

BRITISH VIRGIN ISLANDS
INTERNATIONAL BUSINESS COMPANIES ACT
(CAP.291)
No 8. of 1984

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I Assent
D. R. Barwick
Governor
13th July, 1984

VIRGIN ISLANDS

No. 8 of 1984

An Act to make provisions for the incorporation and operation of International Business Companies and related matters.

(Gazetted 18th July, 1984)

ENACTED by the Legislature of the Virgin Islands as follows:

PART I

Short Title and Interpretation

1. This Act may be cited as the International Business Companies Act, 1984.

2. (1) In this Act

"Articles" means the Articles of Association of a company incorporated under this Act;

"authorized capital" of a company means the sum of the aggregate par value of all shares with par value which the company is authorized by its Memorandum to issue plus the amount, if any, stated in its Memorandum as authorized capital to be represented by shares without par value which the company is authorized by its Memorandum to issue;

"bearer share" means a share represented by a certificate which states that the bearer of the certificate is the owner of the share;

"capital" of a company means the sum of the aggregate par value of all outstanding shares with par value of the company and shares with par value held by the company as treasury shares plus

(a) the aggregate of the amounts designated as capital of all outstanding shares without par value of the company and shares without par value held by the company as treasury shares, and

(b) the amounts as are from time to time transferred from surplus to capital by a resolution of directors;

"Companies Act" means the Companies Act of the British Virgin Islands;

"continued" means continued within the context of Part VIII;

"court" means the Supreme Court or a Judge thereof;

"custodian" has the meaning specified in section 37B;

“effective date” means the date on which the International Business Companies (Amendment) Act, 2003 comes into effect;

"licence fee payment date" means the date on which the company licence fee is paid pursuant to the provisions of section 105;

"licence fee final payment date" means 30th April or 31st October in any year;

"member" means a person who holds shares in a company;

"Memorandum" means the Memorandum of Association of a company incorporated under this Act;

"person" includes a trust, the estate of a deceased individual, a partnership, or an unincorporated association of persons;

"person resident in the British Virgin Islands" means a person who ordinarily resides within the British Virgin Islands or carries on business from an office or other fixed place of business within the British Virgin Islands but does not include a company incorporated under this Act;

"Register" means the Register of International Business Companies maintained by the Registrar in accordance with subsection (1) of section 14;

"registered agent" means the person who is at any particular time performing the functions of registered agent of a company incorporated under this Act pursuant to subsection (1) of section 39;

"Registrar" means the Registrar of Companies appointed under the Companies Act and includes any other officer so appointed who acts, under the delegated authority of the Registrar pursuant to, section 207(6) of the Companies Act;

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

"surplus" in relation to a company, means the excess, if any, at the time of the determination, of the total assets of the company over the sum of its total liabilities, as shown in the books of account, plus its capital;

“transition date” means 31 December 2004;

"treasury shares" means shares of a company that were previously issued but were repurchased, redeemed or otherwise acquired by the company and not cancelled.

- (2) A reference to money in this Act is a reference to the currency of the United States of America.
- (3) A company that is incorporated under the Companies Act or under the laws of a jurisdiction outside the British Virgin Islands shall be a company incorporated under this Act if it is continued as a company incorporated under this Act in accordance with Part VIII and references in this Act to a "company incorporated under this Act" shall be construed accordingly.
- (4) A reference in this Act to voting in relation to shares shall be construed as a reference to voting by members holding the shares except that it is the votes allocated to the shares that shall be counted and not the number of members who actually voted and a reference to shares being present at a meeting shall be given a corresponding construction.
- (5) Unless otherwise defined in the Articles of a company incorporated under this Act, the expression "resolution of directors" means
 - (a) a resolution approved at a duly constituted meeting of directors or of a committee of directors of a company, by affirmative vote of a simple majority or such larger majority as may be specified in the Articles, of the directors present at the meeting who voted and did not abstain; or

- (b) a resolution consented to in writing by an absolute majority, or such larger majority as may be specified in the Articles, of all the directors or of all the members of the committee, as the case may be;

but, where a director is given more than one vote in any circumstances, he shall in the circumstances be counted for the purposes of establishing majorities by the number of votes he casts.

