Registrable persons
- 149. Companies to ascertain and identify beneficial owners
- 150. Duty of companies to give notice to registrable persons
- 151. Duty to supply information

Beneficial ownership registers

- 152. Duty of company to keep beneficial ownership register
- 153. Duty of company to keep information up to date
- 154. Duty of other persons to keep information up to date
- 155. Rectification of beneficial ownership register by Court

Register of beneficial owners of companies

- 156. Register of beneficial owners of companies
- 157. Giving beneficial ownership information to Commission
- 158. Protection of beneficial ownership information
- 159. Gateways for disclosure
- 160. Beneficial Ownership Regulations

PART X

REGISTRATION OF CHARGES

- 161. Interpretation for this Part
- 162. Creation of charges by a company
- 163. Company to keep register of charges
- 164. Registration of charges
- 165. Variation of registered charge

- 166. Satisfaction or release of charge
- 167. Filing of application under section 164 or 165 by or on behalf of chargee
- 168. Priority of relevant charges
- 169. Priority of other charges
- 170. Exceptions to sections 168 and 169

PART XI

PROTECTED CELL COMPANIES

- 171. Interpretation for this Part

Formation of protected cell companies

- 172. Protected cell companies
- 173. Application to the Commission for approval
- 174. Approval of Commission
- 175. Registration of conversion of company to protected cell company
- 176. Nature of a protected cell company

Cells

- 177. Creation of cells, and cellular and non-cellular assets
- 178. Cellular and non-cellular assets, directors' duties

Cell share capital and dividends

- 179. Cell shares and share capital
- 180. Dividends in respect of cell shares
- 181. Reduction of cell share capital with approval of Court
- 182. Notice of applications to Court
- 183. Order authorising reduction of cell share capital
- 184. Accounts, records and registers
- 185. Safeguards for creditors
- 186. Liability of holders of cell shares
- 187. Offences

Assets and liabilities

- 188. Attribution of non-cellular assets and liabilities
- 189. Liability of cellular and non-cellular assets
- 190. Disputes as to liability attributable to cells

191. Position of creditors
192. Recourse to cellular assets by creditors
193. Transfer of cellular assets from a protected cell company
194. Cell transfer orders

Receivership orders

195. Receivership orders in relation to cells
196. Applications for receivership orders
197. Functions of receiver and effect of receivership order
198. Discharge and variation of receivership orders
199. Remuneration of receiver

Liquidation

200. Provisions in relation to liquidation of protected cell company

General provisions

201. Company to inform persons they are dealing with protected cell company
202. Suits and actions against the Commission
203. Charges of cell assets
204. Regulations concerning protected cell companies
205. Saving for directors' functions
206. Saving for internal arrangements

PART XII

MERGER, CONSOLIDATION, SALE OF ASSETS, FORCED REDEMPTIONS, ARRANGEMENTS AND DISSENTERS

207. Interpretation for purposes of this Part
208. Approval of merger and consolidation
209. Registration of merger and consolidation
210. Merger with subsidiary
211. Effect of merger or consolidation
212. Merger or consolidation with foreign company
213. Disposition of assets
214. Redemption of minority shares
215. Arrangements
216. Arrangement if company in voluntary liquidation
217. Rights of dissenters

218. Schemes of arrangement

PART XIII

CONTINUATION

219. Foreign company may continue under this Ordinance
220. Application to continue under this Ordinance
221. Continuation into the Islands
222. Effect of continuation
223. Continuation out of the Islands

PART XIV

MEMBERS' REMEDIES

224. Interpretation for this Part
225. Restraining or compliance order
226. Derivative actions
227. Costs of derivative action
228. Powers of Court when leave granted under section 226
229. Compromise, settlement or withdrawal of derivative action
230. Personal actions by members
231. Representative actions
232. Prejudiced members

PART XV

LIQUIDATION, STRIKING-OFF AND DISSOLUTION

Liquidation

233. Interpretation for this Part
234. Filing of notices by voluntary liquidators
235. Application of this Part
236. Declaration of solvency
237. Appointment of voluntary liquidator
238. Appointment of voluntary liquidator of regulated person
239. Control of voluntary liquidation of regulated person
240. Duration of liquidation
241. Circumstances in which liquidator may not be appointed
242. Notice and advertisement of liquidation
243. Effect of appointment of voluntary liquidator
244. Appointment of additional voluntary liquidator

- 245. Resignation of voluntary liquidator
- 246. Removal of voluntary liquidator
- 247. Vacancy in office of liquidator
- 248. Duties of voluntary liquidator
- 249. Powers of voluntary liquidator
- 250. Termination of voluntary liquidation
- 251. Completion of liquidation

Liquidation where company insolvent

- 252. Company in voluntary liquidation unable to pay its debts
- 253. Liquidator to call meeting of creditors
- 254. Insolvency Ordinance to apply
- 255. Application by creditor, company insolvent

Striking off and dissolution

- 256. Striking company off Register of Companies
- 257. Appeal
- 258. Effect of striking off
- 259. Dissolution of company struck off the Register of Companies
- 260. Restoration of company to Register of Companies by Registrar
- 261. Application to restore dissolved company to Register of Companies
- 262. Court's powers on hearing
- 263. Effect of restoration
- 264. Appointment of liquidator of company struck off
- 265. Property of dissolved company
- 266. Disclaimer

PART XVI

FOREIGN COMPANIES

- 267. Meaning of "carrying on business"
- 268. Registration of foreign company
- 269. Registration
- 270. Registration of changes in particulars
- 271. Foreign company to have registered agent
- 272. Resignation of registered agent
- 273. Registered agent ceases to be eligible to act

- 274. Control over names of foreign companies
- 275. Use of name by foreign company
- 276. Foreign company ceasing to carry on business in the Islands
- 277. Removal of foreign company by Registrar
- 278. Subsequent registration of foreign company
- 279. Service of documents
- 280. Validity of transactions not affected

PART XVII

INVESTIGATION OF COMPANIES

- 281. Definition of “inspector”
- 282. Investigation order
- 283. Court’s powers
- 284. Inspector’s powers
- 285. Hearing in camera
- 286. Incriminating evidence
- 287. Privilege

PART XVIII

ADMINISTRATION AND MISCELLANEOUS

- 288. Company Law Advisory Committee
- 289. Registrar of Companies
- 290. Registers
- 291. Filing of documents
- 292. Registrar to provide documents filed by non-profit company to NPO Supervisor
- 293. Inspection of Registers and documents filed
- 294. Certificate of good standing
- 295. Issue of miscellaneous certificates
- 296. Fees and penalties
- 297. Financial penalties
- 298. Recovery of fees and penalties
- 299. Company struck off liable for fees, etc.
- 300. Companies Regulations
- 301. Approval of forms by Commission
- 302. Guidance
- 303. Commission to consult
- 304. Offence provisions

- 305. Jurisdiction
- 306. Declaration by Court
- 307. Transitional provisions
- 308. Amendment of Schedules
- 309. Repeals and amendments



TURKS AND CAICOS ISLANDS

COMPANIES ORDINANCE 2017

(Ordinance 8 of 2017)

Assent.....20th June 2017

Publication in Gazette.....20th June 2017

Commencement..... in accordance with section 1(2)

AN ORDINANCE TO REPEAL AND REPLACE THE COMPANIES ORDINANCE AND TO PROVIDE FOR THE INCORPORATION, MANAGEMENT AND OPERATION OF DIFFERENT TYPES OF COMPANIES, FOR THE RELATIONSHIPS BETWEEN COMPANIES AND THEIR DIRECTORS AND MEMBERS AND FOR CONNECTED PURPOSES.

ENACTED by the Legislature of the Turks and Caicos Islands.

PART I

PRELIMINARY

Short title and commencement

1. (1) This Ordinance may be cited as the Companies Ordinance 2017.

(2) The provisions of this Ordinance shall come into force on the day or days specified in Schedule 1.

Interpretation

Interpretation

2. (1) In this Ordinance—

“approved form” means a form approved by the Commission under section 301;

“articles” means the original, amended or restated articles of incorporation of a company;

“articles of consolidation” means the articles of consolidation referred to in section 209(1);

“articles of merger” means the articles of merger referred to in section 209(1);

“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;

“beneficial ownership register” means the register of beneficial owners that a company is required to maintain under section 152;

“board” or “board of directors”, in relation to a company, means—

(a) the directors of the company acting together as the board of directors, by whatever name called; or

(b) if the company has only one director, that director;

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

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

“Commission” means the Turks and Caicos Islands Financial Services Commission established under the Financial Services Commission Ordinance, 2001 and preserved and continued under the Financial Services Commission Ordinance;

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

“company number” means the number allotted to the company by the Registrar on its incorporation, its continuation or its registration under Schedule 1;

“continued” means continued into the Islands under section 221;

“country” includes a territory;

“Court” means the Supreme Court;

“director”, in relation to a company, a foreign company and any other body corporate, includes—

- (a) a person who is a member of the governing body of the company; and
- (b) a person who, in relation to the company, occupies or acts in the position of director, by whatever name called;

“distribution”, in relation to a distribution by a company to a member, has the meaning specified in section 79;

“document” means a document in any form and includes—

- (a) any writing or printing on any material;
- (b) 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) a book, graph or drawing; 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;

“domestic company” means a company that is not an international company;

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

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

“fractional share” means a share that has the corresponding fractional rights, obligations and liabilities of a whole share of the same class;

“group company”, in relation to a company, means another company that is a parent or a subsidiary of that company;

“group”, in relation to a company (the “first company”), means the first company and any other company that is—

- (a) a parent of the first company;
- (b) a subsidiary of the first company;
- (c) a subsidiary of a parent of the first company;
- (d) a parent of a subsidiary of the first company;

- “guarantee member”, in relation to a company, means a person whose name is entered in the register of members as a guarantee member;
- “Insolvency Ordinance” means the Insolvency Ordinance, 2017;
- “Insolvency Ordinance liquidator” means a liquidator appointed under the Insolvency Ordinance;
- “international company” means a company that is registered as an international company;
- “liability” includes a contingent or a prospective liability;
- “limited company” means—
- (a) a company limited by shares;
 - (b) a company limited by guarantee that is not authorised to issue shares; or
 - (c) a company limited by guarantee that is authorised to issue shares;
- “listed company” means a company any securities of which are listed on a recognised exchange;
- “listed share” means a share in a listed company that is listed on a recognised exchange;
- “Listing Rules”, in relation to a listed company or listed shares has the meaning specified in section 5;
- “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;
- “non-profit company” means a company incorporated as a non-profit company;
- “NPO Supervisor” has the meaning specified in the Proceeds of Crime Ordinance [Cap. 3.15];
- “ordinarily resident”, in relation to an individual, shall be construed in accordance with section 6;
- “parent”, in relation to a company (the “first company”), means another company that—
- (a) holds, whether legally or equitably, a majority of the issued shares in the first company;

- (b) has the power, directly or indirectly, to exercise, or control the exercise of, a majority of the voting rights in the first company;
- (c) has the right to appoint or remove the majority of the directors of the first company;
- (d) has the right to exercise a dominant influence over the management and control of the first company under a provision in the constitutional documents of the first company; or
- (e) is a parent of a parent of the first company;

“property” means property of every kind, whether situated in the Islands or elsewhere and—

- (a) includes—
 - (i) money;
 - (ii) all forms of real or personal and immovable or moveable property; and
 - (iii) things in action and other intangible or incorporeal property; and
- (b) in relation to rights and interests, includes those rights and interests whether vested, contingent, defeasible or future;

“prescribed” means prescribed by the Regulations;

“protected cell company” means a protected cell company, incorporated as, or converted into, a protected cell company in accordance with the provisions of this Ordinance;

“recognised exchange” means an investment exchange that is specified as a recognised exchange in the Regulations;

“redeemable share” has the meaning specified in section 68;

“register”, in relation to an act done by the Registrar, means to register in any register maintained by the Registrar under this Ordinance or the Regulations;

“Register of Beneficial Owners of Companies” means the Register maintained by the Commission in accordance with section 156;

“Register of Charges” means the Register of Charges maintained by the Registrar in accordance with section 290(1)(c);

“Register of Companies” means the Register of Companies maintained by the Registrar in accordance with section 290(1)(a);

“Register of Foreign Companies” means the Register of Foreign Companies maintained by the Registrar in accordance with section 290(1)(b);

“registered agent” means—

(a) in relation to a company, the person who is the company’s registered agent in accordance with section 44; or

(b) in relation to a foreign company, the person who is the company’s registered agent in accordance with section 271;

“registered name”, in relation to a company, means the name with which the company is registered under this Ordinance;

“registered office”, in relation to a company at any time, means the place described as its registered office in the Register of Companies at that time;

“registrable person”, in relation to a company to which Part IX applies, has the meaning specified in section 148;

“Registrar” means the Registrar of Companies appointed under section 289 and includes any Deputy or Assistant Registrar of Companies;

“Regulations” means the Companies Regulations made under section 300;

“related company” has the meaning specified in subsection (2);

“resolution”—

(a) in relation to the members of a company, means a members’ resolution passed in accordance with section 92; and

(b) in relation to the directors of a company, means a directors’ resolution passed in accordance with section 125;

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

“security” means a share or debt obligation and includes an option, warrant or right to acquire a share or debt obligation;

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

“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;

“solvency test” has the meaning specified in section 4;

“special resolution” means a resolution approved by a majority of 75% or, if a higher majority is required by the articles, that higher majority, of the votes of those members entitled to vote and voting on the resolution;

“subsidiary”, in relation to a company (the “first company”), means a company of which the first company is a parent;

“treasury share” means a share of a company that is—

(a) acquired by the company in accordance with section 61; and

(b) held by the company in accordance with section 65;

“unlimited company” means a company incorporated as an unlimited company and includes—

(a) an unlimited company that is not authorised to issue shares; or

(b) an unlimited company that is authorised to issue shares;

“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;

“voluntary liquidator” means a liquidator appointed under Part XV, and, unless the context otherwise requires, includes two or more joint voluntary liquidators but does not include an Insolvency Ordinance liquidator;

“website”, in relation to the Commission, means the principal public access website site for the time being maintained by, or on behalf of, the Commission;

“working day” means a day that is not a Saturday, Sunday or public holiday.

(2) A company is related to another company if it is in the same group as the other company.

Meaning of “company” and “foreign company”

3. (1) Unless this Ordinance provides otherwise, “company” means—

- (a) a company incorporated under section 10,
- (b) a body corporate continued into the Islands under section 221, or
- (c) an existing company registered as a company under Schedule 1,

but excludes a dissolved company and a company that has continued as a company incorporated under the laws of a jurisdiction outside the Islands in accordance with section 223.

(2) In this Ordinance, “foreign company” means a body corporate incorporated, registered or formed outside the Islands but excludes a company continued into the Islands under section 221.

(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).

Meaning of solvency test

4. For the purposes of this Ordinance, a company satisfies the solvency test if—

- (a) the value of the company’s property exceeds its liabilities, including its contingent liabilities; and
- (b) the company is able to pay its debts as they fall due.

Meaning of Listing Rules

5. A reference in this Ordinance to the “Listing Rules” in relation to a listed company or to listed shares, means—

- (a) the legislation of the jurisdiction in which the company is listed that is applicable to the company by virtue of its listing; and
- (b) the rules, procedures and other requirements of the recognised exchange on which securities of the company are listed.

Meaning of “ordinarily resident”

6. An individual is ordinarily resident in the Islands on any date if, on that date, the individual’s normal and habitual residence is in the Islands and, in determining an individual’s normal and habitual residence, temporary or occasional absences from the Islands are disregarded.

Types of company

Types of company

7. (1) A company may be incorporated or continued under this Ordinance as—

- (a) a company limited by shares;
- (b) a company limited by guarantee that is authorised to issue shares;
- (c) a company limited by guarantee that is not authorised to issue shares;
- (d) an unlimited company that is authorised to issue shares; or
- (e) an unlimited company that is not authorised to issue shares.

(2) A company limited by shares may be incorporated as a protected cell company or, if it has already been incorporated, be registered as a protected cell company in accordance with Part XI.

(3) A company, other than a non-profit company, may be registered as an international company in accordance with section 12.

Non-profit companies

8. (1) A non-profit company shall be established solely or primarily for charitable, religious, cultural, educational, social or fraternal purposes or for the purpose of benefiting the public or a section of the public.

(2) A non-profit company is a non-profit organisation within the meaning of the Proceeds of Crime Ordinance [Cap. 3.15].

(3) The following may be incorporated as a non-profit company—

- (a) a company limited by guarantee that is authorised to issue shares;
- (b) a company limited by guarantee that is not authorised to issue shares.

(4) The Registrar shall not incorporate a company as a non-profit company without the written approval of the NPO Supervisor.

(5) A non-profit company shall not carry on any activities that are inconsistent with the purposes stated in its articles or the purposes specified in subsection (1).

(6) The Regulations may modify or disapply provisions of this Ordinance with respect to non-profit companies.

PART II

INCORPORATION, CONSTITUTION AND CAPACITY

Incorporation

Application for incorporation of company

9. (1) An application for the incorporation of a company under this Ordinance may be filed only by the person proposed as the company's registered agent on its incorporation.

(2) An application to incorporate a company shall be made to the Registrar by filing—

- (a) an application signed by the applicant;
- (b) the articles of incorporation of the company;
- (c) such other documents as may be prescribed; and
- (d) the written consent of the proposed registered agent to act as registered agent.

(3) In the case of a company to which, on its incorporation, Part IX will apply, a person applying to incorporate the company shall provide the Commission with the prescribed beneficial ownership information in relation to each person who will, on the incorporation of the company, be a registrable person in relation to the company.

Incorporation

10. (1) If the Registrar is satisfied that an application for the incorporation of a company complies with this Ordinance and the Regulations, the Registrar shall—

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

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

(a) the requirements of this Ordinance as to incorporation have been complied with; and

(b) the company is incorporated on the date specified in the certificate.

(5) The certificate of incorporation of a non-profit company shall state that the company is a non-profit company.

Protected cell companies

11. The Registrar shall not incorporate a company as a protected cell company unless the Commission has given its written approval in accordance with section 174.

International companies

12. (1) If the articles of a company limited by shares, as filed under section 9 or section 208, contain the statements specified in section 13(4)—

(a) the company shall be registered on incorporation or continuation as an international company; and

(b) the certificate of incorporation or continuation shall state that the company is an international company.

(2) A company may be registered as an international company only on its incorporation under section 10 or its continuation under section 221.

(3) An international company shall not carry on business in the Islands with any person or firm except in furtherance of the business of the international company carried on outside the Islands or where such business is of a minor nature.

(4) Subsection (3) does not prevent an international company effecting and concluding contracts in the Islands, and exercising in the Islands all of its powers necessary for the carrying on of its business outside the Islands or carrying on business with other international companies.

Articles of incorporation

Form of articles of incorporation

13. (1) The articles 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 authorised to issue shares;
 - (iii) a company limited by guarantee that is not authorised to issue shares;
 - (iv) an unlimited company that is authorised to issue shares; or
 - (v) an unlimited company that is not authorised to issue shares;
- (c) in the case of a company limited by shares or otherwise authorised to issue shares, 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;
- (d) in the case of a company limited by guarantee—
- (i) whether the company is authorised to issue shares; and
 - (ii) the amount which each guarantee member of the company is liable to contribute to the company's property in the event that a voluntary liquidator or an Insolvency Ordinance liquidator is appointed whilst the person is a member; and
- (e) any other matter required by this Ordinance or the Regulations.

(2) The articles of a company may limit the purposes of the company.

(3) The articles of a protected cell company shall state that it is a protected cell company.

(4) The articles of an international company shall state that—

- (a) the company is an international company; and
- (b) the business and activities of the company will be carried on principally outside the Islands.

(5) The articles may contain such other matters, not inconsistent with this Ordinance or the Regulations, as the company wishes to include in its articles.

(6) The articles of a non-profit company shall, in addition to complying with this section, comply with section 14.

Articles of a non-profit company

14. The articles of a non-profit company shall—

- (a) state that the company is a non-profit company;
- (b) state the purposes of the company;
- (c) prohibit the use of the company or its assets for the pecuniary advantage of any of its members, except for the payment in cash or in specie to any member in reimbursement of any expense or in consideration of any property made available or services provided by the member for the benefit of the company in furthering its purposes; and
- (d) require that, on the winding-up of the company, any surplus assets are not to be paid or transferred to its members but must be transferred to another non-profit organisation, whether in the Islands or elsewhere—
 - (i) specified in the articles; or
 - (ii) designated by resolution of the members at a meeting of the company called for the purpose of making such a designation or for purposes that include the making of such a designation.

Effect of articles of incorporation

15. (1) The 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) A company, the board, each director and each member of a company has the rights, powers, duties and obligations set out in this Ordinance except to the extent that they are negated or modified, in accordance with this Ordinance, by the articles.

(3) The articles have no effect to the extent that they contravene or are inconsistent with this Ordinance.

Amendment of articles of incorporation

16. (1) Subject to section 17, the members of a company may, by resolution, amend the company's articles.

(2) A company's articles may be amended to authorise its conversion to a protected cell company only by a special resolution of its members.

(3) Subject to subsection (4), the articles of a company may authorise the directors, by resolution, to amend the company's articles.

(4) Despite any provision in the articles to the contrary, the directors of a company do not have the power to amend the articles—

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

(5) A resolution of the directors is void and of no effect to the extent that it contravenes subsection (4).

Entrenched provisions

17. (1) Subject to subsection (2), the articles of a company may include one or more of the following provisions—

- (a) that specified provisions of the articles—
 - (i) shall not be amended or repealed; or
 - (ii) may be amended or repealed only if certain specified conditions are met;
- (b) that a resolution passed by a specified majority of members, greater than 50%, is required to amend the articles or specified provisions of the articles.

(2) Subsection (1) does not apply to a provision in the articles that restricts the purposes of the company.

Filing of notice of amendment of articles

18. (1) If a resolution is passed to amend the articles of a company, the company shall file for registration a notice of amendment.

(2) Subject to an order made under section 19, an amendment to the articles has effect from the date that the notice of amendment is filed with the Registrar.

Application to Court to vary date amendment takes effect

19. (1) A company, a member or director of a company or an interested person may apply to the Court for an order that an amendment to the articles should have effect from a date prior to

the date specified in section 18(2) but no earlier than the date of the resolution.

(2) An application under this section may be made—

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

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

(3) If it is satisfied that it would be just to do so, the Court may make an order on an application made under subsection (1) but if, at the time of the order, the notice of amendment, or restated articles, have not been filed, the Court shall order that the notice of amendment, or restated articles, must be filed within a period not exceeding ten working days after the date of the order.

(4) If a notice of amendment or restated articles are not filed within the period specified in a Court order made under subsection (3), the order ceases to have effect and section 18 applies as if the order had never been made.

Restated articles of incorporation

20. (1) A company may file restated articles.

(2) The restated articles shall incorporate only—

(a) an amendment that has been registered under section 18; or

(b) that is deemed to have been made under any provision of this Ordinance.

(3) The Registrar is not required to verify that the restated articles filed comply with subsection (2).

(4) The restated articles—

(a) have no effect to the extent that they contravene subsection (2);

(b) but otherwise, have effect as the company's articles with effect from the date that they are registered by the Registrar.

By-laws

21. Subject to its articles, a company may have by-laws.

Entitlement of members to copy of articles

22. (1) A member of a company may, at any time, make a written request to the company for a copy of the articles.

(2) A company may fix a charge, not exceeding the amount that it considers reasonably necessary to defray the costs of preparing and providing a copy of the articles to a member.

(3) On receipt of a request under subsection (1), and payment of the charge fixed by the company, if any, the company shall as soon as reasonably practicable, provide a copy of the articles to the member.

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

Capacity and powers

Separate legal personality

23. 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

24. (1) Subject to this Ordinance, any other enactment and its articles, a company has the capacity, powers and privileges of an individual.

(2) Without limiting subsection (1), subject to its articles, the powers of a company include the power—

- (a) in the case of a company limited by shares or authorised to issue shares to—
 - (i) issue and cancel shares and hold treasury shares;
 - (ii) grant options over unissued shares in the company and treasury shares;
 - (iii) issue securities that are convertible into shares; and
 - (iv) give financial assistance to any person in connection with the acquisition of its own shares;
- (b) to issue debt obligations and grant options, warrants and rights to acquire debt obligations;
- (c) to guarantee a liability or obligation of any person and secure any obligation by mortgage, pledge or other charge on any of its property for that purpose; and

(d) to protect the property 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 property 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 beneficiaries of the trust.

(4) The rights or interests of any existing or subsequent creditor of the company in any property of the company—

(a) are not affected by any transfer under subsection (3); and

(b) may be pleaded against a transferee in any such transfer.

Validity of acts of company

25. An act of a company and a transfer of property by or to a company is not invalid merely because the company did not have the capacity, right or power to do the act or to transfer or accept a transfer of the property.

Dealings between company and other persons

26. (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 property, rights or interests from the company that—

(a) this Ordinance or the company's articles has not been complied with;

(b) a person named as a director in the company's register of directors—

(i) is not a director of the company;

(ii) has not been duly appointed as a director of the company; or

(iii) does not have authority to exercise a power which a director of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

- (c) a person held out by the company as a director, employee or agent of the company—
 - (i) has not been duly appointed; or
 - (ii) does not have authority to exercise a power which a director, employee or agent of a company carrying on business of the kind carried on by the company customarily has authority to exercise;
- (d) a person held out by the company as a director, employee or agent of the company with authority to exercise a power which a director, employee or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power; or
- (e) a document issued on behalf of a company by a director, employee or agent of the company with actual or usual authority to issue the document is not valid or not genuine;

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

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

Constructive notice

27. (1) A person is not deemed to have notice or knowledge of the existence or contents of a document relating to a company, including the articles, merely because the 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.

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

(3) A person is deemed to have notice of the existence and contents of a document specified in subsection (2), if the

document has been registered by the Registrar under this Ordinance.

Personal liability

28. (1) A director, agent or voluntary liquidator of a company is not liable for any debt, obligation or default of the company.

(2) Subsection (1) does not apply—

- (a) if this Ordinance or any other enactment provides that the director, agent or voluntary liquidator of a company is liable; or
- (b) to the extent that the director, agent or voluntary liquidator is personally liable for his own conduct or acts.

Companies that may not hold land etc.

29. (1) Subject to subsection (2) but despite anything contained in this Ordinance or any other law, no body corporate, whether incorporated within or outside the Islands, shall have any powers to hold land in the Islands unless it—

- (a) is a company formed and registered under this Ordinance;
- (b) is not an international company nor a foreign company registered under Part XVI; and
- (c) has for the time being no member which is itself an international company or a company the beneficial ownership of which is wholly or in part directly or indirectly held by any international company.

(2) A body corporate which, immediately before 7 August, 1992, had power to hold land in the Islands and held land immediately before 4 October 2002 shall continue to have such power if, but only if, it complied with section 46 of the Companies Ordinance [Cap. 16.08] at all times until it was registered under this Ordinance and that it continues to comply with the prescribed requirements concerning the making of returns.

(3) Any conveyance, transfer, assignment, lease, mortgage or other instrument which purports to vest any interest arising at law or in equity in any land in the Islands, other than a registered land charge, in any body corporate which by virtue of this section does not have power to hold such land, shall be absolutely void and of no effect.

Appointment of trustees of non-profit company's property

30. (1) Where, under a non-profit company's articles, trustees of property held for the purposes of the undertaking of the company may be appointed or discharged by resolution of a meeting of the members or other persons, a memorandum declaring a trustee to have been so appointed or discharged shall be sufficient evidence of that fact.

(2) The memorandum must be signed at the meeting by the person presiding or in some other manner directed by the meeting, and must be attested by two persons present at the meeting.

(3) A memorandum evidencing the appointment or discharge of a trustee under subsection (1) shall operate as a declaration under section 61 of the Trusts Ordinance vesting the property subject to the trust in the trustees.

(4) For the purposes of this section, where a document purports to have been signed and attested as mentioned in subsection (1), upon proof of the signature the document shall be presumed to have been so signed and attested, unless the contrary is shown.

PART III

COMPANY NAMES

Restrictions and requirements

Restrictions on company names

31. (1) The Registrar shall not register a company under this Ordinance by a name—

- (a) if the use of the name would contravene another enactment or the Regulations;
- (b) that, subject to regulations made under section 41—
 - (i) is identical to the name by which a company is or has been registered under this Ordinance or a former Ordinance; or
 - (ii) is so similar to the name by which a company is or has been registered under this Ordinance or a former Ordinance that the use of the name would, in the opinion of the Registrar, be likely to confuse or mislead;

- (c) that—
 - (i) is identical to a name that has been reserved under section 38; or
 - (ii) is so similar to a name that has been reserved 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 Registrar has given prior written consent to the use of the word, phrase or abbreviation;
- (e) that, in the opinion of the Registrar, is offensive, objectionable or contrary to public policy or to the public interest.

(2) For the purposes of subsection (1)(d), the Commission may, by notice published on its website, specify words, phrases or abbreviations as restricted words, phrases or abbreviations.

(3) Despite subsection (1)(b) and (c), the Registrar may register a company by a name that is similar to—

- (a) the name of another company, if the other company is a group company; or
- (b) a name that has been reserved, if the name has been reserved for use by a group company or a proposed company that will, on incorporation, be a group company.

Permitted characters and styles

32. (1) The Regulations may specify—

- (a) the letters, characters and symbols that may be used in a registered name; and
- (b) requirements and restrictions relating to the style and format of registered names.

(2) The Registrar shall not register a company under this Ordinance by a name that contravenes Regulations made under subsection (1).

Company number as company name

33. The name of a company may comprise the expression “TCI Company Number” followed by its company number in figures and the appropriate ending required by section 34.

Required ending for company name

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

- (a) the word “Limited”;
- (b) the abbreviation “Ltd”; or
- (c) such other word or words, or abbreviation, as may be prescribed.

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

(3) The name of a protected cell company shall include the expression “Protected Cell Company” or “protected cell company”.

(4) 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.

(5) This section does not apply to a non-profit company.

Change of name

Change of registered name

35. (1) Subject to its articles, a company may apply to the Registrar to change its registered name.

(2) If the Registrar is satisfied that the proposed new name is a name by which the company could be registered under this Part, the Registrar shall—

- (a) register the company’s change of name; and
- (b) issue a certificate of change of name.

Registrar may direct change of registered name

36. (1) If the Registrar considers, on reasonable grounds, that the registered name of a company does not comply with this Part, the Registrar may, by written notice, direct the company to apply to change its registered name on or before a date specified in the notice, being a date not less than fifteen working days after the date of the notice.

(2) If the company fails to file an application to change its name to a name acceptable to the Registrar within the period specified in the notice, the Registrar may register a new name for the company selected by the Registrar, being a name under which the company could be registered under this Part.

(3) If the Registrar registers a new name for a company under subsection (2), the Registrar shall—

- (a) issue a certificate of change of registered name to the company; and
- (b) publish the change of registered name in the *Gazette*.

Effect of change of name

37. (1) A change of the registered name of a company—

- (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.

(2) Any legal proceedings commenced, or that could have been commenced, against a company under its former registered name may be continued or commenced against the company under its new name.

(3) If a company's registered name is changed under this Part, the company's articles are deemed to be amended to state the new registered name with effect from the date of the change of name certificate.

Other matters relating to names

Reservation of name

38. (1) A person specified in subsection (2) may apply to the Registrar reserve a name for use by a company under this Ordinance.

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

- (a) by a company for its own use on an application to change its registered name under section 35; or
- (b) by a person intending to apply for the incorporation of a company under section 9.

(3) On receipt of an application under subsection (1), if satisfied that the name is one by which a company could be registered under this Part, the Registrar may reserve the name.

(4) If the Registrar reserves a name under subsection (3), the name is reserved for a period of ninety days from the date of reservation for use by the applicant.

Use of company name

39. (1) Subject to section 34(4), a company shall ensure that its full registered 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 shall disclose its full registered name on any websites that it maintain.

(3) A company that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of \$20,000.

Rights and interests in names

40. (1) Nothing in this Part requires the Registrar, when determining whether to incorporate or continue a company by 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 Turks and Caicos Islands enactment or rule of law or an enactment or rule of law in a jurisdiction other than the Islands; or
- (b) to take account of any trade or service mark, or equivalent right, whether registered in the Islands or in a jurisdiction other than the Islands.

(2) Subsection (1) does not prevent the Registrar taking into account any matter specified in that subsection when determining whether, in his 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 Ordinance 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 Part.

Regulations providing for re-use of company names

41. The Regulations may provide for the re-use of names by which company have been registered under this or a former Ordinance, where a company has—

- (a) changed its name;
- (b) been dissolved under this Ordinance or a former Ordinance; or
- (c) been registered under this Ordinance but, in respect of which, the Registrar has issued a certificate of discontinuance under section 223.

PART IV

REGISTERED OFFICE AND REGISTERED AGENT

Registered office

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

(2) The first registered office of a company is the place specified in the application to incorporate the company filed under section 9(2).

(3) The registered office of a company—

- (a) shall be a physical address in the Islands; and
- (b) if the company's registered office is at the office of its registered agent, that fact shall be stated in the description of the address in the application to incorporate or in the notice of change of registered office filed under section 46.

Person eligible for appointment as registered agent

43. A person is eligible to be appointed as the registered agent of a company if the person holds a licence granted under the Company Management (Licensing) Ordinance [Cap. 16.10].

Registered agent required

44. (1) A company shall at all times have a registered agent.

(2) Unless the last registered agent of the company resigns in accordance with section 47, the registered agent of a company is—

- (a) the person named as the company's first registered agent in the application to incorporate the company filed under section 9(2); or
- (b) if the person specified as the company's registered agent in the last notice of appointment of registered agent by the Registrar under section 45.

(3) Unless a person is eligible to act as the registered agent of a company under section 43—

(a) the company shall not appoint the person as its registered agent; and

(b) the person shall not accept appointment, or act, as the registered agent of the company.

(4) A company is not required to have a registered agent if it is in liquidation under the Insolvency Ordinance.

(5) The Commission may impose a financial penalty on a company if it is satisfied that the company—

(a) does not have a registered agent; or

(b) has appointed as its registered agent a person who is not eligible for appointment under section 43.

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

Appointment of registered agent

45. (1) A company may appoint a registered agent—

(a) by a resolution of its members; or

(b) if authorised by the articles, by a resolution of directors.

(2) The articles shall not restrict the power of the members to appoint a registered agent and any purported restriction is void and of no effect.

(3) A company shall file a notice of appointment of registered agent, endorsed by the registered agent with his agreement to act as registered agent.

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

Change of registered office or registered agent

46. (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) despite any provision to the contrary in the articles, by the members of the company; or

(b) if authorised by the articles, by the directors of the company.

(2) A company that wishes to change its registered office or registered agent shall file a notice of the resolution passed which, in the case of a change of registered agent, shall be accompanied by a notice of appointment of the new registered agent to be filed under section 45.

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

(4) 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 to the company's new registered agent.

Resignation of registered agent

47. (1) A person may resign as the registered agent of a company by—

- (a) giving not less than thirty days written notice of his intention to resign as the registered agent of the company on the date specified in the notice to a person specified in subsection (2); and
- (b) filing a copy of the notice within ten working days of the date of the notice.

(2) A notice under subsection (1) 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.

(3) If the company does not appoint a new registered agent on or before the last day of the expiration period specified in the notice of intention to resign, the registered agent may file a notice of resignation.

(4) The resignation of a registered agent takes effect on the earlier of—

- (a) the registration by the Registrar of the notice of a new registered agent under section 45; or
- (b) on the registration by the Registrar of the notice of resignation filed under subsection (3).

Registered agent ceasing to be eligible to act

48. (1) A registered agent of a company who ceases to be eligible to act as registered agent of the company shall, as soon as reasonably practicable, resign as registered agent in accordance with section 47—

- (a) giving thirty days' notice of intention to resign; and
- (b) specifying in the notice of intention to resign and the notice of resignation that the person is resigning on the grounds of ineligibility to act as registered agent.

(2) A registered agent who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$30,000.

(3) A person who ceases to be eligible to act as the registered agent of a company and who complies with subsection (1) does not commit an offence under section 44(6) by continuing to act as registered agent during the period until his resignation takes effect.

PART V

SHARES

Nature and types of shares

Legal nature of shares

49. A share in a company is personal property.

Rights attaching to shares

50. Subject to section 51(1) and (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 declared in accordance with this Ordinance; and
- (c) the right to an equal share in the distribution of the surplus assets of the company.

Classes and series of shares

51 (1) If authorised by its articles in accordance with section 13(1)(c), a company may issue more than one class of shares.

(2) Without limiting subsection (1), the terms of issue for a class of shares may negate, alter or add to the rights specified in section 50.

(3) Subject to its articles, a company may issue a class of shares in one or more series.

Types of shares

52. (1) Without limiting section 51(1), shares in a company—

- (a) may be redeemable;
- (b) with respect to distributions of capital or income, may—
 - (i) not confer any rights; or
 - (ii) confer preferential rights;
- (c) confer special, limited or conditional rights, including voting rights;
- (d) not confer any voting rights;
- (e) participate only in certain assets of the company;
- (f) if issued in, or converted to, one class or series, be convertible to another class or series, in the manner specified in the articles.

(2) Subject to its articles, a company may issue—

- (a) bonus shares;
- (b) partly paid and nil paid shares; and
- (c) fractional shares.

Par value, bearer shares and other bearer instruments prohibited

53. (1) Subject to the articles—

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

(2) A company has no power to, and shall not—

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

(3) A company shall not issue a bearer instrument, including an option and a convertible instrument, that gives the holder a right, whether conditional or otherwise, to a share in the company.

(4) A company commits an offence and is liable on summary conviction to a fine of \$50,000 if it—

- (a) issues a bearer share, converts a share to a bearer share or exchanges a share for a bearer share; or
- (b) issues a bearer instrument contrary to subsection (3).

Division and combination of shares

54. (1) Subject to its 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.

Issue of Shares

Issue of shares

55. (1) Subject to this Ordinance and to the articles, the board of a company may issue shares at such times, to such persons, for such consideration and on such terms as the directors determine.

(2) A share is issued when the name of the holder is entered in the register of members.

(3) A company may, but is not required to, issue share certificates.

Pre-emptive rights

56. (1) Subject to subsection (4), 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.

(2) Shares offered to existing shareholders under subsection (1) shall be offered at such price and on such terms as the shares are to be offered to other persons.

(3) An offer made under subsection (1) must remain open for acceptance for a reasonable period of time.

(4) The articles of a company may negate, limit or modify the requirements of this section.

Consideration for the issue of shares

57. The consideration for which a share is issued may take any form, or a combination of forms, including money, a promissory note, or other written obligation to contribute money or property, real or personal property (including goodwill and know-how), services rendered or a contract for future services.

Consideration to be determined by the board

58. (1) Before issuing shares under section 55, the board of a company shall—

- (a) decide the consideration for which, and the terms on which, the shares will be issued;
- (b) if the shares are to be issued for a consideration which is wholly or partly other than cash, pass a resolution that, in the board's opinion, the present cash value of the non-cash and any cash consideration is not less than the amount to be credited for the issue of the shares.

(2) Subject to the articles, a bonus share issued by the company is considered to have been fully paid for on issue.

(3) Subsection (1) does not apply to—

- (a) the consolidation and division of the shares, or any class of shares, in the company in proportion to those shares or the shares in that class; or
- (b) the subdivision of the shares, or any class of shares, in the company in proportion to those shares or the shares in that class.

(4) The Regulations may disapply subsection (1) to the issue of shares in a company on the exercise of—

- (a) an option to acquire shares; and
- (b) a right to convert a security or other instrument to shares.

Consent to issue of shares

59. The issue by a company of a share that—

- (a) increases a person's liability 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.

Forfeiture of shares

60. (1) The articles of a company, or the terms on which a share in a company is issued, may provide for the forfeiture of the share if it is not fully paid for on issue.

(2) A forfeiture provision shall require the company to serve a written notice of call specifying a date for payment to be made on a member who defaults in making payment in respect of the share.

(3) The written notice of call referred to in subsection (2) shall—

(a) specify a date not earlier than the expiration of fourteen days from the date of service of the notice on or before which the payment required by the notice is to be made; and

(b) contain a statement that, in the event of non-payment at or before the time named in the notice, the share in respect of which payment is not made shall be liable to be forfeited.

(4) If 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 share to which the notice relates.

(5) The company is under no obligation to refund any moneys to the member whose share has been cancelled under subsection (4) and that member shall be discharged from any further obligation to the company in respect of the share.

Company acquiring and holding its own shares

Company may acquire its own shares

61. (1) Subject to section 80 and subsection (2), a company may acquire its own shares in accordance with section 62 or such other provisions for the acquisition by the company of its own shares as may be specified in the articles.

(2) Section 62 does not apply to a company to the extent that it is negated, modified or inconsistent with provisions for the acquisition by the company of its own shares specified in its articles.

(3) A share that is acquired by a company otherwise than in accordance with subsection (1) is deemed to be cancelled immediately on acquisition.

(4) Nothing in this section limits or affects an order of the Court that requires a company to acquire its own shares.

Process of acquisition of its own shares by company

62. (1) The board of a company may make an offer to acquire shares that have been issued by the company, only if the offer is—

- (a) an offer to all shareholders to acquire shares that—
 - (i) would, if accepted, leave the relative voting and distribution rights of the shareholders unaffected; and
 - (ii) affords each shareholder a reasonable opportunity to accept the offer; or
- (b) an offer to one or more shareholders to acquire shares—
 - (i) to which all shareholders have given their written consent; or
 - (ii) that is permitted by the articles and is made in accordance with section 63.

(2) If an offer is made in accordance with subsection (1)(a)—

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

Offer to one or more shareholders to acquire shares

63. (1) The board of a company may make an offer to a shareholder under section 62(1)(b) only if the directors have passed a resolution stating that, in their opinion—

- (a) the acquisition is to the benefit of the remaining shareholders; and

(b) the terms of the offer and the consideration offered for the shares are fair and reasonable to the company and to the remaining shareholders.

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

(3) The board shall not make an offer to a shareholder under section 62(1)(b) if, after passing a resolution under subsection (1) and before the making of the offer, the directors cease to hold the opinion specified in subsection (1).

(4) A shareholder may apply to the Court for an order restraining the proposed acquisition of shares under section 62(1)(b) on the grounds that—

(a) the acquisition is not in the best interests of the remaining shareholders; or

(b) the terms of the offer and the consideration offered for the shares are not fair and reasonable to the company or the remaining shareholders.

Surrender of shares

64. (1) A company may agree to accept the surrender by a shareholder of one or more of the shares held by the shareholder.

(2) A company may either—

(a) hold a share that has been surrendered as a treasury share in accordance with section 65; or

(b) treat the share as a share that has been forfeited under section 60, and cancel it.

(3) This section shall not be taken as giving a shareholder a right to surrender a share in a company without the agreement of the company.

Treasury shares

65. (1) A company may hold shares that have been acquired in accordance with sections 61, 62 and 63 as treasury shares if—

(a) the company's articles do not prohibit the company from holding treasury shares;

(b) the directors resolve that shares to be acquired shall not be cancelled but shall be held as treasury shares; and

(c) the number of shares acquired, when aggregated with shares of the same class already held by the company as treasury shares, does not exceed—

- (i) 50% of the shares of that class previously issued by the company, excluding shares that have been cancelled; or
- (ii) such lower percentage as may be specified in the articles.

(2) The rights and obligations attaching to a treasury share, including any voting rights and any rights to receive a distribution, are suspended and shall not be exercised by or against the company while it holds the share as a treasury share.

(3) If the directors of a company resolve that a treasury share shall be cancelled, the share is deemed to be cancelled when the resolution is made and ceases to be a treasury share.

Transfer of treasury shares

66. (1) Treasury shares may be transferred by the company.

(2) Subject to any provision in the regulations to the contrary, the provisions of this Ordinance and the articles that apply to the issue of a share apply to the transfer of a treasury share as if the transfer of the share was the issue of the share under section 55.

Acquired shares not held as treasury shares cancelled

67. (1) If a share acquired by a company in accordance with sections 61, 62 and 63 is not held by the company as a treasury share in accordance with section 65, the share is deemed to be cancelled immediately on its acquisition.

(2) On the cancellation of a share under this section—

- (a) the rights and privileges attached to the share expire; but
- (b) the share may be reissued in accordance with this Part.

Redemption of shares

Redeemable shares

68. A share is redeemable if the articles or the terms of issue of the share makes provision for the redemption of the share—

- (a) at the option of the company;
- (b) at the option of the holder of the share; or

- (c) on a date specified in the articles or the terms of issue of the share.

Shares redeemed at option of the company

69. (1) A company shall not exercise an option to redeem a share unless—

- (a) the directors resolve that they are satisfied, on reasonable grounds, that the company will, immediately after the share is redeemed, satisfy the solvency test; and
- (b) the option is exercised—
 - (i) in relation to all shareholders of the same class and in a manner that will leave the relative voting and distribution rights of the shareholders unaffected; or
 - (ii) in relation to one or more shareholders and either all shareholders have given their written consent to the redemption or the option is permitted by the articles and is made in accordance with section 63.

(2) If, after passing a resolution under subsection (1)(a), and before the option is exercised, the directors cease to be satisfied on reasonable grounds that the company will, immediately after the share is redeemed, satisfy the solvency test, any redemption of the share is deemed not to have been authorised.

Option exercised in relation to one or more shareholders

70. (1) The board of a company may exercise an option to redeem shares under section 69(1)(b)(ii) only if the directors have passed a resolution stating that, in their opinion—

- (a) the redemption of the shares is to the benefit of the remaining shareholders; and
- (b) the consideration for the redemption is fair and reasonable to the company and to the remaining shareholders.

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

(3) The board shall not make exercise an option to redeem a share under section 69(1)(b)(ii) if, after passing a resolution under subsection (1) and before exercising the option to redeem, the directors cease to hold the opinion specified in subsection (1).

(4) A shareholder may apply to the Court for an order restraining the proposed redemption of shares under section 69(1)(b)(ii) on the grounds that—

- (a) the redemption of the shares is not to the benefit of the remaining shareholders; and
- (b) the consideration for the redemption is not fair and reasonable to the company or to the remaining shareholders.

Shares redeemed at option of shareholder

71. (1) If a share is redeemable at the option of a shareholder and the shareholder gives the company proper notice of his intention to require the company 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; and
- (b) 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; and
- (b) from the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(3) Sections 69 and 70 do not apply to shares redeemed under subsection (1) or (2).

Cancellation of redeemed shares

72. (1) A share that is redeemed by a company is deemed to be cancelled on the date of redemption.

(2) On the cancellation of a redeemed share under this section—

- (a) the rights and privileges attached to the share expire; but
- (b) the share may be reissued in accordance with this Part.