- (6) Unless otherwise defined in the Articles of a company incorporated under this Act, the expression "resolution of members" means
 - (a) a resolution approved at a duly constituted meeting of the members of a company by the affirmative vote of
 - (i) a simple majority, or such larger majority as may be specified in the Articles, of the votes of the shares that were present at the meeting and entitled to vote thereon and were voted and did not abstain, or
 - (ii) a simple majority, or such larger majority as may be specified in the Articles of the votes of each class or series of shares which were present at the meeting and entitled to vote thereon as a class or series and were voted and not abstained and of a simple majority, or such larger majority as may be specified in the Articles, of the votes of the remaining shares entitled to vote thereon that were present at the meeting and were voted and not abstained; or
 - (b) a resolution consented to in writing by
 - (i) an absolute majority, or such larger majority as may be specified in the Articles, of the votes of shares entitled to vote thereon, or
 - (ii) an absolute majority, or such larger majority as may be specified in the Articles, of the votes of series of shares entitled to vote thereon as a class or series and of an absolute majority, or such larger majority as may be specified in the Articles, of the votes of the remaining shares entitled to vote thereon.

PART II

Constitution of Companies

- 3. Subject to the requirements of this Act, the registered agent named in the Memorandum may, by subscribing to a Memorandum and to Articles, incorporate a company under this Act.
- 4. No company shall be incorporated under this Act unless immediately upon its incorporation the company is an International Business Company.
- 5. (1) For purposes of this Act, an International Business Company is a company that does not
 - (a) carry on business with persons resident in the British Virgin Islands;
 - (b) own an interest in real property situate in the British Virgin Islands, other than a lease referred to in paragraph (e) of subsection (2);
 - (c) carry on banking or trust business, unless it is licensed under the Banks and Trust Companies Act, 1990;
 - (d) carry on business as an insurance or reinsurance company, insurance agent or insurance broker, unless it is licensed under an enactment authorizing it to carry on that business;

- (e) carry on the business of company management unless it is licensed under the Company Management Act, 1990; or
 - (f) carry on the business of providing the registered office or the registered agent for companies incorporated in the British Virgin Islands.
- (2) For purposes of paragraph (a) of subsection (1), an International Business Company shall not be treated as carrying on business with persons resident in the British Virgin Islands by reason only that
- (a) it makes or maintains deposits with a person carrying on banking business within the British Virgin Islands;
 - (b) it makes or maintains professional contact with solicitors, barristers, accountants, bookkeepers, trust companies, administration companies, investment advisers or other similar persons carrying on business within the British Virgin Islands;
 - (c) it prepares or maintains books and records within the British Virgin Islands;
 - (d) it holds, within the British Virgin Islands, meetings of its directors or members;
 - (e) it holds a lease of property for use as an office from which to communicate with members or where books and records of the company are prepared or maintained;
 - (f) it holds shares, debt obligations or other securities in a company incorporated under this Act or under the Companies Act; or
 - (g) shares, debt obligations or other securities in the company are owned by any person resident in the British Virgin Islands or by any company incorporated under this Act or under the Companies Act.
6. (1) Without affecting the operation of section 99, if a company is incorporated under this Act without having satisfied the requirements prescribed for an International Business Company under section 5, or if having satisfied the requirements it subsequently ceases to satisfy the requirements for a continuous period of more than 30 days, the company shall upon expiration of that period notify the Registrar of that fact.
- (2) A company that wilfully contravenes subsection (1) is liable to a penalty of \$100 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.
7. Subject to section 74, no member, director, officer, agent or liquidator of a company incorporated under this Act is liable for any debt, obligation or default of the company, unless specifically provided in this Act or in any other law for the time being in force in the British Virgin Islands, and except in so far as he may be liable for his own conduct or acts.
8. A company may be incorporated under this Act for any object or purpose not prohibited under this Act or under any other law for the time being in force in the British Virgin Islands.
9. (1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, this Act or any other law for the time being in force in the British Virgin Islands, a company incorporated under this Act has the power, irrespective of corporate benefit, to perform all acts and engage in all activities necessary or conducive to the conduct, promotion or attainment of the objects or purposes of the company, including the power to do the following:
- (a) issue registered shares or bearer shares or both;
 - (b) issue the following:
 - (i) voting shares,