Certain redemptions deemed not to be a distribution

73. The redemption by a company of one of its own shares is deemed not to be a distribution if—

- (a) the company redeems the share under and in accordance with section 71; or
- (b) the company redeems the share in accordance with the right of a shareholder to require the company to redeem or exchange a share for money or other property of the company.

Transfer of Shares

Shares may be transferred

74. (1) Subject to any limitations or restrictions on the transfer of shares in the 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

75. Shares in a company may pass and be transferred by operation of law, despite anything to the contrary in the company's articles.

Transfer of shares

76. (1) Shares are transferred by a form of transfer that—

- (a) is signed by the transferor; and
- (b) contains the name and address of the transferee.

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

(3) A form of transfer of a share shall be sent to the company for registration.

(4) Subject to the articles and to subsection (5), a company shall, on receipt of a form 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 Ordinance or the articles permit.

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

(7) Subject to the articles of a company, the directors may refuse or delay the registration of a transfer of shares if the transferor fails to pay an amount due in respect of the shares.

(8) The transfer of a share takes effect when the name of the transferee is entered in the register of members.

Form of transfer lost or destroyed

77. If the directors of a company are satisfied that a form 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 be entered in the register of members, despite the absence of the instrument of transfer.

Transfer of listed shares

78. (1) The Listing Rules applicable to a listed company apply to the transfer of the company's shares to the extent that they are inconsistent with sections 76 and 77.

(2) The Regulations may disapply or modify sections 76 and 77 in respect of a listed company.

Distributions

Meaning of distribution

79. (1) A company makes a distribution to a member if—

- (a) the company—
 - (i) makes a direct or indirect transfer of an asset, other than the company's own shares, to or for the benefit of the member; or
 - (ii) incurs a debt to or for the benefit of a member; and
- (b) the transfer is made or the debt is incurred in relation to—
 - (i) shares held by a member who is a shareholder; or
 - (ii) the entitlements to distributions of a member who is not a shareholder.

(2) Subsection (1) applies whether the transfer or incurrence of debt is by means of the purchase of an asset, the redemption or other acquisition of the company's own shares, a transfer of indebtedness or otherwise.

Authorisation of distributions

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

(2) A resolution 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 distributions

81. (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 the member's 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 80(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 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.

Mortgages and charges on shares

Mortgage or charges on shares

82. (1) A mortgage or charge on shares in a company need not be in any specific form, but—

(a) shall be in writing signed by, or with the authority of, the holder of the share to which the mortgage or charge relates; and

(b) shall clearly indicate

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

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

(2) If shares in a company are subject to a mortgage or charge, the register of members shall state—

(a) 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.

Enforcement, mortgage or charge governed by the law of the Islands

83. (1) This section applies if the governing law of a mortgage or charge on shares in a company is the law of the Islands.

(2) In the case of default by the mortgagor or chargor on the terms of a mortgage or charge to which this section applies, the mortgagee or chargee is entitled to the following remedies—

- (a) subject to any limitation or provision 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 limitation or provision to the contrary in the instrument creating the mortgage or charge, may—
 - (i) exercise any voting rights that attach to the shares;
 - (ii) receive distributions in respect of the shares; and
 - (iii) exercise other rights and powers of the mortgagor or chargor in respect of the shares;

until the mortgage or charge is discharged.

(3) Subject to subsection (4), the remedies referred to in subsection (2) are exercisable only if—

- (a) a default has occurred and has continued for a period of not less than thirty 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 fourteen 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 of the default.

(4) If the instrument creating the mortgage or charge so provides, the remedies referred to in subsection (2) are exercisable immediately on a default occurring.

(5) Subject to any provision to the contrary in the instrument of mortgage or charge on shares of a company, any amounts that accrue from the enforcement of the mortgage or charge shall be applied in the following manner—

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

Enforcement, mortgage or charge on shares governed by law of another country

84. If the governing law of a mortgage or charge on shares in a company is not the law of the Islands—

- (a) the mortgage or charge shall comply with the requirements of the applicable governing law in order for the mortgage or charge to be valid and binding on the company;
- (b) the remedies available to a mortgagee or chargee shall be governed by the governing law and the instrument creating the mortgage or charge, except that the rights between the mortgagor or mortgagee as a member of the company and the company shall continue to be governed by the company's articles and this Ordinance; and
- (c) section 83(5) applies in respect of the mortgage or charge.

PART VI

MEMBERS

Register of members

Register of members

85. (1) A company shall keep a register of members stating, as appropriate for the company—

- (a) the name and address of each person who holds shares in the company;
- (b) the number of each class and series of shares held by each shareholder;
- (c) the name and address of each person who is a guarantee member of the company;
- (d) the name and address of each person who is an unlimited member of the company;
- (e) the date on which the name of each member was entered in the register of members;
- (f) the date on which any person ceased to be a member;
- (g) such other information as may be required by the Regulations; and

(h) such other information as the directors may determine.

(2) The Regulations may—

(a) prescribe the circumstances in which information relating to a former member of a company may be deleted from the register of members; and

(b) modify this section with respect to listed companies.

(3) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$30,000.

Trust not to be entered on register

86. No notice of a trust, whether express, implied or constructive, shall be entered on the share register.

Register of members as evidence of legal title

87. (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 share as the only person entitled to—

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

(b) receive a notice in respect of the share;

(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

88. (1) A person specified in subsection (2) may apply to the Court for an order that the register of members be rectified if—

(a) information that is required to be entered in the register of members under section 85 is omitted from the register or inaccurately entered in the register; or

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

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

(a) a member of the company; or

(b) a person who is aggrieved by the omission, inaccuracy or delay.

(3) On an application under this section, the Court may make an order—

- (a) requiring rectification of the register;
- (b) restraining the company from calling a meeting or making a distribution before the register is rectified; and
- (c) for the payment of compensation for any loss sustained.

(4) On an application under this section, the Court may decide—

- (a) a question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the register of members, whether the question arises between—
 - (i) two or more members or alleged members; or
 - (ii) between members or alleged members and the company;
- (b) a question that may be necessary or expedient to be decided for the rectification of the register of members.

Members and their liability

Company must have at least one member

89. (1) Subject to subsection (2), a company shall have at least one member.

(2) Subsection (1) does not apply during the period from the incorporation of the company to the appointment of its first directors under section 112.

(3) 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 if the company is authorised to issue shares, a guarantee member may also be a shareholder.

(4) 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 if the company is authorised to issue shares, an unlimited member may also be a shareholder.

Liability of members

90. (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 company's articles; and
- (c) any liability to repay a distribution under section 81.

(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 articles in accordance with section 13(1); and
- (b) any other liability expressly provided for in the company's articles; and
- (c) any liability to repay a distribution under section 81.

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

Company without members

91. If at any time there is no member of a company, a person doing business in the name of or on behalf of the company—

- (a) is personally liable for the payment of debts of the company contracted during the time that the company had no member; and
- (b) may be sued for those debts without joinder in the proceedings of any other person.

Resolutions and meetings

Members' resolutions

92. (1) Unless otherwise specified in this Ordinance or in the articles of a company, powers given to the members of a company by this Ordinance or the articles may be exercised only by a resolution passed—

- (a) at a meeting of members held under section 93; or
- (b) as a written resolution in accordance with section 98.

(2) A resolution is passed if approved by a majority of more than fifty percent of the votes of those members entitled to vote and voting on the resolution or, if the articles require a higher majority, that higher majority.

(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 articles otherwise provide, a guarantee member and an unlimited member are entitled to one vote on any resolution on which the member is entitled to vote.

Meetings of members

93. (1) A meeting of members—

- (a) may be called by—
 - (i) the directors of the company; or
 - (ii) such person or persons as may be authorised by the articles to call the meeting; and
- (b) shall be called by the directors on the written request of members entitled to exercise at least 30% of the voting rights in respect of the matter for which the meeting is requested, or such lesser percentage as the articles may specify.

(2) Subject to the articles—

- (a) a meeting of members may be held at such time and in such place, within or outside the Islands, as the convener of the meeting considers appropriate; and
- (b) a member of the company is deemed to be present at a meeting of members if—
 - (i) the member participates by telephone or other electronic means; and
 - (ii) all members participating in the meeting are able to hear each other.

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

(4) Subject to the articles, the following apply if shares are jointly owned—

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

Notice of meetings of members

94. (1) Subject to a requirement in the articles to give longer notice, the convener of a meeting of members shall give not less than seven days' notice of the meeting to each person—

- (a) whose name, on the date the notice is given, appears as a member in the register of members; and
- (b) who is entitled to vote at the meeting.

(2) Subject to the articles, a meeting of members held in contravention of the requirement to give notice is valid if members holding a 90% cent majority of the voting rights on all the matters to be considered at the meeting, or such lesser majority as may be specified in the articles, have waived notice of the meeting and, for that purpose, the presence of a member at the meeting is deemed to constitute a waiver on the member's part.

(3) The inadvertent failure of the convener 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 of a meeting of members may fix as the record date for determining those members that are entitled to vote at the meeting—

- (a) the date notice is given of a meeting;
- (b) such other date as may be specified in the notice.

Quorum for meetings of members

95. (1) The quorum for a meeting of members for the purposes of a resolution of members is the quorum specified in the articles, if any.

(2) If a quorum for a meeting of members is not specified in the articles, a meeting of members is properly constituted for all purposes if, at the commencement of the meeting, members entitled to exercise at least 50% of the votes are present in person or by proxy.

Proceedings at meetings of members

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

Court may call meeting of members

97. (1) The Court may order a meeting of members to be held and to be conducted in such manner as the Court orders if—

(a) the directors have failed to call a meeting when requested by members to do so under section 93(1)(b);

(b) the Court is satisfied that—

(i) it is impracticable to call or conduct a meeting of members in the manner specified in this Ordinance or in the company's articles of incorporation; or

(ii) it is in the interests 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 the costs of conducting the meeting and as to the provision of security for those costs, as it considers appropriate.

Written resolutions

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

(2) A resolution under subsection (1) may consist of several documents, including written electronic communications, in the same form, each signed or assented to by a member.

PART VII

DIRECTORS

Management by directors

Management by directors

99. (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 this Ordinance or the articles.

Company to have at least one director

100. (1) Subject to subsections (2) and (3), a company shall have at least one director.

(2) Subsection (1) does not apply during the period from the incorporation of the company to the appointment of its first directors under section 112.

(3) A non-profit company shall have at least two directors.

(4) Subject to subsection (1), the number of directors of a company may be fixed by, or in the manner provided in, the company's articles.

(5) A person who manages, or who directs or supervises the management of, the business and affairs of a company at any time when the company does not have a director is deemed to be a director of the company for the purposes of this Ordinance.

Committees of directors

101. (1) Subject to the 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.

(2) Despite anything to the contrary in the articles, the directors have no power to delegate the following powers to a committee of directors—

- (a) the power to amend the articles;
- (b) the power to designate a committee of directors;
- (c) to delegate powers to a committee of directors;
- (d) the power to appoint or remove directors;
- (e) the power to appoint or remove an agent;
- (f) the power to approve a plan of merger, consolidation or arrangement;
- (g) the power to make a declaration of solvency for the purposes of section 236 or approve a liquidation plan; or
- (h) the power to make a determination that the company will satisfy the solvency test, as required by any provision of this Ordinance.

(3) Subsection (2)(b) and (c) do not prevent a committee of directors, if authorised by the directors, from—

- (a) appointing a sub-committee; and
- (b) delegating powers exercisable by the committee to the sub-committee.

(4) If 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 the directors—

- (a) 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 Ordinance and the articles; and
- (b) have taken reasonable steps to monitor the exercise of the power by the committee.

(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.

Directors' duties

Duties of directors

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

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

(3) A director of a company that is a subsidiary, but not a wholly-owned subsidiary, may, when exercising powers or performing duties as a director, if expressly permitted to do so by the company's articles and with the prior agreement of the shareholders, other than its parent, act in a manner which he believes is in the best interests of the company's parent, even though it may not be in the best interests of the company.

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

Powers to be exercised for proper purpose

103. A director—

- (a) shall exercise his powers as a director for a proper purpose; and
- (b) shall not act, or agree to the company acting, in a manner that contravenes this Ordinance or the company's articles.

Standard of care

104. 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.

Reliance on records and reports

105. (1) Subject to subsection (2), a director of a company, when exercising his powers or performing his duties as a director, is entitled to rely on books, records, financial data and 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 on 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 on which the director did not serve, in relation to matters within the director's or committee's designated authority.

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

- (a) acts in good faith;
- (b) makes proper inquiry where the need for the inquiry is indicated by the circumstances; and
- (c) has no knowledge that his reliance is unwarranted.

Conflict of interest

Disclosure of interest

106. (1) A company shall maintain a register of directors' interests.

(2) Subject to subsection (3), a director of a company shall, immediately after becoming aware of the fact that he is interested in a transaction or proposed transaction with the company, cause the interest to be entered in the register of directors' interests and, unless he is the only director, disclose the interest to the board.

(3) A director of a company is not required to comply with subsection (2) 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) A record in the register of directors' interests and, if the company has more than one director, 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 disclosure or entry in the register of directors' interests, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction for the purposes of subsection (2).

(5) Subject to section 107, the failure by a director to comply with subsection (2) does not affect the validity of a transaction entered into by the director or the company.

(6) The Regulations may prescribe circumstances in which a director is interested in a transaction for the purposes of this section and section 107.

(7) A director who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of \$30,000.

Avoidance by company of transactions

107. (1) A transaction entered into by a company in 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 106 before the company entered into the transaction; or

(b) not required to be disclosed by virtue of section 106(3).

(2) Despite 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.

Protection of third parties

108. The avoidance of a transaction under section 107 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.

Powers of interested director in relation to transaction

109. Subject to the 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 that relates to the transaction; or
- (d) do any other thing in his capacity as a director in relation to the transaction.

Appointment, removal and resignation of directors

Persons disqualified for appointment as director

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

- (a) an individual who is under eighteen years of age;
- (b) a person who is a disqualified person within the meaning of the Insolvency Ordinance;
- (c) a person who is a restricted person within the meaning of the Insolvency Ordinance;
- (d) an undischarged bankrupt; and

(e) a person who, in respect of a particular company, is disqualified by the 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 Ordinance that imposes a duty or obligation on a director.

Consent to act as director

111. A person shall not be appointed as the director or alternate director of a company, or nominated as a reserve director, unless he has given his written consent to the appointment.

Appointment of directors

112. (1) The first registered agent of a company shall, within one month of the date of incorporation of the company—

- (a) appoint one or more persons as the first directors of the company; and
- (b) file a notice of appointment within ten working days of the appointment.

(2) 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.

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

- (a) unless the articles provide otherwise, by the members; or
- (b) if the articles permit, by the directors.

(4) A director is appointed for such term as may be specified on his appointment.

(5) Subject to the articles or his terms of appointment, and unless he vacates office in accordance with section 118, a director whose term of appointment expires holds office until his successor is appointed.

Reserve directors

113. (1) If a company has only one member who is an individual and that member is also the sole director of the company, despite anything contained in the articles, the member

may, by instrument in writing, nominate a person who is not disqualified from being a director of the company under section 110 as a reserve director of the company to act in the place of the sole director in the event of his death.

(2) 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—

(i) the person resigns as reserve director; or

(ii) the member revokes the nomination in writing; or

(b) the member ceases to be the sole member of the company for any reason other than his death.

Removal of directors

114. (1) Subject to the 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 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.

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

(4) If the articles permit, a director may be removed from office by a resolution of the directors.

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

Resignation of director

115. (1) A director of a company may resign his office by giving written notice of his resignation to the company and the resignation has effect from—

(a) the date the notice is received by the company; or

(b) such later date as may be specified in the notice.

(2) A director of a company shall resign immediately if he is, or becomes, disqualified to act as a director under section 110.

Liability of former directors

116. A director who vacates office is liable under any provision of this Ordinance that imposes liabilities on a director in respect of any act, omission or decision made while a director.

Validity of acts of director

- 117.** The acts of a person as a director are valid despite—
- (a) any defect in the person's appointment as a director; or
 - (b) the person's disqualification to act as a director under section 110.

Vacancies

118. (1) The office of director is vacated if the person holding the office—

- (a) resigns in accordance with section 115;
- (b) is removed from office in accordance with this Ordinance or the articles;
- (c) in the case of an individual, dies;
- (d) in the case of a person other than an individual, ceases to exist; or
- (e) otherwise vacates office in accordance with the articles.

(2) Subject to subsection (3), unless the articles provide otherwise, the directors of a company may appoint a director to fill a vacancy on the board.

(3) 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.

Notice of change of directors

119. A company shall, with ten working days of the appointment of a director or a director vacating office, file a notice of change of director.

Miscellaneous provisions concerning directors

Register of directors

120. (1) A company shall keep a register of directors containing the prescribed information for each person who is a director of the company.

(2) The register of directors is prima facie evidence of a matters directed or authorised by this Ordinance or the Regulations to be set out in the register of directors.

Emoluments of directors

121. If the articles permit, the directors of the company may fix the emoluments of directors in respect of services to be rendered in any capacity to the company.

Meetings of directors

122. (1) Subject to the articles—

(a) the directors of a company may meet at such times and in such manner and places within or outside the Islands as they may determine to be necessary or desirable; and

(b) any one or more directors may convene a meeting of directors.

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

(a) that director participates by telephone or other electronic means; and

(b) all directors participating in the meeting are able to hear each other or otherwise communicate with each other.

Notice of meeting of directors

123. (1) Subject to any requirement as to notice in the articles, a director shall be given reasonable notice of a meeting of directors and the notice shall include the date, time and place of the meeting and the matters to be discussed at the meeting .

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

(3) The inadvertent failure of the convener of a directors' meeting to give notice of the 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

124. (1) The quorum for a meeting of directors is that fixed by the articles but, if no quorum is fixed in the articles, a meeting of directors is properly constituted if at the commencement of the meeting half of the total number of directors are present in person or by alternate.

(2) No business may be transacted at a meeting of directors if a quorum is not present.

Directors' resolutions

125. (1) A directors' resolution may be passed—

- (a) at a meeting of directors; or
- (b) as a written resolution in accordance with section 126.

(2) Subject to the articles, each director has one vote on a resolution of directors.

(3) 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.

Written resolutions of directors

126. (1) Subject to the article, a decision that may be made by the directors or a committee of directors at a meeting may also be made by a written resolution.

(2) A written resolution is a resolution of directors or of a committee of directors 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 articles; or
- (b) in the absence of any provision in the articles, by all of the directors entitled to vote on the resolution.

(2) A written resolution may consist of several documents, including written electronic communications, in the same form, each signed or assented to by a director.

Appointment of alternate directors

127. (1) Subject to the articles, a director of a company may appoint another director or a person who is not disqualified for appointment as a director under section 110, as an alternate director.

(2) In the absence of the appointing director, an alternate director has the power 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.

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

(4) The appointment and termination of an alternate director shall be in writing and the appointing director shall give written notice of the appointment and termination to the company—

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

(5) 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.

Rights and duties of alternate directors

128. (1) An alternate director appointed under section 127 has the same rights as the appointing director in relation to a directors' meeting and any written resolution circulated for written consent and, in particular, is entitled to attend meetings in the absence of the director who appointed him and to vote in the place of the director.

(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 acts and omissions as an alternate director and this Part applies to a person appointed as an alternate director, when acting as such.

(4) 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.

Agents

129. (1) The directors of a company may by a document in writing appoint any person, including a director, as an agent of the company.

(2) An agent of the company has the powers and authority of the directors provided for in the articles or, subject to the articles, in the resolution of directors appointing the agent, except that an agent does not have the power or authority to—

- (a) amend the articles;
- (b) change the registered office or agent;
- (c) designate a committee of directors;
- (d) delegate powers to a committee of directors;
- (e) appoint or remove a director;
- (f) appoint or remove an agent;
- (g) fix a director's emoluments;
- (h) approve a plan of merger, consolidation or arrangement;
- (i) make a declaration of solvency for the purposes of section 236 or to approve a liquidation plan;
- (j) make a determination that the company will satisfy the solvency test, as required by any provision of this Ordinance; or
- (k) authorise the company to continue as a company incorporated under the laws of a jurisdiction outside the Islands.

(3) If the directors appoint a person to be an agent of the company, they may authorise the agent to appoint a substitute or delegate 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 an agent under subsection (2) or (3).

Indemnification

130. (1) Subject to subsection (2) and the 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 a threatened, pending or completed civil, criminal, administrative or investigative proceeding, 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.

(2) Subsection (1) does not apply to a person referred to in that subsection unless the person—

(a) acted honestly and in good faith and in what the person believed to be in the best interests of the company; and

(b) in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.

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

(a) the company's parent in the circumstances specified in section 102(2) or (3); or

(b) a shareholder or shareholders of the company in the circumstances specified in section 102(4).

(4) The termination of proceedings by a judgement, order, settlement, conviction or the entering of a nolle prosequi does not, by itself, create a presumption that—

(a) the person did not act honestly and in good faith and with a view to the best interests of the company; or

(b) the person had reasonable cause to believe that his conduct was unlawful.

(5) A company may pay expenses, including legal fees, incurred by a director in defending legal, administrative or investigative proceedings in advance of the final disposition of the proceedings—

- (a) on receipt of an undertaking by or on behalf of the director to repay the amount if it is determined that the director is not entitled to be indemnified by the company in accordance with subsection (1); and
- (b) subject to such other terms as it considers appropriate.

(6) The indemnification and advancement of expenses provided by or granted under this section is not exclusive of 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.

(4) If a person referred to in subsection (1) successfully defends 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.

Insurance

131. A company may purchase and maintain insurance in relation to a 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 130.

PART VIII
COMPANY ADMINISTRATION
Company records

Articles, registers and filed documents

132. (1) A company shall keep the documents specified in subsection (2) at the office of its registered agent.

(2) The following documents are specified for the purposes of subsection (1)—

- (a) the articles of the company;
- (b) the register of members or a copy of the register of members;
- (c) the register of directors or a copy of the register of directors;
- (d) the beneficial ownership register;
- (e) the register of charges, if any, or a copy of the register of charges; and
- (f) a copy of each notice and other document filed by the company in the previous ten years.

(3) If a company keeps a document in electronic form, it complies with subsection (1) by ensuring that, at any time, the document—

- (a) is available for inspection; and
- (b) is capable of being reproduced in hard copy;

at the office of the company's registered agent.

(4) If a company keeps a hard copy of any register specified in subsection (2) at the office of its registered agent or its registered office, it shall ensure that—

- (a) an up to date written record of the place where the register is kept is maintained at the office of the registered agent or the registered office, as the case may be; and
- (b) the copy register is updated within five working days of any change in the register.

(5) The Regulations may modify the provisions of this section in relation to listed companies.

(6) A company that contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on summary conviction to a fine of \$30,000.

Minutes and resolutions

133. (1) A company shall keep—

- (a) minutes of each meeting of—
 - (i) directors;
 - (ii) members and classes of members;
 - (iii) committees of directors; and
 - (iv) committees of members and classes of members; and
- (b) a copy of each resolution consented to by—
 - (i) directors;
 - (ii) members and classes of members;
 - (iii) committees of directors;
 - (iv) committees of members and classes of members.

(2) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$30,000.

Financial records

134. (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;

including all underlying documentation.

(2) For the purposes of this section, “underlying documentation” includes invoices, receipts, contracts and any other documents that—

- (a) evidence—
 - (i) a transaction entered into by the company;
 - (ii) a sum of money received or expended by the company; or
 - (iii) an asset or liability of the company; or
- (b) assist in determining the financial position of the company.

(3) A company that contravenes this section commits an offence and is liable on summary conviction to a fine of \$50,000.

Requirements relating to records and documents

135. (1) The records and documentation required to be kept by a company under this Ordinance shall be kept—

- (a) in hard copy; or
- (b) either wholly or partly as electronic records that comply with the requirements of the Electronic Transactions Ordinance.

(2) Records and documents kept in hard copy shall be kept as such place or places within or outside the Islands as the directors may determine and shall be retained for the prescribed period.

(3) A company shall provide the registered agent of the with a written record stating where a record or document specified in subsection (1) is kept and details of the person who controls the record if the record or document is kept at a place other than the office of the registered agent.

(4) If any document to which subsection (1) applies is kept in hard copy outside the Islands, the company shall ensure that the document is provided to the registered agent if requested by the registered agent.

(5) Records kept in electronic form shall be capable of being made available for inspection at the office of the company's registered agent.

(6) A company that contravenes this section commits an offence and is liable on summary conviction to a fine of \$50,000.

Inspection of records

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

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

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

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

- (a) the articles;

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

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

(3) Subject to the 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)(d) refuse to permit the member to inspect the document or limit the inspection of the document, including limiting the making of copies or the taking of extracts from the records.

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

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

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

Secretary, service and seal

Secretary

137. A company may appoint a secretary.

Service of process, etc. on company

138. (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.

Company seal

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

Contracts

Contracts generally

140. (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, varied or discharged by or on behalf of the company in writing under the common seal of the company;
- (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, varied or discharged 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
- (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, varied or discharged orally by or on behalf of the company by a person acting under the express or implied authority of the company.

(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) Despite subsection (1)(a)—

- (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 merely because the common seal of the company is not affixed to the contract, agreement or instrument;
- (b) an instrument is validly executed by a company as a deed or an instrument under seal if it is either—
 - (i) 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

articles to witness the application of the company's seal; or

- (ii) 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.

(4) An instrument under seal or a deed that is executed in accordance with this section is validly executed as an instrument under seal or as a deed if it is executed in a manner contemplated by the parties to the instrument or deed, and that includes, without limitation—

- (a) where the complete instrument or deed is executed; and
- (b) where any signature or execution page of the instrument under seal or deed is executed, whether or not at the time of execution of the signature or execution page the remainder of the instrument under seal or deed is in a final form, and is attached to, added to, or compiled with, in each case whether physically or electronically, the remainder of the instrument under seal or deed by or on behalf of the party executing it or otherwise with the executing party's express or implied authority.

(5) Subsection (3)(a) does not affect the validity of any instrument under seal validly executed before the date on which this section comes into force.

Pre-incorporation contracts

141. (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 an 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—

- (a) within such period as may be specified in the contract; or,
 - (b) 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

142. (1) A promissory note or bill of exchange is 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.

(2) If a promissory note or bill of exchange is endorsed in accordance with subsection (1), the person signing the endorsement is not liable on the promissory note or bill of exchange.

Power of attorney

143. (1) Subject to its 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 the attorney 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.

Authentication or attestation

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

PART IX

BENEFICIAL OWNERS OF COMPANIES

Preliminary

Scope of this Part

145. (1). This Part applies to a company unless—

- (a) the company is listed on an approved exchange; or
- (b) the company falls within a prescribed exemption.

(2) A reference in this Part to a company is to a company to which this Part applies.

Identifying beneficial owners and registrable persons

Beneficial owners

146. A person is a beneficial owner of a company to which this Part applies if the person—

- (a) holds, directly or indirectly, more than 25% of the issued shares in the company;
- (b) is entitled, directly or indirectly, to exercise, or control the exercise of, more than 25% of the voting rights in the company;
- (c) has the right, directly or indirectly, to appoint or remove a majority of the directors of the company;
- (d) has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the company; or
- (e) has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the activities of a trust or a partnership that, by the law under which the partnership is governed, is not a corporate body, and paragraph (a), (b), (c) or (d) apply to—

- (i) the trustees of the trust; or
- (ii) the members of the partnership,
in the capacity of trustee or member.

Majority beneficial interests

147. A person has a majority beneficial interest in a company to which this Part applies if the person—

- (a) holds, directly or indirectly, a majority of the issued shares in the company;
- (b) is entitled, directly or indirectly, to exercise, or control the exercise of, a majority of the voting rights in the company;
- (c) has the right, directly or indirectly, to appoint or remove a majority of the directors of the company;
or
- (d) has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the company.

Registrable persons

148. Subject to subsection (2), a person is a registrable person in relation to a company to which this Part applies if the person—

- (a) is a beneficial owner of the company; and
- (b) is—
 - (i) a natural person;
 - (ii) a corporation sole;
 - (iii) a government or a government department of a country;
 - (iv) a local authority or local government body in a country;
 - (v) an international organisation, the members of which include two or more countries or their governments;
 - (vi) a company or a foreign company registered under Part XVI; or
 - (vii) a person of a type that may be specified in the Regulations.

Companies to ascertain and identify beneficial owners

149. (1) A company to which this Part applies shall take reasonable steps to ascertain and identify all persons who are beneficial owners of the company.

(2) For the purposes of ascertaining and identifying persons who are beneficial owners for the purposes of subsection (1), a company is entitled to rely, without further enquiry, on the response of a person to a written notice sent in good faith by the company, unless the company has reason to believe that the response is misleading or false.

Duty of companies to give notice to registrable persons

150. (1) A company to which this Part applies shall give written notice to each beneficial owner identified in accordance with section 149 and to any person that it knows or has reasonable cause to believe is a registrable person in relation to it.

(2) A notice given under subsection (1) shall require the person to whom it is given, within four weeks of receipt of the notice—

- (a) to state whether or not the person is a registrable person; and
- (b) if the person is a registrable person, to confirm or correct any of the prescribed beneficial ownership information that is included in the notice and supply any of the prescribed beneficial ownership information that is missing from the notice.

(3) A company to which this Part applies is not required to comply with subsection (1) or (2) with respect to a registrable person if—

- (a) the company has already been informed of the person's status as a registrable person in relation to it and has been supplied with the prescribed beneficial ownership information; and
- (b) in the case of a registrable person that is not another company to which this Part applies, the information was provided by the registrable person or with his knowledge.

(4) A company to which this Part applies may also give written notice to a registered shareholder or to a legal entity that the company knows or has reasonable cause to believe would be a registrable person if it were a company or a foreign company registered under Part XVI, if the company knows or has

reasonable cause to believe that the shareholder or legal entity knows the identity of a registrable person.

(5) A notice under subsection (4) may require the person to whom it is given (the addressee)—

- (a) to state whether or not they know the identity of a registrable person or any person likely to have that knowledge; and
- (b) if so, within four weeks of receipt of the notice, to supply, at the expense of the company, any prescribed beneficial ownership information respecting such registrable persons that are within the addressee's knowledge, and to state whether the information is being supplied with or without the knowledge of the person concerned.

(6) A person to whom a notice is given under subsection (2) is not required by the notice to disclose any information—

- (a) in respect of which a claim to legal privilege could be maintained in any legal proceedings; or
- (b) that the person is prohibited by any enactment applicable in the Islands from disclosing.

(7) A company to which this Part applies that contravenes this section commits an offence and is liable on summary conviction to a fine of \$50,000.

Duty to supply information

151. (1) This section applies to a person if—

- (a) the person is a registrable person with respect to a company to which this Part applies;
- (b) the person knows the facts referred to in paragraph (a);
- (c) the person has no reason to believe that the prescribed beneficial ownership information concerning the person are stated in the company's beneficial ownership register;
- (d) the person has not received a notice from the company under section 150; and
- (e) the circumstances described in paragraphs (a), (b), (c) and (d) have continued for a period of at least one month.

(2) The person shall—

- (a) notify the company of the person's status as a registrable person in relation to the company;
- (b) state the date, to the best of the person's knowledge, on which the person acquired that status; and
- (c) give the company the prescribed beneficial ownership information.

(3) The duty under subsection (2) must be complied with by the end of the period of one month beginning with the day on which the conditions in subsection (1)(a), (b) and (c) were first met with respect to the person.

Beneficial ownership registers

Duty of company to keep beneficial ownership register

152. (1) A company to which this Part applies shall maintain a register setting out the prescribed beneficial ownership information with respect to each person who is a registrable person in relation to the company.

(2) If a company to which this Part applies becomes aware of any change in the particulars registered in relation to a registrable person whose details are entered in its beneficial ownership register, it shall enter in its register—

- (a) details of the change; and
- (b) the date on which the change occurred.

(3) A company shall not enter in its beneficial ownership register—

- (a) the particulars of a registrable person, who is not another company to which this Part applies, or any change in those particulars, unless the particulars or change have been confirmed in accordance with subsection (4); or
- (b) any particulars in relation to a person who is not a registrable person.

(4) The particulars of a registrable person are considered to be confirmed if—

- (a) the person supplied or confirmed to them to the company, whether voluntarily, under a duty imposed by the Ordinance or otherwise;
- (b) another person supplied them to the company with the person's knowledge;

(c) they are provided on the incorporation of the company.

(5) A company to which this Part applies that contravenes this section commits an offence and is liable on summary conviction to a fine of \$50,000.

Duty of company to keep information up to date

153. (1) If a company to which this Part applies knows or has reasonable cause to believe that, in relation to a person whose particulars are stated in the company's beneficial ownership register—

- (a) the person ceases to be a registrable person; or
- (b) any other change occurs as a result of which the particulars stated in the beneficial ownership register for the registrable person are incorrect or incomplete,

the company shall, as soon as reasonably practicable after it learns of the change or first has reasonable cause to believe that the change has occurred, give written notice that complies with the Regulations to the registrable person.

(2) A company is not required to comply with subsection (1) with respect to a person if—

- (a) the company has already been informed that the person has ceased to be a registrable person or of the change in particulars; and
- (b) in the case of a registrable person that is not another relevant company, the information was provided by the registrable person or with his knowledge.

(3) A company that contravenes this section commits an offence and is liable on summary conviction to a fine of \$50,000.

Duty of other persons to keep information up to date

154. (1) This section applies to a person if—

- (a) the person has stated that he is a registrable person, within the meaning of this Part, in response to a notice received under section **150** or the person has reason to believe that beneficial ownership information is stated in a company's beneficial ownership register;

- (b) a change in the beneficial ownership information specified in section 153(1) occurs with respect to the person;
- (c) the person knows of the change;
- (d) the person has no knowledge that the beneficial ownership register has been altered to reflect the change; and
- (e) the person has not received a notice from the company under section 152 by the end of the period of one month beginning with the day on which the change occurred.

(2) A person to which this section applies shall—

- (a) notify the company of the change;
- (b) state the date on which the change occurred; and
- (c) give the company any information needed to update the company's beneficial ownership register.

(3) The duty under subsection (2) shall be complied with by the end of the period of one month beginning with the day on which the person discovered the change.

Rectification of beneficial ownership register by Court

155. (1) If—

- (a) the name of any person as a registrable person is, without sufficient cause, entered in or omitted from a company's beneficial ownership register; or
- (b) default is made or unnecessary delay occurs in entering on the beneficial ownership register the fact that a person has ceased to be a registrable person;

the person aggrieved, any member of the company or any other person who is a registrable person in relation to the relevant company may apply to the Court for rectification of the register.

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

- (a) refuse the application; or
- (b) order rectification of the register and, if it orders rectification, the Court—

- (i) shall direct that notification of the rectification be given to the Registrar; and
- (ii) may order the company to pay damages to the aggrieved party.

Register of beneficial owners of companies

Register of beneficial owners of companies

156. The Commission shall maintain a Register of Beneficial Owners of Companies.

(2) The Register of Beneficial Owners of Companies maintained by the Commission and the information contained in any document provided to the Commission may be kept in such manner as the Commission 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.

(3) The Commission may establish systems and facilities enabling the filing of documents and the provision of information to the Commission in electronic form.

Giving beneficial ownership information to Commission

157. (1) A company to which this Part applies shall, no more than fourteen days after its incorporation, deliver a notice to the Commission in the approved form—

- (a) setting out the prescribed particulars of each person whose particulars are registered in its beneficial ownership register; or
- (b) stating that no registrable person is a beneficial owner of the company.

(2) A company to which this Part applies shall, no more than fourteen days after the any change to the particulars recorded in its beneficial ownership register, deliver a notice to the Commission in the approved form setting out details of the change.

(3) The Commission shall, on receipt of a notice under subsection (1) or (2) register the particulars in the Register of Beneficial Owners of Companies.

(4) A company that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of \$50,000.

Protection of beneficial ownership information

158. (1) The following information is protected information for the purposes of this section and section 159—

- (a) the Register of Beneficial Owners of Companies;
- (b) beneficial ownership information provided to the Commission;
- (c) information concerning a request made to the Commission under section for disclosure of information, including the fact that a request has been made.

(2) Subject to section 159, neither the Commission nor a director, including the Managing Director, an employee or an agent of the Commission or any person acting under the authority of the Commission, shall disclose protected information to any person.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of \$50,000.

Gateways for disclosure

159. (1) Section 158 does not apply to a disclosure made to—

- (a) the Royal Turks and Caicos Islands Police Force pursuant to a request made in accordance with the Beneficial Ownership Registration Regulations; or
- (b) any person or authority prescribed by the Beneficial Ownership Registration Regulations as a person or authority to whom a disclosure of beneficial ownership information may be disclosed.

(2) A person shall not disclose to any other person that a request has been made under subsection (1) for disclosure of beneficial ownership information or that a disclosure of beneficial ownership information has been made under subsection (1) if the disclosure is likely to frustrate or prejudice the purpose for which the request was made.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of \$50,000.

Beneficial Ownership Regulations

160. (1) The Governor may, after consulting with the Commission, make Regulations generally for giving effect to this Part and specifically in respect of anything required or permitted to be prescribed by this Part.

(2) The Beneficial Ownership Regulations may prescribe rules for determining whether, as provided in this Part—

- (a) a person holds a significant interest or majority interest in a company;
- (b) the circumstances in which a person holds an interest indirectly in a company; and
- (c) the application of this Part to protected cell companies.

(3) The Regulations may exempt—

- (a) specified types or descriptions of company from the application of this Part; and
- (b) specified types or description of persons from the requirement to comply with a notice given to them under section 150 or section 153(1).

(4) The Regulations may specify persons who, although falling within section 148, are considered not to be registrable persons.

PART X

REGISTRATION OF CHARGES

Interpretation for this Part

161. (1) In this Part—

“effective date” means—

- (a) in the case of an existing company, the date that the company is registered as a company under Schedule 1; or
- (b) in the case of a company that is continued under this Ordinance, the date of the company’s continuation; or
- (c) in any other case, the date on which this Ordinance comes into force;

“liability” includes a contingent or a prospective liability;

“property” includes future property;

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

(2) A reference in this Part to the creation of a charge includes a reference to the acquisition of property, wherever situated, which—

(a) immediately before its acquisition, was the subject of a charge; and

(b) remains subject to that charge after its acquisition.

(3) For the purpose of subsection (2), the date of creation of the charge is deemed to be the date that the property is acquired.

Creation of charges by a company

162. (1) Subject to its 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 as 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) If 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 that is subject to the charge.

Company to keep register of charges

163. (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 trustee, the name and address of the chargee;
- (e) details of any prohibition or restriction contained in the instrument creating the charge on the company's power to create a future charge ranking in priority to or equally with the charge.

(2) A company that contravenes this section commits an offence and is liable on summary conviction to a fine of \$50,000.

Registration of charges

164. (1) If 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 Islands authorised to act on its behalf; or
- (b) the chargee, or a person authorised to act on the chargee's behalf.

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

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

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

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

(5) The Registrar shall state the date and time on which a charge was registered—

- (a) in the Register of Registered Charges; and
- (b) on the certificate of registration.

(6) A certificate issued under subsection (4) is conclusive evidence that—

- (a) the requirements of this Part as to registration have been complied with; and

- (b) the charge referred to in the certificate was registered on the date and time stated in the certificate.

Variation of registered charge

165. (1) If there is a variation in the terms of a charge registered under section 164, an application for the variation to be registered may be made to the Registrar by—

- (a) the company, or a legal practitioner in the Islands authorised to act on its behalf; or
- (b) the chargee, or a person authorised to act on the chargee's behalf.

(2) On receipt of an application made in accordance with subsection (1), the Registrar shall immediately—

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

(3) 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.

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

Satisfaction or release of charge

166. (1) A notice of satisfaction or release may be filed under this section if—

- (a) all liabilities secured by the charge registered under section 164 have been paid or satisfied in full; or
- (b) a charge registered under section 164 has ceased to affect the company's property, or any part of the company's property.

(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 company's property, or any part of the company's property; and
- (b) if the charge has ceased to affect the company's property, or any part of the company's property,

identify 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.

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

- (a) the company or a legal practitioner in the Islands authorised to act on the company's behalf; or
- (b) the chargee or a legal practitioner in the Islands, acting on behalf of the chargee.

(4) 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 Islands acting on behalf of the chargee; or
- (c) accompanied by a declaration verifying the matters stated in the notice.

(5) If the Registrar is satisfied that a notice filed under subsection (1) complies with subsection (2) or (4), as the case may be, the Registrar shall immediately—

- (a) register the notice; and
- (b) issue a certificate of satisfaction, release or partial satisfaction or release of the charge; and
- (c) send a copy of the certificate to the company and to the chargee.

(6) The Registrar shall state in the Register of Registered Charges and on the certificate issued under subsection (5), the date and time on which the notice filed under subsection (1) was registered.

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

(8) A person who makes a statement in a declaration referred to in subsection (4)(c) that the person knows or has reasonable grounds to believe to be false, deceptive or misleading in a material particular, commits an offence and is liable—

- (a) on summary conviction, to a fine not exceeding \$10,000 or a term of imprisonment for two years or both; or

- (b) on conviction on indictment, to a fine not exceeding \$100,000 or a term of imprisonment for two years or both.

Filing of application under section 164 or 165 by or on behalf of chargee

167. (1) An application for the registration of a charge under section 164 or for the variation of a charge under section 165 made by the chargee, or a person authorised to act on behalf of the chargee, may be filed only by a legal practitioner in the 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 stating the full name and address of a person in the Islands who is authorised by the chargee 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 that is—

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

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

(5) Only a person specified in subsection (1) may file a notice under subsection (4).

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

Priority of relevant charges

168. (1) Subject to subsection (3), a relevant charge on a company's property that is registered in accordance with section 164 has priority over—

(a) a relevant charge on the property that is subsequently registered in accordance with section 164; and

(b) a relevant charge on the property that is not registered in accordance with section 164.

(2) Charges created on or after the effective date that are not registered rank among themselves in the order in which they would rank if this section was not in force.

Priority of other charges

169. A charge created prior to the effective date—

(a) shall continue to rank in the order in which it would have ranked had section 164 not come into force; and

(b) if the charge would have taken priority over a charge created on or after the effective date, that charge shall continue to take such priority after the effective date.

Exceptions to sections 168 and 169

170. Despite sections 168 and 169—

(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 XI

PROTECTED CELL COMPANIES

Interpretation for this Part

171. In this Part—

- “account owner” means in relation to a protected cell account, any person who is the registered holder of shares which are issued by the protected cell company, and linked to that protected cell account;
- “cell” means a cell created by a protected cell company for the purpose of segregating and protecting cellular assets in the manner provided by this Ordinance;
- “cell share capital” means the proceeds of issue of cell shares;
- “cell shares” means shares created and issued by a protected cell company in respect of one of its cells pursuant to the provisions of section 179, the proceeds of the issue or the cell share capital of which shall be comprised in the cellular assets attributable to that cell;
- “cell transfer order” means an order transferring the cellular assets attributable to a cell of a protected cell company;
- “cellular assets” means the assets attributable to a cell of a protected cell company which are assets represented by the proceeds of cell share capital and reserves attributable to the cell and all other assets attributable to the cell;
- “cellular dividend” means dividend payable by a protected cell company in respect of cell shares by reference only to the cellular assets and liabilities, or profits, attributable to the cell in respect of which the cell shares were issued;
- “creditors” includes present, future and contingent creditors;
- “general account” means an account comprising all of the assets and liabilities of a protected cell company which are not linked to a protected cell account of that company;
- “liability” includes any debt or obligation;
- “linked” means referable by means of—
- (a) an instrument in writing including a governing instrument or contract;
 - (b) an entry or other notation made in respect of a transaction in the records of a protected cell company; or
 - (c) an unwritten but conclusive indication,
- which identifies an asset, right contribution, liability or obligation as belonging to a cell;

“non-cellular assets” means the assets of a protected cell company which are not cellular assets;

“receiver” means the person appointed by the Court by a receivership order;

“receivership order” means an order of the court for a receiver to manage the business and cellular assets of or attributable to a cell under section 195(1);

“reserves” includes retained earnings, capital reserves and share premiums;

“transaction” includes, without limitation, any agreement, arrangement, dealing, disposition, circumstance, event or relationship whereby any liability arises or is imposed.

Formation of protected cell companies

Protected cell companies

172. (1) A company limited by shares may, with the written approval of the Commission—

- (a) be incorporated as a protected cell company; or
- (b) if it is not a protected cell company be converted to a protected cell company

(2) A company shall not be converted to a protected cell company unless—

- (a) it is authorised by its articles to convert to a protected cell company; and
- (b) the conversion has been approved by a special resolution of the company’s members.

Application to the Commission for approval

173. (1) Application to the Commission for approval to incorporate a company as a protected cell company shall be made by providing the Commission with—

- (a) a copy of the documents filed under section 9;
- (b) a statement in the approved form signed by or on behalf of the person applying to incorporate the company; and
- (c) such other documents as may be prescribed.

(2) Application to the Commission for approval to convert register a company to a protected cell company shall be made by providing the Commission with—

- (a) a copy of the company's articles; and
- (b) a statement of conversion in the approved form signed by a director of the company.

(3) The Commission may require a person applying for its approval under subsection (1) or (2) to provide it with such documents in addition to those specified in the applicable subsection as it reasonably requires to determine the application.

(4) A company cannot be incorporated as, nor can a company which is not a protected cell company be converted into, a protected cell company unless—

- (a) it carries on, or it will when incorporated or converted carry on, insurance business within the meaning of the Insurance Ordinance; or
- (b) it is or will be of such class or description, or carries on or will carry on, such business or class of business, as is prescribed.

Approval of Commission

174. (1) On receiving an application under section 173, the Commission may, if satisfied that the company is capable of complying with this Ordinance, may approve—

- (a) the incorporation of a company as a protected cell company; or
- (b) the conversion of a company to a protected cell company.

(2) The Commission may—

- (a) impose such conditions on the granting of its approval to the incorporation of a company as, or the conversion of a company to, a protected cell company as it considers necessary to ensure the reputation of the Islands and, in particular, to vet the account owners of protected cell accounts and to ensure compliance with this Ordinance; and
- (b) require the company to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its protected cell accounts business in a particular way.

(3) The Commission may revoke or vary any condition or requirement imposed under subsection (2) by giving notice to the company.

(4) The Commission is not required to provide any reason for its refusal to approve an application made under section 173 and its decision shall not be subject to appeal or review in any court.

Registration of conversion of company to protected cell company

175. (1) If the Registrar is satisfied that an application to register the conversion of a company as a protected cell company complies with this Ordinance and the Regulations and is approved by the Commission, the Registrar shall—

- (a) register the documents filed;
- (b) register the company as a protected cell company; and
- (c) issue a certificate of registration of the company as a protected cell company showing the date that its conversion has effect.

(2) The conversion of a company to a protected cell company has effect on the date of the registration of the conversion stated in the certificate of registration.