- (ii) non-voting shares,
 - (iii) shares that may have more or less than one vote per share,
 - (iv) shares that may be voted only on certain matters or only upon the occurrence of certain events, and
 - (v) shares that may be voted only when held by persons who meet specified requirements;
- (c) issue common share, preferred shares, limited shares or redeemable shares;
 - (d) issue shares that entitle participation only in certain assets;
 - (e) issue options, warrants or rights, or instruments of a similar nature, to acquire any securities of the company;
 - (f) issue securities that, at the option of the holder thereof or of the company or upon the happening of a specified event, are convertible into, or exchangeable for, other securities in the company or any property then or to be owned by the company;
 - (g) purchase, redeem or otherwise acquire and hold its own shares;
 - (h) guarantee a liability or obligation of any person and to secure any of its obligations by mortgage, pledge or other charge, of any of its assets for that purpose;
 - (i) protect the assets of the company for the benefit of the company, its creditors and its members, and at the discretion of the directors, for any person having a direct or indirect interest in the company; and
 - (j) issue shares in any one or more currencies.
- (2) For purposes of paragraph (i) of subsection (1), notwithstanding any other provision of this Act or of any other law for the time being in force in the British Virgin Islands or any rule of law to the contrary, the directors may cause the company to transfer any of its assets in trust to one or more trustees, to any company, association, partnership, foundation or similar entity; and, with respect to the transfer, the directors may provide that the company, its creditors, its members or any person having a direct or indirect interest in the company or any of them, may be the beneficiaries, creditors, members, certificate holders, partners or holders of any other similar interest.
 - (3) The rights or interest of any existing or subsequent creditor of the company in any assets of the company are not affected by any transfer under subsection (2), and those rights or interest may be pleaded against any transferee in any such transfer.
10. (1) No act of a company incorporated under this Act and no transfer of real or personal property by or to a company so incorporated is invalid by reason only of the fact that the company was without capacity or power to perform the act, or to transfer or receive the property, but the lack of capacity or power may be pleaded in the following cases:
- (a) in proceedings by a member against the company to prohibit the performance of any act or the transfer of real or personal property by or to the company; or
 - (b) in proceedings by the company, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a derivative action, against the incumbent or former directors of the company for loss or damage due to their unauthorized act.
- (2) For purposes of paragraph (a) of subsection (1), the court may set aside and prohibit the performance of a contract if

- (a) the unauthorized act or transfer sought to be set aside or prohibited is being, or is to be, performed or made under any contract to which the company is a party;
- (b) all the parties to the contract are parties to the proceedings; and
- (c) it appears fair and reasonable to set aside or prohibit the performance of the contract;

and in so doing the court may, in applying this subsection, award to the company or to the other parties to the contract such compensation as may be reasonable except that in determining the amount of compensation the court shall not take into account anticipated profits to be derived from the performance of the contract.

11. (1) The word "Limited", "Corporation", "Incorporated", "Societe Anonyme" or "Sociedad Anonima" or the abbreviation "Ltd", "Corp", "Inc" or "S.A." must be part of the name of every company incorporated under this Act, but a company may use and may be legally designated by either the full or the abbreviated form.
- (2) No company shall be incorporated under this Act under a name that
- (a) is identical with that under which a company in existence is already incorporated under this Act or registered under the Companies Act or so nearly resembles the name as to be calculated to deceive, except where the company in existence gives its consent; or
 - (b) contains the words "Assurance", "Bank", "Building Society", "Chamber of Commerce", "Chartered", "Cooperative", "Imperial", "Insurance", "Municipal", "Royal", "Trust Company", "Trustee Company" or a word conveying a similar meaning, or any other word that, in the opinion of the Registrar, suggests or is calculated to suggest
 - (i) the patronage of Her Majesty or that of a member of the Royal Family; or
 - (ii) a connection with Her Majesty's Government or a department thereof; or
 - (iii) a connection with a municipality or other local authority or with a society or body incorporated by Royal Charter;

except with the approval of the Registrar in writing;
 - (c) is indecent, offensive or, in the opinion of the Registrar, objectionable.
- (3) A company may amend its Memorandum to change its name.
- (4) If a company is incorporated under a name that
- (a) is identical with a name under which a company in existence was incorporated under this Act or registered under the Companies Act, or
 - (b) so nearly resembles the name as to be calculated to deceive;
- the Registrar may, without the consent of the company in existence, give notice to the last registered company to change its name and if it fails to do so within 60 days from the date of the notice, the Registrar must amend the Memorandum of the company to change its name to such name as the Registrar deems appropriate, and the Registrar must publish notice of the change in the Gazette.
- (5) Subject to subsections (2) and (4), where a company changes its name, the Registrar must enter the new name on the Register in place of the former name, and must issue a certificate of incorporation indicating the change of name.
- (6) A change of name does not affect any rights or obligations of a company, or render defective any legal proceedings by or against a company, and all legal proceedings that have been commenced against a company by its former name may be continued against it by its new name.

- (7) Subject to subsection (2) the Registrar may, upon a request made by any person, reserve for 90 days a name for future adoption by a company under this Act.
12. (1) The Memorandum must include
- (a) the name of the company;
 - (b) the address within the British Virgin Islands of the registered office of the company;
 - (c) the name and address within the British Virgin Islands of the registered agent of the company;
 - (d) the objects or purposes for which the company is to be incorporated;
 - (e) the currency in which shares in the company shall be issued;
 - (f) a statement of the authorized capital of the company setting forth the aggregate of the par value of all shares with par value that the company is authorized to issue and the amount, if any, to be represented by shares without par value that the company is authorized to issue;
 - (g) a statement of the number of classes and series of shares, the number of shares of each such class and series and the par value of shares with par value and that shares may be without par value, if that is the case;
 - (h) a statement of the designations, powers, preferences and rights, and the qualifications, limitations or restrictions of each class and series of shares that the company is authorized to issue, unless the directors are to be authorized to fix any such designations, powers, preferences, rights, qualifications, limitations and restrictions, and in that case, an express grant of such authority as may be desired to grant to the directors to fix by a resolution any such designations, powers, preferences, rights, qualifications, limitations and restrictions that have not been fixed by the Memorandum;
 - (i) a statement of the number of shares to be issued as registered shares and the number of shares to be issued as bearer shares, unless the directors are authorized to determine at their discretion whether shares are to be issued as registered shares or bearer shares, and in that case an express grant of such authority as may be desired must be given to empower the directors to issue shares as registered shares or bearer shares as they may determine by resolution of directors;
 - (j) whether registered shares may be exchanged for bearer shares and whether bearer shares may be exchanged for registered shares;
 - (k) if bearer shares are authorized to be issued, the manner in which a required notice to members is to be given to the holders of bearer shares; and
 - (l) a statement that the company may not carry on the activities set forth in subsection (1) of section 5 which statement shall set forth verbatim the activities described in that subsection, unless it is licensed to carry out any of the activities referred to in that subsection.
- (2) For purposes of paragraph (d) of subsection (1), if the Memorandum contains a statement either alone or with other objects or purposes that the object or purpose of the company is to engage in any act or activity that is not prohibited under any law for the time being in force in the British Virgin Islands, the effect of that statement is to make all acts and activities that are not illegal part of the objects or purposes of the company, subject to any limitations in the Memorandum.
- (3) The Memorandum must be subscribed by the registered agent named in the Memorandum in the presence of another person who must sign his name as a witness.
- (4) The Memorandum, when registered, binds the company and its members from time to time to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were contained

in the Memorandum, on the part of himself, his heirs, executors and administrators, a covenant to observe the provisions of the Memorandum, subject to this Act.

13. (1) The Memorandum, when submitted for registration, must be accompanied by Articles prescribing regulations for the company.
 - (2) The Articles must be subscribed by the registered agent named in the Memorandum in the presence of another person who must sign his name as a witness.
 - (3) The Articles, when registered, bind the company and its members from time to time to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were contained in the Articles, on the part of himself, his heirs, executors and administrators, a covenant to observe the provisions of the Articles, subject to this Act.
14. (1) The Registrar shall not register the Memorandum or the Articles delivered to him unless he is satisfied that all requirements of this Act in respect of registration have been complied with and
 - (a) a solicitor engaged in the formation of the company; or
 - (b) the registered agent named in the Memorandum of the company to be registered agent,certifies in writing that the requirements of this Act in respect of registration have been complied with and the written certification delivered to the Registrar is sufficient evidence of compliance.
 - (2) Subject to subsection (1), the Registrar shall retain and register the Memorandum and Articles submitted to him in a Register to be maintained by him to be known as the Register of International Business Companies.
 - (3) Upon the registration of the Memorandum and the Articles, the Registrar shall issue a certificate of incorporation under his hand and seal certifying that the company is incorporated.
15. (1) Upon the issue by the Registrar of a certificate of incorporation of a company, the company is, from the date shown on the certificate of incorporation, a body corporate under the name contained in the Memorandum with the full capacity of an individual who is sui juris.
 - (2) A certificate of incorporation of a company incorporated under this Act issued by the Registrar is prima facie evidence of compliance with all requirements of this Act in respect of incorporation.
16. (1) Subject to any limitation in its Memorandum or Articles, a company incorporated under this Act may amend its Memorandum or Articles by a resolution of members or, where permitted by its Memorandum or Articles or by this Act, by a resolution of directors.
 - (2) A company that amends its Memorandum or Articles must submit to the Registrar an extract of the resolution of members or the resolution of directors amending the Memorandum or Articles, as the case may be, certified as a true copy of the resolution amending the Memorandum or Articles by
 - (a) the solicitor engaged in advising the company; or
 - (b) the registered agent named in the Memorandum of the company,and the Registrar must retain and register the certified copy of the extract of the resolution.
 - (3) An amendment to the Memorandum or Articles has effect from the time the amendment is registered by the Registrar.
 - (4) A company that wilfully contravenes subsection (2) is liable to a penalty of \$50 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