Nature of a protected cell company

176. (1) A protected cell company is a single legal person.

(2) The creation by a protected cell company of a cell does not create, in respect of that cell, a legal person separate from the protected cell company.

Cells

Creation of cells, and cellular and non-cellular assets

177. (1) A protected cell company may create one or more cells for the purpose of segregating and protecting cellular assets in the manner provided by this Ordinance.

(2) Each cell of a protected cell company must have its own distinct name or designation.

(3) The powers conferred by subsection (1) must be exercised by the protected cell company in general meeting unless the protected cell company's articles provide that they may be exercised by the directors of the protected cell company;

(4) The assets of a protected cell company are either cellular assets or non-cellular assets.

(5) The non-cellular assets of a protected cell company are the assets of the protected cell company which are not cellular assets.

(6) The cellular assets of a protected cell company are the assets of the protected cell company attributable to the cells of the protected cell company.

Cellular and non-cellular assets, directors' duties

178. (1) It is the duty of the directors of a protected cell company—

- (a) to keep cellular assets separate and separately identifiable from non-cellular assets; and
- (b) to keep cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells.

(2) Subsection (1) does not prevent the directors arranging for cellular assets and non-cellular assets to be held—

- (a) by or through a trustee, custodian or nominee; or
- (b) by a company the shares and capital interests of which may be cellular assets or non-cellular assets, or a combination of both.

(3) There is no default in complying with subsection (1) if cellular assets or non-cellular assets, or a combination of both, are collectively invested, or collectively managed, by an investment manager if the assets in question remain separately identifiable in accordance with that subsection.

(4) If default is made in complying with subsection (1), the directors of the protected cell company are liable to a default fine.

Cell share capital and dividends

Cell shares and share capital

179. (1) A protected cell company may create and issue shares, “cell shares,” in respect of any of its cells.

(2) The proceeds of the issue of shares other than cell shares are non-cellular assets.

Dividends in respect of cell shares

180. (1) A protected cell company may pay a dividend (a “cellular dividend”) in respect of cell shares.

(2) Cellular dividends may be paid in respect of cell shares by reference only to the cellular assets and liabilities, or the profits, attributable to the cell in respect of which the cell shares were issued.

(3) In determining whether or not profits are available for the purpose of paying a cellular dividend, no account is to be taken of—

- (a) the profits and losses, or the assets and liabilities, attributable to any other cell of the protected cell company; or
- (b) non-cellular profits and losses, or assets and liabilities.

Reduction of cell share capital with approval of Court

181. A reduction of cell share capital may be made under the authority of, and in accordance with the terms and conditions of, an order of the Court under this Part but not otherwise

Notice of applications to Court

182. (1) Before an application for an order authorising the reduction of cell share capital is made, public notice of the application shall be given, setting out the terms of the application and the date, time and place of the hearing.

(2) Notice of an application to the Court for an order authorising the reduction of cell share capital must be given to—

- (a) the protected cell company, except where the protected cell company is itself the applicant;
- (b) the receiver (if any) of the cell;
- (c) the liquidator (if any) of the protected cell company;
- (d) all holders of cell shares of the cell, other than the applicant;
- (e) such persons as are specified in regulations under section 204; and
- (f) such other persons as the Court may direct.

(3) Each person specified in subsection (2)(a) to (f) is entitled to make representations to the Court before the order is made.

(4) The Court may dispense with the requirement to give notice to any person specified in subsection (2)(a) to (d).

Order authorising reduction of cell share capital

183. (1) The Court may, on an application being made, by order authorise the protected cell company to reduce the cell share capital—

- (a) if the applicant is the protected cell company, of any of the protected cell company's cells; or
- (b) if the applicant is the holder of cell shares, of the cell in which the cell shares are held.

(2) Without prejudice to the generality of subsection (1), an order under subsection (1) may authorise the protected cell company—

- (a) to extinguish or reduce the liability on any cell shares in respect of cell share capital not paid up; or
- (b) with or without extinguishing or reducing any liability on any cell shares—
 - (i) to cancel any paid-up cell share capital which is lost or unrepresented by available cellular assets; or
 - (ii) to pay off any paid-up cell share capital which exceeds the needs of the protected cell company.

(3) An order of the Court authorising a reduction of cell share capital shall be deemed to be substituted for the corresponding part of the protected cell company's memorandum and have effect as if originally contained therein.

(4) A Court order authorising a reduction of cell share capital does not prejudice anything done in accordance with the memorandum before the date of the order.

(5) The protected cell company may, so far as is necessary, alter its memorandum to reflect a Court order authorising a reduction of cell share capital.

(6) The Court, on hearing an application for an order authorising the reduction of cell share capital, may make an interim order, or adjourn the hearing, conditionally or unconditionally

Accounts, records and registers

184. (1) A protected cell company shall maintain records that will enable financial statements to be prepared in accordance with accepted accounting principles so that the records shall, to the best of the knowledge, information and belief of the directors and

officers of the company, clearly show the share capital, proceeds or rights issues, securities, reserves, assets, liabilities, income and expenses, dividends and distributions that are linked to each protected cell account.

(2) The records referred to in subsection (1) shall be kept in accordance with section 134 and, in the case of a protected cell company to which the Insurance Ordinance applies, the records shall be kept at the company's principal office.

(3) The records maintained with respect to a protected cell account may be inspected by any account owner of that protected cell account, but an account owner shall not have a right to inspect the records relating to any other protected cell account or (in such capacity) in the general account.

(4) A protected cell company shall prepare or cause to be prepared financial statements in respect of each protected cell account.

(5) Subject to subsection (4), a copy of the financial statements of a protected cell account shall be made available to the account owner of a protected cell account at such intervals and for such periods as are agreed between the protected cell company and the account owner of the protected cell account, but in any event shall be made available not less frequently than once in each financial year.

(6) If—

(a) the records maintained with respect to a protected cell account; or

(b) the financial statements of a protected cell account,

are not made available for inspection by any account owner of that protected cell account, the Commission may, on application by the affected account owner, compel immediate production of the records or financial statements.

(7) A protected cell company shall maintain a register of account owners setting out their perspective interest in any protected cell account together with the particulars required in respect of members of the protected cell company.

(8) The register of account owners shall not be open to public inspection and in the case of a protected cell company which is a mutual fund, the register of account owners shall not be open to inspection by any person without the consent of the protected cell company, provided that an account owner shall be entitled to receive a copy of the information in the register pertaining to his interest in the protected cell company.

(9) The register of account owners shall be *prima facie* evidence of any matters by this Ordinance directed or authorised to be inserted therein

Safeguards for creditors

185. (1) The Court shall not make an order authorising the reduction of cell share capital unless it is satisfied—

- (a) that the creditors of the protected cell company entitled to have recourse to the cellular assets attributable to the cell in question consent to the reduction; or
- (b) that those creditors would not be unfairly prejudiced by the reduction.

(2) The Court may dispense with the consent of a creditor upon the protected cell company securing payment of its liability to the creditor in such form and manner as the Court may direct.

(3) Subsections (5) and (6) apply if—

- (a) a creditor whose consent is required under subsection (1) has not, without neglect or default on his part, been given written notice by the protected cell company that his consent to the reduction is required; and
- (b) after the reduction of cell share capital, the cellular assets attributable to the cell in question are or are likely to be insufficient to discharge the claims of creditors in respect of that cell.

(4) In determining the cellular assets attributable to the cell in question under subsection (3)(b), no account is to be taken of the protected cell company's general assets unless there are no creditors in respect of that cell entitled to have recourse to the protected cell company's general assets.

(5) Every person who, at the date of the Court order authorising the reduction of cell share capital, was a holder of cell shares of the cell in question shall be liable to contribute, towards payment of the liability in question, an amount not exceeding that which he would have been liable to contribute if the winding up of the protected cell company had commenced on the day before that date.

(6) Subsection (7) applies if the protected cell company is wound up, or if a receivership order is made under section 195, in respect of the cell of the protected cell company in

relation to which the Court order authorising the reduction of cell share capital was made.

(7) The Court, on the application of the creditor in question and upon proof of the matters set out in subsection (3)(a) may—

- (a) if it thinks fit, settle a list of persons liable to contribute; and
- (b) make and enforce calls and orders against the contributories settled on the list as if they were ordinary contributories in a winding up.

(8) Nothing in subsections (3) to (7) affects the rights of the contributories among themselves.

Liability of holders of cell shares

186. (1) Subject to any other provisions in this Ordinance, if a protected cell company's cell share capital is reduced, no past or present holder of cell shares of the cell in question is liable in respect of any cell share to any call or contribution exceeding the amount of the difference (if any) between the following amounts—

- (a) the amount of the cell share as fixed by the order of the Court authorising the reduction of cell share capital; and
- (b) the amount paid on the cell share or if appropriate, the reduced amount deemed to have been paid on it.

Offences

187. (1) An officer of a protected cell company commits an offence if he—

- (a) makes a statement or declaration that he knows or has reasonable grounds to believe to be false, deceptive or misleading in a material particular;
- (b) intentionally conceals the name of a creditor whose consent is required under this Part to the reduction of the protected cell company's cell share capital;
- (c) intentionally misrepresents the nature or amount of the debt or claim of a creditor; or
- (d) aids, abets, connives in or is privy to any such concealment or misrepresentation as is described in paragraph (a) or (b).

(2) A person who commits an offence under this section is liable—

- (a) on summary conviction, to a fine not exceeding \$10,000 or a term of imprisonment for two years or both;
- (b) on conviction on indictment, to a fine not exceeding \$100,000 or a term of imprisonment for two years or both.

Assets and liabilities

Attribution of non-cellular assets and liabilities

188. (1) Liabilities of a protected cell company not otherwise attributable to any of its cells are to be discharged from the protected cell company's non-cellular assets.

(2) Income, receipts and other property or rights of or acquired by a protected cell company not otherwise attributable to any cell are to be applied to and comprised in the protected cell company's non-cellular assets.

Liability of cellular and non-cellular assets

189. (1) Subject to subsection (2) and (9), if any liability arises which is attributable to a particular cell of a protected cell company—

- (a) the cellular assets attributable to that cell will be primarily liable;
- (b) the protected cell company's non-cellular assets will be secondarily liable, provided that the cellular assets attributable to the relevant cell have been exhausted; and
- (c) the liability will not be a liability of any cellular assets not attributable to the relevant cell.

(2) If the protected cell company has agreed with the person in respect of whom the liability arises that a liability is the liability solely of—

- (a) the protected cell company's non-cellular assets,
or
- (b) the cellular assets attributable to a particular cell of the protected cell company,

subsection (1) will have effect subject to that agreement.

(3) In the case of loss or damage which is attributable to a particular cell of a protected cell company and which is caused by fraud, the loss or damage shall be the liability solely of the protected cell company's non-cellular assets.

(4) Subsection (3) is without prejudice to any liability of any person other than the protected cell company.

(5) The fraud referred to in subsection (3) does not include the fraud of any person making a claim against the protected cell company or any of its assets or of that person's servants, employees, officers or agents.

(6) Any liability not attributable to a particular cell of a protected cell company will be the liability solely of the protected cell company's non-cellular assets.

(7) The liabilities under subsection (1)(a) of the cellular assets attributable to a particular cell of a protected cell company will reduce proportionally until the value of the aggregate liabilities equals the value of those assets but this subsection will be disregarded in assessing the existence and extent of any secondary liability under subsection (1)(b).

(8) The liabilities of the protected cell company's non-cellular assets will reduce proportionally until the value of the aggregate liabilities equals the value of those assets but this subsection will not apply in any situation in which any of the liabilities of the protected cell company's non-cellular assets arises from fraud or by reason of a special agreement such as is referred to in subsection (2).

(9) This section has extra-territorial application.

Disputes as to liability attributable to cells

190. (1) In the event of any dispute as to—

- (a) whether any right is or is not in respect of a particular cell;
- (b) whether any creditor is or is not a creditor in respect of a particular cell;
- (c) whether any liability is or is not attributable to a particular cell; or
- (d) the amount to which any liability is limited,

the Court, on the application of the protected cell company, and without affecting any other right or remedy of any person, may issue a declaration in respect of the matter in dispute.

(2) The Court, on hearing an application for a declaration under subsection (1) may—

- (a) direct that any person shall be heard on the application;
- (b) make an interim declaration, or adjourn the hearing, conditionally or unconditionally;
- (c) make the declaration subject to such terms and conditions as it thinks fit; or
- (d) direct that the declaration is binding upon such persons as are specified.

Position of creditors

191. (1) The rights of creditors of a protected cell company shall correspond with the liabilities provided for in section 189.

(2) No such creditor shall have any rights other than the rights referred to in this section and in sections 189 and 192.

(3) There is implied in every transaction entered into by a protected cell company unless expressly excluded in writing, the following terms—

- (a) that no party will seek, whether in any proceedings or by any other means, to make or attempt to make liable any cellular assets attributable to any cell of the protected cell company in respect of a liability not attributable to that cell;
- (b) that if any party succeeds by any means in making liable any cellular assets attributable to any cell of the protected cell company in respect of a liability not attributable to that cell, that party is liable to the protected cell company to pay a sum equal to the value of that benefit;
- (c) that if any party succeeds in arresting, seizing or attaching by any means, or otherwise levying execution against, any cellular assets attributable to any cell of the protected cell company in respect of a liability not attributable to that cell, that party holds those assets or their proceeds on trust for the protected cell company and must keep those assets or proceeds separate and identifiable as such trust property; and
- (d) that the law applicable to the transaction is the law of the Islands and that the parties submit to the exclusive jurisdiction of the Court.

(4) All sums recovered by a protected cell company as a result of a trust under subsection (3)(c) shall be credited against

any concurrent liability imposed pursuant to the implied term set out in subsection (3)(b).

(5) Any asset or sum recovered by a protected cell company under the implied term set out in subsection (3)(b) or (c) or by any other means in the events referred to in those paragraphs must, after the deduction or payment of any costs of recovery, be applied by the protected cell company so as to compensate the cell affected.

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

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

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

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

Recourse to cellular assets by creditors

192. Without prejudice to the provisions of sections 189 and 192, cellular assets attributable to a cell of a protected cell company—

- (a) are available only to the creditors of the protected cell company who are creditors in respect of that cell and who are thereby entitled, in conformity with the provisions of this Ordinance, to have recourse to the cellular assets attributable to that cell; and
- (b) are absolutely protected from the creditors of the protected cell company who are not creditors in respect of that cell and who

accordingly will not be entitled to have recourse to the cellular assets attributable to that cell.

Transfer of cellular assets from a protected cell company

193. (1) Subject to the provisions of subsections (2) and (3), the cellular assets attributable to any cell of a protected cell company may be transferred to another person, wherever resident or incorporated, and whether or not a protected cell company.

(2) Subsection (1) does not apply to non-cellular assets of a protected cell company.

(3) No transfer of the cellular assets attributable to a cell of a protected cell company may be made except under a “cell transfer order”.

(4) A transfer of cellular assets attributable to a cell of a protected cell company shall not of itself entitle creditors of that protected cell company to have recourse to the assets of the person to whom the cellular assets were transferred.

(5) The provisions of this section are without prejudice to any power of a protected cell company lawfully to make payments or transfers from the cellular assets attributable to any cell of the protected cell company to a person entitled to have recourse to those cellular assets.

(6) A protected cell company does not require a cell transfer order to invest, and change investment of, cellular assets or otherwise to make payments or transfers from cellular assets in the ordinary course of the protected cell company’s business.

Cell transfer orders

194. (1) The Court shall not make a cell transfer order in relation to a cell of a protected cell company unless it is satisfied—

- (a) that the creditors of the protected cell company are entitled to have recourse to the cellular assets attributable to the cell or consent to the transfer; or
- (b) that those creditors would not be unfairly prejudiced by the transfer.

(2) The Court, on hearing an application for a cell transfer order—

- (a) may make an interim order or adjourn the hearing, conditionally or unconditionally; or

(b) may dispense with any of the requirements of subsection (1).

(3) The Court may attach such conditions as it thinks fit to a cell transfer order, including conditions as to the discharging of claims of creditors entitled to have recourse to the cellular assets attributable to the cell in relation to which the order is sought.

(4) The Court may make a cell transfer order in relation to a cell of a protected cell company even if—

- (a) a liquidator has been appointed to act in respect of the protected cell company or the protected cell company has passed a resolution for voluntary winding up; or
- (b) a receivership order has been made in respect of the cell or any other cell of the protected cell company.

Receivership orders

Receivership orders in relation to cells

195. (1) The Court may issue a receivership order and appoint a receiver for the purposes of—

- (a) the orderly winding up of the business of or attributable to the cell; and
- (b) the distribution of the cellular assets attributable to the cell to those entitled to have recourse thereto.

(2) If the Court is satisfied—

- (a) that the cellular assets attributable to a particular cell of the protected cell company (when account is taken of the protected cell company's general assets, unless there are no creditors in respect of that cell entitled to have recourse to the protected cell company's non-cellular assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that cell; and
- (b) that the making of an order under this section would achieve the purposes set out in subsection (1),

the Court may make a receivership order under this section in respect of that cell.

- (3) A receivership order—
- (a) shall not be made if—
 - (i) a liquidator has been appointed to act in respect of the protected cell company; or
 - (ii) the protected cell company has passed a resolution for voluntary winding up;
 - (b) shall cease to be of effect upon the appointment of a liquidator to act in respect of the protected cell company.

(4) A receivership order may be made in respect of one or more cells.

(5) A receivership order does not affect prior acts.

(6) No resolution for the voluntary winding up of a protected cell company, any cell of which is subject to a receivership order, shall be effective without leave of the Court.

Applications for receivership orders

196. (1) An application for a receivership order in respect of a cell of a protected cell company may be made by—

- (a) the protected cell company;
- (b) the directors of the protected cell company;
- (c) any creditor of the protected cell company in respect of that cell;
- (d) any holder of cell shares in respect of that cell;
- (e) the Commission; or
- (f) such other person as may be specified in regulations under section 204.

(2) The Court, on hearing an application—

- (a) for a receivership order; or
- (b) for leave, under section 195(6), for a resolution for voluntary winding up,

may make an interim order or adjourn the hearing, conditionally or unconditionally.

(3) Notice of an application to the Court for a receivership order in respect of a cell of a protected cell company shall be served upon—

- (a) the protected cell company;

(b) such other person as may be specified in regulations under section 204;

(c) the Commission; and

such other persons (if any) as the Court may direct,

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

Functions of receiver and effect of receivership order

197. (1) The receiver of a cell—

(a) shall, within 1 month from the date of the receivership order, deliver to the Commission a certified copy of the order;

(b) may do anything necessary for the purposes set out in section 195(1); and

(c) has all the functions of the directors in respect of the business and cellular assets of or attributable to the cell.

(2) The receiver 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 receivership order to be discharged or varied; or

(c) for an order as to any matter arising in the course of his receivership.

(3) In exercising any functions the receiver is the agent of the protected cell company, and does not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent, or acts in bad faith.

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

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

(a) no proceedings may be instituted or continued by or against the protected cell company in relation to the cell in respect of which the receivership order was made; and

(b) no steps may be taken to enforce any security or in execution of legal process in respect of the business or cellular assets of or attributable to

the cell in respect of which the receivership order was made,
except by leave of the Court, which may be conditional or unconditional.

(6) During the period of operation of a receivership order—

- (a) the functions of the directors shall cease in respect of the business and cellular assets of or attributable to the cell in respect of which the order was made; and
- (b) the receiver of the cell is deemed to be a director of the protected cell company in respect of the general assets of the protected cell company, unless there are no creditors in respect of that cell entitled to have recourse to the protected cell company's general assets.

(7) If default is made in complying with subsection (1)(a), the directors of the protected cell company are liable to a default fine.

Discharge and variation of receivership orders

198. (1) The Court cannot discharge a receivership order unless the Court is satisfied that the purpose for which the order was made—

- (a) has been achieved or substantially achieved; or
- (b) is incapable of achievement.

(2) The Court, on hearing an application for the discharge or variation of a receivership order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

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

(4) Subsection (3) shall not affect or extinguish any right or remedy of a creditor against any other person, including any surety of the protected cell company.

(5) Subject to the provisions of—

- (a) this Ordinance,
- (b) the provisions of the Insolvency Ordinance with respect to preferential payments; and
- (c) any agreement between the protected cell company and any creditor thereof as to the subordination of the debts due to that creditor to the debts due to the protected cell company's other creditors,

(6) The protected cell company's cellular assets attributable to any cell of the protected cell company in relation to which a receivership order has been made must, in the winding up of the business of or attributable to that cell pursuant to the provisions of this Ordinance, be realised and applied proportionately in satisfaction of the protected cell company's liabilities attributable to that cell.

(7) Any surplus must thereafter be distributed, unless the articles provide otherwise—

- (a) among the holders of the cell shares or the persons otherwise entitled to the surplus; or
- (b) where there are no cell shares and no such persons, among the holders of the non-cellular shares,

in each case according to their respective rights and interests in or against the protected cell company.

(8) The Court may, upon discharging a receivership order in respect of a cell of a protected cell company, direct that the cell shall be dissolved on such date as the Court may specify.

(9) On the dissolution of a cell of a protected cell company, the protected cell company may not undertake business or incur liabilities in respect of that cell.

Remuneration of receiver

199. The remuneration of a receiver and any expenses properly incurred by him shall be payable, in priority to all other claims, from—

- (a) the cellular assets attributable to the cell in respect of which the receiver was appointed; and
- (b) to the extent that these may be insufficient, the general assets of the protected cell company.

Liquidation

Provisions in relation to liquidation of protected cell company

200. (1) Notwithstanding any statutory provision or rule of law to the contrary, in the liquidation of a protected cell company, the liquidator—

- (a) shall deal with the protected cell company's assets in accordance with the requirements of section 177(1);
- (b) in discharge of the claims of creditors of the protected cell company, shall apply the protected cell company's assets to those entitled to have recourse thereto in conformity with the provisions of this Ordinance.

(2) The provisions of the Insolvency Ordinance concerning the distribution of the property of a company, apply with the necessary modifications, in relation to a protected cell company, but subject to this Ordinance.

General provisions

Company to inform persons they are dealing with protected cell company

201. (1) A protected cell company shall—

- (a) inform any person with whom it enters into any transaction in respect of a particular cell that the company is a protected cell company; and
- (b) for the purposes of that transaction, identify or specify the cell in respect of which that person is transacting.

(2) Subsection (4) applies where—

- (a) in contravention of subsection (1), a protected cell company fails to inform a person that he is entering into a transaction with a protected cell company, and
- (b) that person is otherwise unaware that, and has no reasonable grounds to believe that, he is entering into a transaction with a protected cell company.

(3) Subsection (4) also applies where—

- (a) in contravention of subsection (1), a protected cell company fails to identify or specify the cell in respect of which a person is entering into a transaction, and
- (b) that person is otherwise unaware of, and has no reasonable basis of knowing, the cell in respect of which he is entering into a transaction.

(4) Where this subsection applies—

- (a) the directors shall incur personal liability to that person in respect of the transaction; and
- (b) the directors shall have a right of indemnity against the general assets of the protected cell company, unless they were fraudulent, reckless or negligent, or acted in bad faith.

(5) Subsection (4) applies even though there is a provision to the contrary in the protected cell company's articles of incorporation or in any contract with the protected cell company or otherwise.

(6) The Court may nonetheless relieve a director of all or part of his personal liability under subsection (4)(a) if the Court is satisfied that it is fair to relieve him because—

- (a) he was not aware of the circumstances giving rise to his liability and, in being not so aware, he was neither fraudulent, reckless or negligent, nor acted in bad faith; or
- (b) he expressly objected, and exercised such rights as he had as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability.

(7) Where, under subsection (6), the Court relieves a director of all or part of his personal liability under subsection (4)(a), the Court may order that the liability in question shall instead be met from such of the cellular or general assets of the protected cell company as may be specified in the order.

(8) Any provision in the articles of incorporation of a protected cell company, and any other contractual provision under which the protected cell company may be liable, which purports to indemnify directors in respect of conduct which would otherwise disentitle them to an indemnity against general assets by virtue of subsection (4)(b), is void.

Suits and actions against the Commission

202. (1) No suit or action shall lie against the Commission or any person acting on its behalf in respect of anything done or committed to be done in its official capacity in good faith without negligence.

(2) Nothing in subsection (1) shall be deemed to interfere with applications or references to the Court under the Insolvency Ordinance.

Charges of cell assets

203. (1) A protected cell company may create any charge, mortgage, or other form of security interest in respect of assets attributable to a particular cell in relation to—

- (a) any liability attributable to that cell; or
- (b) any liability which is not attributable to that cell.

(2) A protected cell company cannot exercise the powers referred to in subsection (1) without the written consent of all the members of the relevant cell.

(3) Without affecting the generality of section 176, the Insolvency Ordinance applies in respect of each cell of a protected cell company as if each cell were a separate company.

Regulations concerning protected cell companies

204. (1) Without limiting the generality of section 300, the Regulations may make provision in respect of any of the following matters—

- (a) restricting the business which protected cell companies may carry out;
- (b) the conduct of the business of protected cell companies;
- (c) the manner in which protected cell companies may carry on, or hold themselves out as carrying on, business;
- (d) the form and content of the accounts of protected cell companies;
- (e) the winding up, administration or receivership of protected cell companies;
- (f) continuation in accordance with Part XIII of companies which are, or are equivalent to, protected cell companies.

(2) The Regulations may modify provisions of this Ordinance in their application to protected cell companies, but only to such extent as is necessary to prevent conflict between this Part and the other Parts of this Ordinance.

Saving for directors' functions

205. This Part, subject to the powers of delegation by directors, does not affect the functions of the directors of a protected cell company in respect of the affairs of the protected cell company including the due administration of the affairs of each cell except as expressly provided.

Saving for internal arrangements

206. (1) This Ordinance does not prevent, in the ordinary course of business of a protected cell company, arrangements—

- (a) as between cells, or
- (b) as between cells and the protected cell company,
- (c) in relation to the protected cell company's business or to the protected cell company's business attributable to the cells concerned.

(2) In respect of any arrangements of a kind mentioned in subsection (1), the protected cell company shall make the necessary adjustments to the accounting records of the protected cell company and those attributable to its cells.

(3) This section does not affect the generality of section 176.

PART XII

MERGER, CONSOLIDATION, SALE OF ASSETS, FORCED REDEMPTIONS, ARRANGEMENTS AND DISSENTERS

Interpretation for purposes of this Part

207. (1) In this Part—

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

“consolidation” means the consolidating of two or more constituent companies into a new company;

“constituent company” means a company that is participating in a merger or consolidation with one or more other companies;

“merger” means the merging of two or more constituent companies into one of the constituent companies;

“parent company” means a company that owns at least 90% 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 section 2 do not apply to this Part.

Approval of merger and consolidation

208. (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 class entitled to vote on the merger or consolidation; and
 - (ii) a specification of each 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 of each; and

(d) in respect of a merger, a statement of any amendment to the 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 articles of incorporation that comply with this Ordinance 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 each class of shares that are entitled to vote on the merger or consolidation as a class if the articles so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the 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.

Registration of merger and consolidation

209. (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 articles of each constituent company was registered by the Registrar; and

(c) the manner in which the merger or consolidation was authorised with respect to each constituent company.

(2) The articles of merger or consolidation shall be filed with the Registrar together with—

(a) in the case of a merger, any resolution to amend the articles of the surviving company; and

(b) in the case of a consolidation, articles for the consolidated company that comply with this Ordinance.

(3) If the Registrar is satisfied that the requirements of this Ordinance in respect of merger or consolidation have been complied with and that the proposed name of the surviving or consolidated company complies with the requirements of Part III and is a name under which the company could be registered under section 10, the Registrar shall—

(a) register—

(i) the articles of merger or consolidation; and

(ii) in the case of a merger, an amendment to the articles of the surviving company or, in the case of a consolidation, the articles of the consolidated company;

(b) in the case of a consolidation, allot a unique number to the consolidated company; and

(c) issue a certificate of merger or consolidation 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 Ordinance in respect of the merger or consolidation.

Merger with subsidiary

210. (1) A parent company may merge with one or more subsidiary companies, without the authorisation of the members of any of the subsidiary companies, 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 or each; and
- (d) a statement of any amendment to the 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) The parent company shall provide a copy or an outline of the plan of merger 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 articles of each constituent company were registered by the Registrar; and
- (c) if the parent company does not own all the shares in each subsidiary company to be merged, the date on which a copy or outline of the plan of merger 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 articles of the surviving company.

(7) If the Registrar is satisfied that the requirements of this section have been complied with and that the proposed name of the surviving company complies with the requirements of Part III

and is a name under which the company could be registered under section 10, the Registrar shall—

- (a) register—
 - (i) the articles of merger; and
 - (ii) any amendment to the articles of the surviving company; and
- (b) issue a certificate of merger.

(8) A certificate of merger issued by the Registrar is conclusive evidence of compliance with all requirements of this Ordinance in respect of the merger.

Effect of merger or consolidation

211. (1) A merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such subsequent date, not exceeding thirty 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 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 articles of the surviving company are automatically amended to the extent, if any, that changes in its articles are contained in the articles of merger;
- (c) in the case of a consolidation, the articles filed with the articles of consolidation is the articles of the consolidated company;
- (d) assets of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and
- (e) the surviving company or the consolidated company is liable for all claims, debts, liabilities and obligations of each constituent company.

(3) If 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 of a constituent company, is released or impaired by the merger or consolidation; and

(b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any member, director, officer or agent of a constituent company, 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 of the consolidated or surviving company, as the case may be; or

(ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.

(4) The Registrar shall strike off the Register of Companies—

(a) a constituent company that is not the surviving company in a merger; or

(b) a constituent company that participates in a consolidation.

(5) On striking a company off under subsection (4), the Registrar shall issue a certificate of dissolution certifying that the company has been dissolved.

Merger or consolidation with foreign company

212. (1) One or more companies may merge or consolidate with one or more foreign companies in accordance with this section, including if 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 foreign companies 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 Ordinance with respect to merger or consolidation, as the case may be, and a foreign company shall

comply with the laws of the jurisdiction in which it is incorporated; and

- (b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside the Islands, it shall file—
 - (i) an agreement that a service of process may be effected on it in the 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 Ordinance 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 Ordinance 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 a dissenting member of a constituent company that is a company registered under this Ordinance the amount, if any, which the dissenting member is entitled to under this Ordinance 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, such evidence of the merger or consolidation as the Registrar considers acceptable.

(3) The effect under this section of a merger or consolidation is the same as in the case of a merger or consolidation under section 208 if the surviving company or the consolidated company is incorporated under this Ordinance, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside the Islands, the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 208 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 Ordinance, the merger or

consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such subsequent date, not exceeding thirty 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 Islands, the merger or consolidation is effective as provided by the laws of that other jurisdiction.

Disposition of assets

213. Subject to the articles of a company, any sale, transfer, lease, exchange or other disposition, other than a mortgage, charge or other encumbrance or the enforcement of such an encumbrance, of more than 50% in value of the assets of the company, other than a transfer pursuant to the power described in section 24(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) on 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 a member 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 a member is entitled to consent to the sale, transfer, lease, exchange or other disposition.

Redemption of minority shares

214. (1) Subject to the 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) On 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

215. (1) In this section, “arrangement” includes—

- (a) an amendment to the 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 Ordinance with one or more other companies, if the surviving company or the consolidated company is a company incorporated under this Ordinance;
- (d) a separation of two or more businesses carried on by a company;
- (e) any sale, transfer, exchange or other disposition of any part of the assets or business of a company to any person in exchange for shares, debt obligations or other securities of that other person, or money or other assets, or a combination of each;
- (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 of each;
- (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 its creditors or members, 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 Ordinance or otherwise permitted.

(3) On approval of the plan of arrangement by the directors, the company shall apply to the Court for approval of the proposed arrangement.

(4) The Court may, on an application 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 twenty days immediately following the date of the order, and in making the order the Court may—

- (a) determine what notice, if any, of the proposed arrangement is to be given to any person;
- (b) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;
- (c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under section 217;
- (d) conduct a hearing and permit an interested person to appear; and
- (e) approve or reject the plan of arrangement as proposed or with such amendments as it may direct.

(5) If 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 to the plan of arrangement.

(6) The directors of the company, on 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) On the registration of the articles of arrangement, the Registrar shall issue a certificate certifying that the articles of arrangement have been registered.

(10) An arrangement is effective on the date the articles of arrangement are registered by the Registrar or on such date subsequent to the date of arrangement, not exceeding thirty days, as is stated in the articles of arrangement.

Arrangement if company in voluntary liquidation

216. The voluntary liquidator of a company may approve a plan of arrangement under section 215 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

217. (1) A member of a company is entitled to payment of the fair value of his shares on 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 made in accordance with 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 24(3);
- (d) a redemption of his shares by the company in accordance with section 214; and
- (e) an arrangement, if permitted by the Court.

(2) A member who desires to exercise his entitlement under subsection (1) shall give to the company, before the meeting of members at which the action is submitted to a vote, or at the meeting but before the vote, written objection to the action; but an objection is not required—

- (a) from a member to whom the company did not give notice of the meeting in accordance with this Ordinance; or
- (b) if the proposed action is authorised by written consent of members without a meeting.

(3) An objection under subsection (2) shall include a statement that the member proposes to demand payment for his shares if the action is taken.

(4) Within twenty 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.

(5) A member to whom the company was required to give notice who elects to dissent shall, within twenty days immediately following the date on which the notice referred to in subsection (4) is given, give to the company a written notice of his decision to elect to dissent, stating—

- (a) his name and address;
- (b) the number and classes of shares in respect of which he dissents; and
- (c) a demand for payment of the fair value of his shares;

and a member who elects to dissent from a merger under section 212 shall give to the company a written notice of his decision to elect to dissent within twenty days immediately following the date on which the copy or outline of the plan of merger is given to him in accordance with section 212.

(6) A member who dissents shall do so in respect of all shares that he holds in the company.

(7) On the giving of a notice of election to dissent, the member to whom the notice relates ceases to have any of the rights of a member except the right to be paid the fair value of his shares.

(8) Within seven days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within seven days immediately following the date on which the proposed action is put into effect, whichever is later—

(a) the company or, in the case of a merger or consolidation, the surviving company or the consolidated company shall make a written offer to each dissenting member to purchase his shares at a specified price that the company determines to be their fair value; and

(a) if, within thirty days immediately following the date on which the offer is made, the company making the offer and the dissenting member agree on the price to be paid for his shares, the company shall pay to the member the amount in money on the surrender of the certificates representing his shares.

(9) If the company and a dissenting member fail, within the period of thirty days referred to in subsection (8), to agree on the price to be paid for the shares owned by the member, within twenty days immediately following the date on which the period of thirty days expires, the following shall apply—

(a) the company and the dissenting member shall each designate an appraiser;

(b) the two designated appraisers together shall designate an appraiser;

(c) the three appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day before 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 on the surrender by him of the certificates representing his shares.

(10) Shares acquired by the company under subsection (8) or (9) shall be cancelled but if the shares are shares of a surviving company, they shall be available for reissue.

(11) The enforcement by a member of his entitlement under this section excludes the enforcement by the member of a right to which he might otherwise be entitled by virtue of his holding shares, except that this section does not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.

(12) Only subsections (1) and (8) to (11) shall apply in the case of a redemption of shares by a company under section 214 and in such case the written offer to be made to the dissenting member pursuant to subsection (8) shall be made within seven days immediately following the direction given to a company pursuant to section 214 to redeem its shares.

Schemes of arrangement

218. (1) If 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 called 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 Ordinance, by the administrator;
- (e) if a voluntary liquidator of the company is appointed under Part XV, by the voluntary liquidator; or
- (f) if an Insolvency Ordinance 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—

- (a) on all the creditors or class of creditors, or the members or class of members, as the case may be, and on the company; or
- (b) in the case of a company in voluntary liquidation or in liquidation under the Insolvency Ordinance, 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) takes effect when a copy of the order is filed with the Registrar.

(5) A copy of an order of the Court made under subsection (3) shall be annexed to each copy of the company's articles 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) If the Court makes an order with respect to a company under this section, sections 207 to 217 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 \$10,000.

PART XIII

CONTINUATION

Foreign company may continue under this Ordinance

219. (1) Subject to subsection (2), a foreign company may continue as a company incorporated under this Ordinance in accordance with this Part if the laws of the jurisdiction in which the foreign company is registered permit it to continue in the Islands.

(2) A foreign company may not continue as a company incorporated under this Ordinance if—

- (a) it is in liquidation, or subject to equivalent insolvency proceedings, in another jurisdiction;
- (b) a receiver or manager is appointed in relation to any of its assets;
- (c) it has entered into an arrangement with its creditors, that has not been concluded; or
- (d) an application made to a Court in another jurisdiction for the liquidation of the company or for the company to be subject to equivalent insolvency proceedings has not been determined.

Application to continue under this Ordinance

220. (1) A foreign company may apply to continue under this Ordinance by filing—

- (a) a certified copy of its certificate of incorporation, or such other document as evidences its incorporation, registration or formation;
- (b) articles that comply with subsections (2) and (3);
- (c) evidence satisfactory to the Registrar that the application to continue and the proposed articles have been approved—
 - (i) by a majority of the directors or the other persons who are responsible for exercising the powers of the company; or
 - (ii) in such other manner as may be established by the company for exercising the company's powers; and
- (d) evidence satisfactory to the Registrar that—
 - (i) the laws of the jurisdiction in which the foreign company is registered permit it to continue in the Islands; and
 - (ii) the company is not disqualified from continuing in the Islands under section 219(2).

(2) The Regulations may specify evidence that the Registrar may rely on for the purposes of subsection (1)(d).

(3) Subject to subsection (4), the articles of a company continuing under this Ordinance shall comply with section 13.

(4) The articles of a company applying to continue under this Ordinance—

- (a) shall, in addition to the matters required to be stated under section 13, 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 the foreign company is incorporated, registered or formed; and
 - (iii) the date on which the foreign company was incorporated, registered or formed; and
- (b) shall state the matters specified in section 13(2).

(5) The articles of a foreign company applying to continue under this Ordinance shall be signed by, or on behalf of, the persons who have approved them under subsection (1)(c).

Continuation into the Islands

221. (1) If the Registrar is satisfied that the requirements of this Ordinance in respect of continuation are complied with, on receipt of the documents specified in section 220, the Registrar shall—

- (a) register the documents;
- (b) allot a unique number to the continued company; and
- (c) issue a certificate of continuation to the continued company.

(2) A certificate of continuation issued by the Registrar under subsection (1) is conclusive evidence that—

- (a) the requirements of this Ordinance as to continuation have been complied with; and
- (b) the foreign company is continued as a company incorporated under this Ordinance under the name designated in its articles on the date specified in the certificate of continuation.

(3) The Registrar may refuse to continue a foreign company under this Part if he is of the opinion that it would be contrary to the public interest to do so.

Effect of continuation

222. (1) When a foreign company is continued under this Ordinance—

- (a) this Ordinance applies to the company as if it had been incorporated under section 10 after the commencement date;
- (b) the company is capable of exercising the powers of a company incorporated under this Ordinance;
- (c) the company is not to be treated as a company incorporated under the laws of a jurisdiction outside the Islands; and
- (d) the articles filed under section 220(1) becomes the company's articles.

(2) The continuation of a foreign company under this Ordinance 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) any conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and any cause existing, against the continued company or against any member, director, officer or agent of the company, is not released or impaired by its continuation as a company under this Ordinance; and
- (b) any civil or criminal proceedings pending by or against the company, or against any member, director, officer or agent of the company, when the Registrar issues a certificate of continuation are not abated or discontinued by its continuation as a company under this Ordinance, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent of the company, as the case may be.

(4) The shares in the foreign company that were outstanding immediately before the issue by the Registrar of a certificate of continuation are deemed to have been issued in conformity with this Ordinance.

Continuation out of the Islands

223. (1) Subject to subsection (2) and its articles, a company for which the Registrar would issue a certificate of good standing pursuant to section 294 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 Islands in the manner provided under those laws.

(2) If a company that wishes to continue as a company incorporated under the laws of a jurisdiction outside the Islands has a charge registered in respect of the property of the company under section 164 and the charge has not been released or satisfied, it shall, before continuing and provided that the charge does not contain a covenant prohibiting continuation of the company outside the Islands, provide a written declaration addressed to the Registrar specifying that—

- (a) a notice of satisfaction or release in respect of the charge has been filed and registered under section 166;
- (b) if paragraph (a) does not apply, the chargee to whom the registered charge relates has been notified in writing of the intention to continue the company as a company incorporated under the laws of a jurisdiction outside the Islands and the chargee has given his consent or has not objected to the continuation; or
- (c) if paragraph (a) does not apply and the chargee, after notification under paragraph (b), has not given his or her consent or has objected to the continuation, the chargee's interest secured by the registered charge shall not be diminished or in any way compromised by the continuation and the charge shall operate as a liability to which subsection (10)(a) applies.

(3) A company that continues as a company incorporated under the laws of a jurisdiction outside the Islands does not cease to be a company incorporated under this Ordinance, unless—

- (a) the laws of the jurisdiction outside the Islands permit the continuation and the company has complied with those laws;
- (b) the registered agent of the company has filed with the Registrar the required notice of continuance under subsection (6); and

(c) the Registrar has issued a certificate of discontinuance of the company under subsection (7).

(4) For the purposes of establishing compliance with subsection (3)(a), the company shall file a declaration confirming—

(a) that the laws of the jurisdiction outside the Islands permit the continuation of the company; and

(b) the company has complied with those laws.

(5) Subject to subsections (3) and (4), if the continuation of a company under the laws of a jurisdiction outside the Islands is dependent upon the issuing of a certificate of discontinuance under subsection (7)(a), the Registrar may rely upon a provisional certificate of continuance (however described) issued in respect of that company under the laws of that jurisdiction as a basis to issue the certificate of discontinuance.

(6) The registered agent of a company that continues as a company incorporated under the laws of a jurisdiction outside the Islands may file a notice of the company's continuance.

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

(a) issue a certificate of discontinuance of the company;

(b) strike 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*.

(8) The Registrar may publish the striking off of a company in such other manner as he considers appropriate.

(9) A certificate of discontinuance issued under subsection (7) is prima facie evidence that—

(a) the requirements of this Ordinance 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.

(10) If a company is continued under the laws of a jurisdiction outside the 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 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 of the company, is released or impaired by its continuation as a company under the laws of the jurisdiction outside the Islands;
- (c) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent of the company, are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside the Islands, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent of the company, as the case may be; and
- (d) service of process may continue to be effected on the registered agent of the company in the Islands in respect of any claim, debt, liability or obligation of the company during its existence as a company under this Ordinance.

(11) Nothing contained in or done pursuant to subsection (2) shall operate as a bar to any legal action a chargee may be entitled to in law or equity against the company.

PART XIV

MEMBERS' REMEDIES

Interpretation for this Part

224. 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.

Restraining or compliance order

225. (1) If a company or a director of a company engages in, proposes to engage in or has engaged in, conduct that contravenes this Ordinance or the company's articles, 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 restrain the company or director from engaging in, conduct that contravenes this Ordinance or the articles.

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

(3) The Court may, 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.

Derivative actions

226. (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 shall 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—
 - (i) the directors; or
 - (ii) the determination of the shareholders or members as a whole.
- (4) Unless the Court otherwise orders—
- (a) the applicant shall give the company at least twenty eight days' notice of an application for leave under subsection (1); and
 - (b) 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 for leave 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.

Costs of derivative action

227. (1) If the Court grants leave to a member to bring or intervene in proceedings under section 226, 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.

Powers of Court when leave granted under section 226

228. The Court may, at any time after granting a member leave under section 226, make any order it considers appropriate in relation to proceedings brought by the member or in which the member intervenes, including an order—

- (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.

Compromise, settlement or withdrawal of derivative action

229. No proceedings brought by a member or in which a member intervenes with the leave of the Court under section 226 may be settled or compromised or discontinued without the approval of the Court.

Personal actions by members

230. A member of a company may bring an action against the company for breach of a duty owed by the company to the member, in the capacity of member.

Representative actions

231. If 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—

- (a) appoint that member to represent all or some of the members having the same interest; and
- (b) for that purpose, make such order as it thinks fit, including an order—
 - (i) as to the control and conduct of the proceedings;
 - (ii) as to the costs of the proceedings; and
 - (iii) directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the members represented.

Prejudiced members

232. (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 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, the Court 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 company's articles;
- (e) appointing a receiver of the company;
- (f) appointing a liquidator of the company under the Insolvency Ordinance;
- (g) directing the rectification of the records of the company; and
- (h) setting aside a decision made or action taken by the company or its directors in breach of this Ordinance or the company's articles.

(3) The Court shall not make an order 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.

PART XV

LIQUIDATION, STRIKING-OFF AND DISSOLUTION

Liquidation

Interpretation for this Part

233. (1) In this Part, unless the context otherwise requires—
“creditor” has the meaning specified in the Insolvency Ordinance;

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

“licensed insolvency practitioner” means a person holding a licence to act as an insolvency practitioner issued under the Insolvency Ordinance;

“regulated person” means a person holding a licence or authorisation, by whatever name called, issued or granted under a regulatory Ordinance;

“regulatory Ordinance” has the meaning specified in the Financial Services Commission Ordinance;

“secured creditor” has the meaning specified in the Insolvency Ordinance;

“unsecured creditor” has the meaning specified in the Insolvency Ordinance; and

“voluntary liquidation” has the meaning specified in section 240.

(2) For the purposes of this Part, 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.

Filing of notices by voluntary liquidators

234. 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 ordinarily resident in the 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 43; or

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

Application of this Part

235. (1) A company may only be liquidated by a voluntary liquidator appointed under this Part if the company—

(a) has no liabilities; or

(b) is able to pay its debts as they fall due and the value of its assets equals or exceeds its liabilities.

(2) A company may be liquidated under this Part even though a charge is registered in respect of the company’s

property under section 164 and the liquidator shall be bound to give effect to the rights and priority of the claims of the company's secured creditors.

Declaration of solvency

236. (1) Where it is proposed to appoint a voluntary liquidator, the directors of the company shall—

- (a) make a declaration of solvency 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; and
- (b) approve a liquidation plan specifying—
 - (i) the reasons for the liquidation of the company;
 - (ii) their estimate of the time required to liquidate the company;
 - (iii) whether the liquidator is authorised to carry on the business of the company if he determines that to do so would be necessary or in the best interests of the creditors or members of the company;
 - (iv) the name and address of each individual to be appointed as liquidator and the remuneration proposed to be paid to each liquidator; and
 - (v) whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.

(2) Subject to section 242(2), a declaration of solvency has no effect unless—

- (a) it is made on a date no more than four weeks earlier than the date of the resolution to appoint a voluntary liquidator; and
- (b) it 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.

(3) A liquidation plan has no effect for the purposes of section 241(1)(e) unless it is approved by the directors no more

than six weeks prior to the date of the resolution to appoint a voluntary liquidator.

(4) A director making a declaration of solvency under this section without having reasonable grounds for the opinion that—

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

commits an offence and is liable—

- (a) on summary conviction, to a fine not exceeding \$25,000 or a term of imprisonment for one year or both;
- (b) on conviction on indictment, to a fine not exceeding \$100,000 or a term of imprisonment for two years or both.

Appointment of voluntary liquidator

237. (1) Subject to section 238, 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).

(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 articles for the company's existence;
- (b) upon the happening of such event as may be specified in its 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 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 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 a member is 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 a member is entitled to consent to the liquidation plan.
- (5) Where two or more joint voluntary liquidators are appointed, whether under this section or as a result of an appointment under section 244, the functions and powers of the voluntary liquidator may be performed or exercised by any one of the voluntary liquidators or by any two or more of them together, except so far as the resolution of appointment otherwise provides.
- (6) The Regulations may provide for descriptions or categories of individuals who are eligible to be appointed as the voluntary liquidator of a company under this section, or act, as the voluntary liquidator of a company.

Appointment of voluntary liquidator of regulated person

- 238.** (1) A resolution to appoint a voluntary liquidator shall not be passed under section 237 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 placed into voluntary liquidation; and
 - (b) approved the appointment of the individual proposed as voluntary liquidator.
- (2) The Regulations may specify that, in relation to certain specified categories or descriptions of regulated person, the

voluntary liquidator or, where joint voluntary liquidators are appointed, at least one of the voluntary liquidators, shall be a licensed insolvency practitioner.

(3) Any resolution passed in contravention of subsection (1)(a) and any appointment of a liquidator who has not been approved by the Commission under subsection (1)(b) is void and of no effect.

Control of voluntary liquidation of regulated person

239. (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) the liquidation records and accounts; and
- (b) any reports that the liquidator 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 the liquidator is required 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.

Duration of liquidation

240. The voluntary liquidation of a company commences at the time at which notice of the voluntary liquidator's appointment is filed under section 242(1)(a) and continues until it is terminated in accordance with section 250 or section 251 and throughout this period, the company is referred to as being "in voluntary liquidation".

Circumstances in which liquidator may not be appointed

241. (1) A voluntary liquidator shall not be appointed under section 237 by the directors or the members of a company if—

- (a) an administrator or liquidator of the company has been appointed under the Insolvency Ordinance;

- (b) an application has been made to the Court to appoint an administrator or a liquidator of the company under the Insolvency Ordinance and the application has not been dismissed;
- (c) the person to be appointed voluntary liquidator has not consented in writing to his appointment;
- (d) the directors of the company have not made a declaration of solvency complying with section 236; or
- (e) the directors have not approved a liquidation plan under section 236(1)(b).

(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, the directors or the members, as the case may be, shall, as soon as practicable, give the liquidator notice of his appointment.

(4) A resolution to appoint a voluntary liquidator is void and of no effect unless the voluntary liquidator files notice of his appointment on or before the fourteenth day following the date of the resolution.

Notice and advertisement of liquidation

242. (1) Where a voluntary liquidator is appointed under section 237, the liquidator shall—

- (a) within fourteen days of the commencement of the liquidation date of his appointment, file the following documents:
 - (i) a notice of appointment;
 - (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 thirty days of commencement of the liquidation, advertise notice of his appointment in the manner prescribed.

(2) Subsection (1)(a)(ii) does not require the liquidator to file the statement of the company's assets and liabilities required under section 236(2) to be attached to the declaration of solvency, although the statement may be filed.

(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.

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

Effect of appointment of voluntary liquidator

243. (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 may, after the commencement of the voluntary liquidation—

- (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.

Appointment of additional voluntary liquidator

244. (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.

Resignation of voluntary liquidator

245. (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 fourteen days' notice of his 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 fourteen days' notice of the voluntary liquidator's resignation.

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

(6) A voluntary liquidator who resigns shall file a notice of his resignation and, subject to subsection (7), the 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 the resignation.

Removal of voluntary liquidator

246. (1) A voluntary liquidator may be removed only 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 role as voluntary liquidator; or
- (iii) for some other reason, he 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; or
- (b) where the company is a regulated person, the Commission.

(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 fourteen 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.

Vacancy in office of liquidator

247. (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 has 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 seven days of his appointment, file a notice of appointment ; and

- (b) within thirty days of his appointment, advertise the appointment in the prescribed manner.

Duties of voluntary liquidator

248. (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 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 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.

(2) A transfer, including a prior transfer, described in section 24(3) of all or substantially all of the assets of a company incorporated under this Ordinance 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

249. (1) In order to perform the duties imposed on him under section 248, a voluntary liquidator has all powers of the company that are not reserved to the members under this Ordinance or in the 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 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 243(3)(a), as the liquidator may determine to be necessary or to be in the best interests of the creditors or members of the company;
- (i) to execute any contract, agreement or other instrument in the name of the company or in the name of the liquidator; and
- (j) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

(2) Notwithstanding subsection (1)(h), a voluntary liquidator shall not, without the permission of the Court, carry on the business of a company in voluntary liquidation for a period of more than two years.

Termination of voluntary liquidation

250. (1) The Court may, at any time after the appointment of a voluntary liquidator under section 237, make an order terminating the liquidation if it is satisfied that it would be just and equitable to do so.

(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.

(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.

(4) 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.

(5) 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.

(6) 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.

(7) Where the Court makes an order under subsection (1), the person who applied for the order shall, within five working 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
- (b) file a sealed copy of the order.

Completion of liquidation

251. (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 certifying that the company has been dissolved.

(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.

(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.

Liquidation where company insolvent

Company in voluntary liquidation unable to pay its debts

252. (1) A voluntary liquidator of a company in voluntary liquidation who is of the opinion that the company is insolvent, shall immediately send a written notice to Commission.

(2) A voluntary liquidator who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$50,000.

Liquidator to call meeting of creditors

253. (1) A voluntary liquidator who sends a notice to the Commission under section 252(1) shall call a meeting of creditors of the company to be held within twenty one 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 the Insolvency Ordinance by a liquidator appointed by the members of a company and the provisions of the Insolvency Ordinance relating to the calling and holding of meetings by such a liquidator apply.

(3) Without affecting any acts carried out by the voluntary liquidator before sending a notice to the Commission under section 252(1), the provisions of the Insolvency Ordinance restricting the powers of a liquidator appointed by the members of a company before the first meeting of creditors is held apply to a voluntary liquidator appointed under this Part as if a liquidator appointed by the members under the Insolvency Ordinance.

(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 Commission may apply to the Court ex parte for the appointment of 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 \$25,000.

Insolvency Ordinance to apply

254. (1) From the time that a voluntary liquidator appointed under Division 1 first becomes aware that the company is not, or will not be, able to pay its debts he shall conduct the liquidation as if he had been appointed liquidator under the Insolvency Ordinance.

(2) Where the voluntary liquidator of a company files a notice with the Commission under section 252(1)—

- (a) the Insolvency Ordinance 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 this Part.

Application by creditor, company insolvent

255. (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 Ordinance 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.

Striking off and dissolution

Striking company off Register of Companies

256. (1) The Registrar may strike a company off the Register of Companies if—

- (a) the company—
 - (i) does not have a registered agent;
 - (ii) fails to file any return, notice or document required to be filed under this Ordinance or the Regulations;
- (b) the registrar 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 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; or
- (d) the company, being a regulated company, has its licence cancelled or revoked by the Commission;
- (e) the company, being a non-profit company, carries on any activities that are inconsistent with the purposes stated in its articles or the purposes specified in section 8(1).

(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 of Companies, the Registrar 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 of Companies 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 of Companies on a date specified in the notice which shall be no less than thirty days after the date of the notice; and
- (b) publish a notice of intention to strike the company off the Register of Companies 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 company off the Register of Companies.

(5) The Registrar—

(a) shall publish a notice of the striking of a company from the Register of Companies in the *Gazette*; and

(b) may publish it in such other way as he considers appropriate.

(6) The striking of a company off the Register of Companies 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).

Appeal

257. (1) Any person who is aggrieved by the striking of a company off the Register of Companies under section 256 may, within ninety 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 of Companies, suspend the operation of the striking off upon such terms as he considers appropriate, pending the determination of the appeal.

Effect of striking off

258. (1) Where a company has been struck off the Register of Companies, 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 of Companies, the company, or a director, member, liquidator or receiver thereof, may—

(a) make application for restoration of the company to the Register of Companies;

(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 of Companies 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 260, “liquidator” means a voluntary liquidator and an Insolvency Ordinance liquidator.

Dissolution of company struck off the Register of Companies

259. Where a company that has been struck off the Register of Companies under section 256 remains struck off continuously for a period of ten years, it is dissolved with effect from the last day of that period.

Restoration of company to Register of Companies by Registrar

260. (1) Where a company has been struck off the Register of Companies, but not dissolved, the Registrar may, upon receipt of an application 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 of Companies under section 256(1)(a)(i), the Registrar shall not restore the company to the Register unless he is satisfied that—

(a) a licensed person has agreed to act as registered agent of the company; and

(b) it would be fair and reasonable for the company to be restored to the Register.

(3) An application to restore a company to the Register of Companies under subsection (1) may be made by the company, or a creditor, member or liquidator of the company and shall be made within ten years of the date of the notice published in the *Gazette* under section 256(5).

(4) The company, or a creditor, a member or a liquidator thereof, may, within ninety days, appeal to the Court from a refusal of the Registrar to restore the company to the Register of Companies and, if the Court is satisfied that it would be just for the company to be restored to the Register of Companies, the Court may direct the Registrar to do so upon such terms and conditions as it may consider appropriate.

(5) Notice of an appeal to the Judge in chambers under subsection (4) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(6) Where the Registrar restores a company to the Register of Companies under subsection (1) or in accordance with a direction of the Court under subsection (4), the Registrar shall issue a certificate of restoration to the Register of Companies.

(7) Where a company is restored to the Register of Companies under this section, the company is deemed never to have been struck off the Register of Companies.

(8) Where a company to which subsection (2) applies is restored to the Register of Companies, it shall immediately appoint a registered agent under section 45.

Application to restore dissolved company to Register of Companies

261. (1) Application may be made to the Court to restore a dissolved company to the Register of Companies 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 of Companies.

(2) An application under subsection (1) may not be made after the end of the period of ten years from the date that the company was dissolved.

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

- (a) the Registrar of Companies;
- (b) the Permanent Secretary, Finance; 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.

Court's powers on hearing

262. (1) Subject to subsection (2), on an application under section 261, the Court may—

- (a) restore the company to the Register of Companies 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 of Companies.

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

- (a) the applicant nominates a person to be liquidator of the company, if it is restored to the Register of Companies;
- (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 purposes 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 the person would be eligible to be appointed voluntary liquidator of the company under this Ordinance;

(b) in the case of a company that was dissolved following the completion or termination of its liquidation under the Insolvency Ordinance, if the person is a licensed insolvency practitioner who would be eligible to act in relation to the company in accordance with that Ordinance.

(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.

Effect of restoration

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

- (a) in the case of a company to which section 261(2) applies, by the person appointed to be liquidator of the company under section 262(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 of Companies with effect from the date and time that the copy of the sealed order was filed and issue a certificate of restoration to the Register of Companies.

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

- (a) the company is restored as a company in liquidation under this Ordinance or the Insolvency Ordinance; 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 of Companies.

(4) Subject to subsection (5), a company is restored to the Register of Companies 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 41, the

company is restored to the Register of Companies with its company number name.

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

Appointment of liquidator of company struck off

264. (1) If a company has been struck off the Register of Companies, the Registrar may apply to the Court for the appointment of 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 of Companies; and
- (b) the liquidator is deemed to have been appointed under the Insolvency Ordinance.

Property of dissolved company

265. (1) Subject to subsection (3), 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 of Companies, 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 of Companies.

(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

266. (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 Permanent Secretary, Finance may, by written notice published in the *Gazette*, disclaim the Crown's title to onerous property which vests in the Crown under section 265.

(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 Permanent Secretary, Finance 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 Permanent Secretary, Finance, orders otherwise, the Permanent Financial Secretary is not entitled to disclaim property unless the property is disclaimed—

- (a) within twelve months of the date upon which the vesting of the property under section 265 came to the notice of the Permanent Secretary, Finance; or
- (b) if any person interested in the property gives written notice to the Permanent Secretary, Finance requiring the Permanent Secretary, Finance to decide whether or not to disclaim the property, within three months of the date upon which the Permanent Secretary, Finance received the notice,

whichever occurs first.

(5) Property disclaimed by the Permanent Secretary, Finance under this section is deemed not to have vested in the Crown under section 265.

(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 XVI

FOREIGN COMPANIES

Meaning of “carrying on business”

267. (1) A reference in this Part to a foreign company carrying on business in the Islands includes a reference to the foreign company establishing or having a place of business in the Islands.

(2) For the purposes of this Part, a foreign company does not carry on business in the Islands merely because, in the 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 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 thirty one 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

268. (1) A foreign company shall not carry on business in the 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.

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

(3) An application by a foreign company for registration under this Part shall be made to the Registrar 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;
- (d) a notice specifying the name of the person appointed as the registered agent of the foreign company in the Islands, endorsed by the registered agent with his agreement to act as registered agent;
- (e) if a document specified in paragraph (a) or (b) is not in English, a translation of the document certified as accurate in accordance with the Regulations; and
- (f) such other documentation as may be prescribed.

(4) A foreign company that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of \$50,000.

Registration

269. (1) Subject to subsection (2), on receipt of an application that complies with section 268(3), the Registrar shall register the

foreign company in the Register of Foreign Companies and issue a certificate of registration as a foreign company.

(2) If the Registrar 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 the Registrar.

Registration of changes in particulars

270. (1) A foreign company registered under this Part shall file a notice 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;
- (e) its registered agent; or
- (f) such other particulars as may be prescribed.

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

(3) A notice of a change in the instrument constituting or defining the constitution of a foreign company shall be accompanied by—

- (a) a certified copy of the new or amended instrument; and
- (b) if the instrument is not in English, a translation of the document certified as accurate in accordance with the Regulations.

(4) On receipt of a notice of change in particulars under subsection (3) that complies with this section, the Registrar shall register the change in the Register of Foreign Companies.

Foreign company to have registered agent

271. (1) A foreign company that carries on business in the Islands shall, at all times, have a registered agent in the Islands who is eligible to act under subsection (2).

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

granted under the Company Management (Licensing) Ordinance [Cap. 16.10].

(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 \$30,000.

Resignation of registered agent

272. (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 thirty days written notice of 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) file a copy of the notice.

(3) A notice under subsection (2) shall be sent to—

(a) the principal place of business of the foreign company in the 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.

Registered agent ceases to be eligible to act

273. (1) For the purposes of this section, a person ceases to be eligible to act as a registered agent if the person ceases to hold a licence granted under the Company Management (Licensing) Ordinance [Cap. 16.10].

(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 was, immediately before ceasing to be

eligible to act, the registered agent, send to the person specified in subsection (3) a notice—

- (a) advising the foreign company that it is no longer eligible to be its registered agent;
- (b) advising the foreign company that it must appoint a new registered agent within sixty days of the date of the notice; and
- (c) specifying that on the expiration of the period specified in paragraph (b), he will cease to be the registered agent of the company, if the company has not previously changed its registered agent.

(3) A notice under subsection (2) shall be sent to—

- (a) the principal place of business of the foreign company in the 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 sixty days of the date of the notice—

- (a) appoint a new registered agent; and
- (b) file a notice of change of registered agent under section 270.

(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 \$30,000.

(7) A person does not commit an offence under subsection (6) merely because—

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

Control over names of foreign companies

274. (1) If the Registrar is of the opinion 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 Islands is undesirable, the Registrar may serve a notice on the foreign company requiring it to cease carrying on business in the Islands under, or using, that name.

(2) A foreign company on which a notice is served under subsection (1) shall not carry on business in the Islands under, or using, the name specified in the notice from—

- (a) a date thirty 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 thirty 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.

(5) If the Registrar is of the opinion that the alternate name with which a foreign company is applying to be registered under subsection (4) is acceptable, the Registrar shall register the foreign company under the alternate name.

(6) A foreign company that contravenes subsection (3) or subsection (4) commits an offence and is liable on summary conviction to a fine of \$25,000.

Use of name by foreign company

275. (1) Subject to subsections (2), (3) and (4), a foreign company that carries on business in the 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.

(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.

(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.

(5) A foreign company that contravenes subsections (1) or (3) commits an offence and is liable on summary conviction to a fine of \$25,000.

Foreign company ceasing to carry on business in the Islands

276. (1) A foreign company shall, within seven days of ceasing to carry on business in the Islands, file a notice .

(2) On receipt of a notice under subsection (1), the Registrar shall remove 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 foreign company by Registrar

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

- (a) the Registrar has reasonable cause to believe that—
 - (i) the foreign company is not carrying on business authorised in the Islands;

- (ii) the foreign company is carrying on business for which a licence, permit or authority is required under the laws of the 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 Ordinance; or
 - (ii) pay any fee or penalty payable under this Ordinance by the due date; or
 - (d) the Registrar 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 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 thirty days after the date of the notice; and
 - (b) publish a notice of 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—
- (a) shall publish a notice of the removal of a foreign company from the Register of Foreign Companies in the *Gazette*; and

(b) may publish it in such other way as he considers appropriate.

(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).

Subsequent registration of foreign company

278. (1) This section applies where—

(a) a foreign company has been removed from the Register of Foreign Companies, whether under section 276 or section 277; and

(b) the foreign company subsequently applies under section 268 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 268, carried on business in the Islands, it shall not be entitled to be registered under section 269 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.

Service of documents

279. (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

280. 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.

PART XVII

INVESTIGATION OF COMPANIES

Definition of “inspector”

281. In this Part, “inspector” means an inspector appointed by an order made under section 282(2).

Investigation order

282. (1) A member of a company or the Registrar may apply to the Court *ex parte* or on such notice as the Court may require, for an order that the company and any of its affiliated companies be investigated.

(2) If, on 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 unlawfully or with intent to defraud;
- (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) a person concerned with the incorporation, business or affairs of the company or any of its affiliates has in connection with the company or any of its affiliates acted unlawfully, fraudulently or dishonestly;

the Court may make any order it considers appropriate with respect to an investigation of the company and any of its affiliated companies by an inspector, who may be the Registrar.

(3) A member who makes an application under subsection (1) 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.

(5) An applicant under this section shall not be required to give security for costs.

Court's powers

283. (1) An order made under section 282(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 an order to—

- (a) replace the inspector;
- (b) determine the notice to be given to an interested person, or dispense with notice to a person;
- (c) authorise the inspector to enter any premises in which the Court is satisfied there may be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;
- (d) require a person to produce documents or records to the inspector;
- (e) authorise the inspector to conduct a hearing, administer oaths or affirmations and examine a person on oath or affirmation, and prescribe rules for the conduct of the hearing;
- (f) require a person to attend a hearing conducted by the inspector and to give evidence on oath or affirmation;
- (g) give directions to the inspector or an interested person on a 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 or an extract of the report, or to send a copy of the report or extract of the report to a person designated by the Court;

(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.

(3) The inspector shall file a copy of each report the inspector makes to the Court under this section.

(4) A report received by the Registrar under this section shall not be disclosed to any person other than in accordance with an order of the Court made under subsection (2).

(5) A person who fails to comply with the requirements of an order made by the Court under subsection (2) commits an offence and is liable on summary conviction, to a fine not exceeding \$30,000 or a term of imprisonment for one year or both.

Inspector's powers

284. An inspector—

(a) has the powers set out in the order appointing him; and

(b) shall, upon request, give a copy of the order to any interested person.

Hearing in camera

285. (1) An application under this Part and any subsequent proceedings, including an application 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—

(a) may appear or be heard at the hearing; and

(b) has a right to be represented by a legal practitioner appointed by him for the purpose.

(3) A person shall not publish anything relating to any proceedings under this Part unless authorised by the Court.

(4) A person who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of \$50,000.

Incriminating evidence

286. A person is not excused from attending a hearing conducted by, and giving evidence and producing documents and

records to, an inspector appointed by the Court under this Part merely because the evidence tends to incriminate the person or subject the person to any proceeding or penalty, but the evidence may not be used or received against the person in any proceeding thereafter instituted against the person, other than a prosecution for perjury in giving the evidence.

Privilege

287. (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 client.

PART XVIII

ADMINISTRATION AND MISCELLANEOUS

Company Law Advisory Committee

288. (1) The Commission shall establish a committee to be known as the “Company Law Advisory Committee”.

(2) Subject to subsection (3), the Commission shall appoint as members of the Committee such persons having knowledge and experience of company law as it considers appropriate.

(3) The members of the Committee shall comprise—

- (a) at least one person who is a representative of persons qualified to act as registered agents of companies;
- (b) at least two persons whose business or profession in the Islands is relevant to company law or company management;
- (c) at least two persons who are directors or employees of the Commission; and
- (d) at least one person who represents the Government.

(4) The Chairman of the Committee shall be appointed by the Commission.

(5) The Chairman of the Committee may co-opt persons to assist the Committee for the purposes of a particular meeting, or generally.

(6) A person co-opted to assist the Committee may participate in any meetings of the Committee, which the person attends, but is not entitled to vote.

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

- (a) to keep this Ordinance, and other enactments relevant to company law under review;
- (b) to make such recommendations as it considers appropriate to the Commission for changes to this Ordinance and other enactments relevant to company law; and
- (c) to make such recommendations as it considers appropriate to the Commission for the development and reform of company law in the Islands.

(8) The Committee is an advisory committee and neither the Commission nor the Government has any obligation to act in accordance with the advice, or a decision, of the Committee or to take any advice or decision of the Committee into account.

(9) The Committee shall determine its own procedures.

Registrar of Companies

289. (1) The Commission—

- (a) shall appoint a suitably experienced or qualified and fit and proper person to be Registrar of Companies; and
- (b) may appoint a Deputy and Assistance Registrars of Companies;

on such terms and conditions as it considers appropriate.

(2) The Registrar, Deputy and Assistant Registrars are employees of the Commission and shall carry out their duties and exercise their powers subject to—

- (a) the general direction of the Board; and
- (b) the management and supervision of the managing director of the Commission.

(3) Subject to subsection (2), the Registrar is responsible for the administration of this Ordinance.

(4) Subject to the control of the Registrar, the Deputy and Assistant Registrars have and may exercise the powers, duties and functions of the Registrar and the fact that the Deputy or an

Assistant Registrar exercises those powers, duties and functions is conclusive evidence of his authority to do so.

Registers

290. (1) The Registrar shall maintain—

- (a) a Register of Companies incorporated or continued under this Ordinance;
- (b) a Register of Foreign Companies registered under Part XVI; and
- (c) a Register of Charges registered under Part X.

(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.

(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.

(4) Without limiting subsection (3), 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 person 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 hard copy and electronic form; and
 - (iii) the issuance by the Registrar of certificates and other documents in electronic form.

(5) Regulations shall not be made under subsection (4)(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.

(6) The Registrar—

- (a) shall retain every qualifying document filed; and
- (b) shall not retain any document filed that is not a qualifying document.

(7) For the purposes of subsection (5), a document is a qualifying document if—

- (a) this Ordinance 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 Ordinance, the Regulations or the other enactment that requires or permits the document to be filed.

Filing of documents

291. (1) Except as otherwise provided in this Ordinance or the Regulations, a document required or permitted to be filed by a company under this Ordinance, may only be filed—

- (a) by the registered agent of the company; or
- (b) if an Insolvency Ordinance liquidator is appointed in respect of the company, by that liquidator.

(2) The Commission may, by notice published in the *Gazette* and its Internet site, provide for the filing, registration and issuing of documents, or certain specified types of documents, on a non-working day.

Registrar to provide documents filed by non-profit company to NPO Supervisor

292. The Registrar shall provide copies of all documents, notices and returns filed in relation to a non-profit company to the NPO Supervisor.

Inspection of Registers and documents filed

293. (1) Subject to any other enactment or the Regulations, a person may—

- (a) inspect the Registers maintained by the Registrar under section 290(1);
- (b) inspect any document retained by the Registrar in accordance with section 290(6); and

(c) require a certified or uncertified copy or extract certificate of incorporation, restoration, 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 has custody, to be certified by the Registrar; and a certificate of incorporation, restoration, merger, consolidation, arrangement, continuation, discontinuance, dissolution or good standing or a certified copy or extract is prima facie evidence of the matters contained in the document.

(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 was the original document.

(3) Subsection (2) applies whether the copy or extract is obtained from a document filed in hard copy 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.

(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.

Certificate of good standing

294. (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.

(2) The certificate of good standing issued under subsection (1) shall contain such statements as are specified in the Regulations.

Issue of miscellaneous certificates

295. The Registrar may, upon request by any person, issue a certificate confirming—

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

Fees and penalties

296. (1) The prescribed fees and penalties shall be payable to the Registrar.

(2) Unless this Ordinance 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.

(3) The Registrar may refuse to take any action required of him under this Ordinance for which a fee is prescribed until all fees and penalties have been paid.

Financial penalties

297. (1) This section applies where Schedule 2 or the Regulations provide that the Commission may impose a financial penalty on a company or a foreign company in respect of a breach of or failure to comply with the Ordinance or the Regulations.

(2) Where it intends to impose a financial penalty on a company or foreign company, the Commission shall send a notice of its intention to the company—

- (a) specifying—
 - (i) the reason for the imposition of the financial penalty, and
 - (ii) the amount of the penalty that it intends to impose; and
- (b) advising the company of its right to make written representations to the Commission in accordance with subsection (3).

(3) A company or foreign company that receives a notice under subsection (2) may, within twenty-eight days of the date upon which it receives the notice, send written representations to the Commission—

- (a) denying that the financial penalty is payable; or
- (b) providing reasons that it considers justify the imposition of a lower penalty.

(4) After the expiration of twenty-eight days from the date that it sent a notice under subsection (2) to a company or foreign company, the Commission may send the company a penalty notice stating—

- (a) the reason for the imposition of the financial penalty;

- (b) the date on which notice of intention to impose a financial penalty was sent to the company;
- (c) the amount of the penalty imposed; and
- (d) a date, not less than fourteen days after the date of the penalty notice, by which the penalty shall be paid to the Commission.

(5) The penalty imposed in a penalty notice shall not exceed the amount specified in the notice of intention sent under subsection (2).

(6) Before imposing a financial penalty against a licensee under subsection (4), the Commission shall consider any written representations that it has received from the company and, where it receives such representations, it must provide reasons for the action that it takes.

(7) A company or foreign company that receives a penalty notice under this section shall pay the penalty stated to the Commission on or before the date specified in the notice.

Recovery of fees and penalties

298. (1) A fee or penalty payable to the registrar under this Ordinance that remains unpaid for thirty days immediately following the date on which demand for payment is made by the Registrar is recoverable at the instance of the Commission in accordance with subsection (3) as if the fee or penalty was a financial penalty.

(2) A financial penalty constitutes a debt to the Commission and may be recovered in the court.

(3) The Commission may, after the imposition of a penalty has become final, issue a certificate certifying the unpaid amount of any debt referred to in subsection (1) and the registration of the certificate in the court has the same effect as a judgment of the court for a debt of the amount specified in the certificate together with the costs of registration.

Company struck off liable for fees, etc.

299. A company continues to be liable for all fees and penalties payable under this Ordinance notwithstanding that the name of the company has been struck off the Register of Companies.

Regulations

300. (1) The Governor may, after consulting with the Commission, make Regulations generally for giving effect to this

Ordinance and specifically in respect of anything required or permitted to be prescribed by this Ordinance.

(2) Without limiting subsection (1), the Regulations may—

- (a) prescribe notices and returns and other documents required to be filed by companies and foreign companies;
- (b) provide for financial penalties for any contravention of or failure to comply with specified requirements of this Ordinance or the Regulations;
- (c) provide for the procedures to be adopted by the Commission when imposing a financial penalty on a company.
- (d) specify the amount, or maximum amount, of financial penalty, or the range of financial penalties that may be imposed by the Commission for a contravention of this Ordinance or a failure to comply;

(3) A financial penalty provided for in the Regulations shall not exceed \$25,000.

(4) The Regulations may make different provision in relation to different persons, circumstances and cases.

Approval of forms by Commission

301. (1) The Commission may, by publication in the prescribed manner, approve forms to be used for documents filed, issued or produced under this Ordinance or the Regulations.

(2) Where the Commission has published an approved form with respect to a document to be filed, issued or produced under this Ordinance 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.

Guidance

302. The Commission may issue guidance concerning compliance with the requirements of this Ordinance and the Regulations and concerning such other matters as it considers relevant to its functions under or in relation to this Ordinance.

Commission to consult

303. (1) Before issuing, amending or replacing any approved form or issuing any Guidance, the Commission shall—

- (a) provide persons that the Commission considers will be substantially affected with a copy of the proposed—
 - (i) approved form or Guidance;
 - (ii) amendments to the approved form or Guidance; or
 - (iii) replacement of the approved form or Guidance;
- (b) give those persons a reasonable opportunity to make representations to the Commission; and
- (c) consider any representations that it receives.

(2) The Commission may comply with its obligations under—

- (a) subsection (1)(a), by publishing the relevant documents on its Internet site,
- (b) subsection (1), in respect of a person by consulting with any professional or trade association of which the person is a member and considering representations by that association.

(3) The Commission may but is not obliged to provide a response to any written representations that it receives.

(4) The failure of the Commission to comply with subsection (1) does not affect the validity of any approved form or Guidance issued.

Offence provisions

304. Where an offence under this Ordinance is committed by a body corporate, a director or officer who authorized, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction to the penalty specified for the commission of the offence.

Jurisdiction

305. 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 Islands.

Declaration by Court

306. (1) A company may apply to the Court, by originating summons supported by an affidavit, for a declaration on any question of interpretation of this Ordinance or of the 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 a fiduciary or professional duty, to have properly discharged his duties in the subject matter of the application.

Transitional provisions

307. The transitional provisions and savings set out in Schedule 1 apply.

Amendment of Schedules

308. (1) The Governor may, by order, amend the Schedules to this Ordinance.

(2) An order made under this section shall be laid before the House of Assembly at its next meeting immediately following the date of publication of the order in the *Gazette*.

(3) If, at the meeting of the House of Assembly referred to in subsection (2), the House of Assembly passes a resolution annulling an order which has been laid before it in accordance with that subsection or if an order made under this section is not laid before the House of Assembly in accordance with that subsection, that order shall cease to have effect on and after the day of the annulment or the day next following the day that the meeting is concluded, as the case may require, but without affecting the validity or curing the invalidity of anything done or omitted to be done thereunder before that day or the making of a new order.

(4) Notwithstanding section 23(2) of the Interpretation Ordinance, where—

- (a) an order is annulled under subsection (3) or is not laid before the House of Assembly in accordance with subsection (2); and
- (b) that order amended or revoked an order that was in operation immediately before the first mentioned order came into operation, the annulment or failure to comply with subsection (2) revives the previous order on and after the day of the annulment or, in the case of failure to comply with subsection (2), on and after the day next following

the day that the meeting of the House of Assembly referred to in that subsection is concluded.”.

Repeals and amendments

309. (1) The following enactments are repealed on 1 July 2018—

- (a) the Companies Ordinance [Cap. 16.08]; and
- (b) the Protected Cell Companies Ordinance [Cap. 16.09].

(2) The Stamp Duty Ordinance [Cap. 19.05] is amended as follows—

- (a) in section 25(1), insert after “the Companies Ordinance”, the words “and any reference to an international company shall be interpreted as a reference to a company registered as an international company under the Companies Ordinance, 2017”;

(b) in Schedule 1—

- (i) in Head 6 in the paragraph under “Exemption”, by inserting after “exempted company”, the words “, international company”;

(ii) in Head 7, under “Exemptions”—

- (A) in paragraph 2, by inserting after “Transfer of stock of” the words “an international company or”;
- (B) in paragraph 3, by inserting after “Transfers to”, insert “an international company or”.

SCHEDULE 1

COMMENCEMENT, TRANSITIONAL PROVISIONS AND SAVINGS

Commencement

1. (1) Subject to subparagraph (2), the provisions of this Ordinance come into force on 30 September 2017.

(2) Part IX comes into force on 26 June 2017.

Interpretation

2. In this Schedule—

“automatic registration date” means 30 June 2018;

“commencement date” means 30 September 2017;

“existing company” means a company incorporated, formed, continued or registered under the former Ordinance, but excludes—

(a) a foreign company incorporated outside the Islands registered under Part XII of the former Ordinance; and

(b) a registered not for profit association;

“former Companies Register” means the Register of Companies maintained under the former Ordinance;

“former Ordinance” means the Companies Ordinance [Cap. 16.08];

“registered not for profit association” means an association—

(a) incorporated under section 89 of the former Ordinance as it read on 1 April 2013; and

(b) that, at midnight on the day before the commencement date, is registered under the former Ordinance as a not for profit association, not having been continued under section 100 of the former Ordinance;

“registration date”, in relation to an existing company, means the date that it is registered under this Ordinance, whether on application under paragraph 3 or automatically under paragraph 5;

“transition period” means the period commencing at 9am on the commencement date and terminating at 4pm on 29 June 2018.

Application by existing company to register under this Ordinance

3. (1) An existing company that, at the date of the application, is on the former Ordinance may during the transition period apply to the Registrar to register as a company under this Ordinance.

(2) An application for the registration of an existing company as a company under this Ordinance shall—

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

(b) be accompanied by—

(i) articles of incorporation that, subject to subparagraphs (4) and (5), comply with section 13;

(ii) a document signed by the registered agent signifying his consent to act as the registered agent of the company on its registration; and

(iii) such other documents as may be prescribed.

(3) In the case of an existing company to which, on its registration, Part IX will apply, a person applying to register the company shall provide the Commission with the prescribed beneficial ownership information in relation to each person who is a registrable person in relation to the company.

(4) In addition to the matters required under section 13, the articles shall state—

(a) that, immediately prior to its registration under this Ordinance, it was governed by the former Ordinance; and

(b) the date that the company was first incorporated or, if appropriate, the date with effect from which it was continued under the former Ordinance.

(5) The articles shall state the name of the registered agent, and the address of the registered office, at the time of the application to register under this paragraph.

(6) Subject to subparagraph (7), an application to register under this paragraph shall be authorised, and the articles shall be approved, by a special resolution of the members of the company.

Registration by the Registrar

4. (1) Subject to subparagraph (2), the Registrar, if satisfied that the requirements of this Ordinance in respect of registration

have been complied with, shall upon receipt of an application and the other documents specified in paragraph 3—

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

(2) The Registrar—

- (a) shall not register an existing non-profit company as a non-profit company under this Ordinance without the written approval of the NPO Supervisor; and
- (b) may refuse to register an existing company under this paragraph if the company is in default of any obligation under the former Ordinance, including an obligation to pay any fee or penalty due on or before the date of its registration.

(3) A certificate of registration is conclusive evidence that—

- (a) all the requirements of this Schedule as to registration have been complied with; and
- (b) the company is registered under this Ordinance on the date specified in the certificate of 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 an existing company.

(5) Except as otherwise provided in this Ordinance, a company that is registered under this paragraph shall be subject to this Ordinance as if it was a company incorporated under this Ordinance and paragraphs 5 to 7 and paragraphs 5 to 7 and paragraph 10 of this Schedule do not apply to the company.

Automatic registration of existing companies

5. (1) Subject to the provisions of this paragraph, at midnight on the last day of the transition period, every existing company that is on the former Companies Register shall be deemed to be registered under this Ordinance with immediate effect.

(2) For the avoidance of doubt, if the Registrar does not determine an application for the registration of an existing company on or before the end of the transition period, the company is deemed to be registered under this Ordinance automatically in accordance with subparagraph (1).

(3) No certificate of registration shall be issued by the Registrar under paragraph 4 after the end of the transition period.

(4) Where a company is automatically registered under this paragraph, the Registrar shall, as soon as is reasonably practicable, enter the name of the company on the Register and allot a unique number to the company.

(5) The unique number allotted to a company under subparagraph (4) may, at the discretion of the Registrar, be the number previously allocated by the Registrar to the company as an existing company.

Type of company on automatic registration

6. (1) The following apply to an existing company that is automatically registered under paragraph 5—

- (a) if at midnight on the last day of the transition period, the company is a company limited by shares, it shall be registered under this Ordinance as a company limited by shares;
- (b) if at midnight on the last day of the transition period, the company is a company limited by guarantee, not authorised by its memorandum of association to have a share capital, it shall be registered under this Ordinance as a company limited by guarantee that is not authorised to issue shares;
- (c) if at midnight on the last day of the transition period, the company is a company limited by guarantee, that is authorised to have a share capital, it shall be registered under this Ordinance as a company limited by guarantee that is authorised to issue shares;
- (d) if at midnight on the last day of the transition period, the company is an unlimited company, not authorised by its memorandum of association to have a share capital, it shall be registered under this Ordinance as an unlimited company that is authorised to issue shares;
- (e) if at midnight on the last day of the transition period, the company is an unlimited company, authorised by its memorandum of association to have a share capital, it shall be registered under this Ordinance as an unlimited company that is authorised to issue shares;

- (f) if at midnight on the last day of the transition period, the company is registered as an exempted company, it shall be registered under this Ordinance as an international company;
- (g) if at midnight on the last day of the transition period, the company is registered as a limited life company, it shall be registered under this Ordinance as an international company;
- (h) if at midnight on the last day of the transition period, the company is registered as a protected cell company, it shall be registered under this Ordinance as a protected cell company; and
- (i) if at midnight on the last day of the transition period, the company is registered as a non-profit company, it shall be registered under this Ordinance as a non-profit company.

Certificate of registration

7. (1) If an existing company is automatically registered under this Part, the Registrar is not required to issue a certificate of registration to the company unless it applies for a certificate and pays the prescribed fee.

(2) A certificate of registration issued under subparagraph (1) shall state—

- (a) that the company was, immediately prior to its registration under this Ordinance, registered under the former Ordinance;
- (b) the date of its incorporation or continuation under the former Ordinance;
- (c) the type of company that existing company is registered as; and
- (d) that the existing company was automatically registered under this Ordinance and the date of its registration.

Registration of charges created prior to registration date

8. (1) This section applies to a company that is registered on application or automatically.

(2) A company to which this paragraph applies may apply to register a charge created prior to its registration date.

(3) Section 164 applies to an application made under subparagraph (2) 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 163;
- (b) sections 165, 166, 167 and 169 apply with respect to the charge as if it was a relevant charge;
- (c) section 168 does not apply with respect to the charge, even if it is a charge created prior to the commencement date.

Registered office and registered agent

9. (1) On the automatic registration of an existing company under this Ordinance, its registered office is the registered office of the company under the former Ordinance immediately prior to its registration.

(2) On the automatic registration of an existing company that, its registered agent is the person who was its registered agent under the former Ordinance immediately prior to its registration.

(3) An existing company other than an exempted company, the registered agent of which is a director of the company, which is automatically registered shall, within one months of its registration—

- (a) appoint a person eligible to act as registered agent under section 43 as its registered agent; and
- (b) file a notice of appointment of its registered agent in the approved form.

Memorandum and articles

10. In the case of an existing company that is registered automatically, its articles continue in effect except to the extent that they are inconsistent with this Ordinance and are deemed to constitute the articles of incorporation of the company for the purposes of this Ordinance.

Winding up of former Ordinance companies

11. (1) Where an existing company is, on the automatic registration date, being wound up under Part VI of the former Ordinance, the former Ordinance continues to apply in relation to the winding up.

(2) If an application made to the Court for the winding up of an existing company made to the Court under the former Ordinance has not been determined at the date of the company's

registration under this Ordinance, the application shall be treated as if it was an application for the appointment of a liquidator under the Insolvency Ordinance.

Reinstatement of existing company that has been struck off

12. (1) If an application could have been made under section 206 of the former Ordinance to reinstate an existing company struck off the former Companies Register, an application to restore the company may be made to the Court under section 261 as if the company had been struck off the Register maintained under this Ordinance.

(2) On an application under subparagraph (1), the Court may reinstate the company.

(3) Where the Court makes an order under subparagraph (2)—

(a) the company is deemed never to have been struck off the former Ordinance Register or to have been dissolved; and

(b) where the order is made after the end of the transition period, the company is deemed to have been automatically registered under this Ordinance in accordance with paragraph 5 of this Schedule on the automatic registration date.

(4) 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 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.

Struck off company liable for fees and penalties

13. (1) An existing company that is struck off the former Companies Register shall remain liable for—

(a) all fees and penalties due under the former Ordinance; and

(b) such fees and penalties that would have been payable under this Ordinance had the company been automatically registered under paragraph 5.

(2) The Court shall not make an order reinstating an existing company 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.

Sections of this Ordinance having effect

14. (1) Sections 261 and 264 of this Ordinance apply to, and with respect to, an existing company that is struck off the former Companies Register.

(2) Sections 265 and 266 apply to, and with respect to an existing company and its property if the company is struck off the former Companies Register prior to the end of the transition period.

Effect of registration under this Ordinance

15. (1) An existing company that is registered under this Ordinance, whether on application under paragraph 3 or automatically under paragraph 5, continues in existence as a legal entity and its registration under this Ordinance, whether under the same or a different name, does not—

- (a) prejudice or affect its identity;
- (b) affect its assets, rights or obligations; or
- (c) affect the commencement or continuation of proceedings by or against the company.

(2) Subject to subparagraph (3), an existing company that is registered under this Schedule shall be subject to this Ordinance except to the extent specified in this Schedule, to the extent that this Schedule is applicable to the company.

(3) Part IX of this Ordinance does not apply to a company that is automatically registered under paragraph 4 until 30 September 2018.

Seals of registered companies

16. Where, immediately before its registration under this Schedule, an existing 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 Ordinance.

Registrar, Deputy and Assistant Registrar of Companies

17. The person holding office as Registrar of Companies under the former Ordinance and any person holding office as Deputy or Assistant Registrar of Companies under the former Ordinance, immediately before the transition date, is deemed to have been appointed as Registrar of Companies or as Deputy or Assistant Registrar of Companies in accordance with section 289

on the same terms as they were appointed under the former Ordinance.

References to companies in other enactments

18. A reference in any enactment to a company incorporated, continued or registered under the former Ordinance shall, unless the context otherwise requires, be read as including a reference to a company incorporated, continued or registered under this Ordinance.

Registered not for profit associations

19. (1) A registered not for profit association may, during the transition period, apply to the Registrar to register as a not-for-profit company under this Ordinance.

(2) An application under subparagraph (1), shall—

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

(b) be accompanied by—

(i) articles of incorporation that, subject to subparagraphs (4) and (5), comply with sections 13 and 14;

(ii) a document signed by the registered agent signifying his consent to act as the registered agent of the company on its registration; and

(iii) such other documents as may be prescribed.

(4) In addition to the matters required under section 13 and section 14, the articles shall state—

(a) that, immediately prior to its registration under this Ordinance, it was registered as a not for profit association under the former Ordinance; and

(b) the date that the company was first registered under the former Ordinance.

(5) The articles shall state the name of the registered agent, and the address of the registered office, at the time of the application to register under this paragraph.

Registration of non profit association

20. (1) Subject to subparagraphs (2) and (3), the Registrar, if satisfied that the requirements of this Ordinance in respect of registration have been complied with, shall upon receipt of an application and the other documents specified in paragraph 3—

- (a) register the documents;
 - (b) allot a unique number to the company; and
 - (c) issue a certificate of registration to the company in the approved form.
- (2) The Registrar—
 - (a) shall not register a not for profit association as a non-profit company without the written approval of the NPO Supervisor; and
 - (b) may refuse to register a not for profit association as a non-profit company if the not for profit association company is in default of any obligation under the former Ordinance, including an obligation to pay any fee or penalty due on or before the date of its registration.
- (3) A certificate of registration is conclusive evidence that—
 - (a) all the requirements of this Schedule as to registration have been complied with; and
 - (b) the company is registered under this Ordinance on the date specified in the certificate of 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 an existing company.
- (5) Except as otherwise provided in this Ordinance, a company that is registered under this paragraph shall be subject to this Ordinance as if it was a non-profit company incorporated under this Ordinance and paragraphs 5 to 7 and paragraph 10 of this Schedule do not apply to the company.
- (6) A registered not for profit association that is not registered under this paragraph before the end of the transition period shall be struck off the former Companies Register and its affairs wound up by a liquidator appointed by the NPO Supervisor.
- (7) The Registrar—
 - (a) shall publish the striking off of the registered not for profit association in the *Gazette*; and
 - (b) may publish it in such other way as he considers appropriate.

Validity of tax exemption certificates preserved

21. The repeal of the former Ordinance does not affect the validity of a tax exemption certificate issued under section 230(2) of the former Ordinance.

Application of provisions of former Ordinance

22. (1) The following provisions of the former Ordinance apply to companies incorporated or registered under this Ordinance—

- (a) the definition of “prospectus” in section 2(1);
- (b) section 33 (Prospectus etc. to be approved by Commission);
- (c) section 34 (Offence);
- (d) Schedule 2 (Rules Governing the Issue of a Prospectus);
- (e) section 225 (Prohibited sale of securities).

(2) For the purposes of subparagraph (1)—

- (a) a reference to “company” in the definition of prospectus and sections 34 and Schedule 2 of the former Ordinance is to be taken to be a reference to a company within the meaning of this Ordinance; and
- (b) a reference to “exempted company” in section 225 is to be taken as a reference to an international company.

(3) Subsection (1) continues to have effect despite the repeal of the former Ordinance.

SCHEDULE 2

FINANCIAL PENALTIES

The Commission may impose a financial penalty on a company or other person under the section specified in column 1 in respect of a breach of or failure to comply with the Ordinance specified in column 2.

Section	Breach or failure to comply
12(3)	International company carrying on business in the Islands
36(2)	Company failing to file application to change its name as directed by Registrar
44(1)	Company failing to have registered agent
44(3)	Company appointing a person not eligible for appointment as its registered agent
44(3)	Person not eligible for appointment accepting appointment as registered agent
45(3)	Company failing to file a notice of appointment of registered agent
48(1)	Registered agent that ceases to be eligible to act as registered agent failing to resign
53(2)	Company issuing a bearer share, converting a share to a bearer share or exchanging a share for a bearer share
53(3)	Company issuing a bearer instrument
85(1)	Company failing to keep register of members containing particulars required
112(1)	Registered agent failing to appoint one or more directors of company or failing to file notice of appointment within specified time
119	Company failing to file notice of change of directors
120	Company failing to keep register of directors containing the prescribed information
132(1)	Company failing to keep documents specified in

	subsection (2) at the office of its registered agent
133(1)	A company failing to keep documents specified in subsection (1)
134(1)	Company failing to keep required financial records
135	Company failing to comply with subsection (1), (2), (3), (4) or (5)