17. A copy of the Memorandum and a copy of the Articles must be given to any member who requests a copy on payment by the member of such amount as the director may determine to be reasonably necessary to defray the costs of preparing and furnishing them.

PART III

Capital and Dividends

- 17A. Subject to any limitations or provisions to the contrary in its Memorandum or Articles, the unissued shares and treasury shares of a company incorporated under this Act shall be at the disposal of the directors who may, without limiting or affecting any rights previously conferred on the holders of any existing shares or class or series of shares, offer, allot, grant options over or otherwise dispose of shares to such persons, at such times and upon such terms as the company may, by resolution of directors, determine.
18. No share in a company incorporated under this Act may be issued until the consideration in respect of the share is fully paid, and when issued the share is for all purposes fully paid and non-assessable save that a share issued for a promissory note or other written obligation for payment of a debt may be issued subject to forfeiture in the manner prescribed in section 19A.
19. Subject to any limitations in the Memorandum or Articles, each share in a company incorporated under this Act shall be issued for money, services rendered, personal property (including other shares, debt obligations or other securities in the company), an estate in real property, a promissory note or other binding obligation to contribute money or property, or any combination thereof.
- 19A. (1) The Memorandum or Articles, or an agreement for the subscription of shares, of a company incorporated under this Act may contain provisions for the forfeiture of shares for which payment is not made pursuant to a promissory note or other written binding obligation for payment of a debt.
- (2) Any provision in the Memorandum or Articles, or in an agreement for the subscription of shares of a company incorporated under this Act providing for the forfeiture of shares shall contain a requirement that written notice specifying a date for payment to be made be served on the member who defaults in making payment pursuant to a promissory note or other written binding obligation to pay a debt.
- (3) The written notice referred to in subsection (2) shall name a further date not earlier than the expiration of 14 days from the date of service of the notice on or before which the payment required by the notice is to be made and shall contain a statement that in the event of non-payment at or before the time named in the notice the shares, or any of them, in respect of which payment is not made will be liable to be forfeited.
- (4) Where a notice 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, by resolution of directors forfeit and cancel the shares to which the notice relates.
- (5) The company is under no obligation to refund any moneys to the member whose shares have been cancelled pursuant to subsection (4) and that member shall be discharged from any further obligation to the company.
20. (1) Subject to any limitations in the Memorandum or Articles, shares in a company incorporated under this Act may be issued for such amount as may be determined from time to time by the directors, except that in the case of shares with par value, the amount shall not be less than the par value; and, in the absence of fraud, the decision of the directors as to the value of the consideration received by the company in respect of the issue is conclusive, unless a question of law is involved.
- (2) A share issued by a company incorporated under this Act upon conversion of, or in exchange for, another share or a debt obligation or other security in the company, shall be treated for all purposes as having been issued for money equal to the consideration received or deemed to have been received by the company in respect of the other share, debt obligation or security.
- (3) Repealed by No. 10 of 1990.

21. Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may issue fractions of a share and unless and to the extent otherwise provided in the Memorandum or Articles, a fractional share has the corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share of the same class or series of shares.
- 21A. (1) The authorized capital, if any, of a company incorporated under this Act may be stated in more than one currency in which case the par value of the shares, if any, shall be expressed in the same currencies.
- (2) The Registrar may issue guidelines with respect to calculation of fees payable pursuant to section 104 for companies with an authorized capital stated in a currency other than United States dollars.
22. (1) Upon the issue by a company incorporated under this Act of a share with par value, the consideration in respect of the share constitutes capital to the extent of the par value and the excess constitutes surplus.
- (2) Subject to any limitations in the Memorandum or Articles, upon the issue by a company incorporated under this Act of a share without par value, the consideration in respect of the share constitutes capital to the extent designated by the directors and the excess constitutes surplus, except that the directors must designate as capital an amount of the consideration that is at least equal to the amount that the share is entitled to as a preference, if any, in the assets of the company upon liquidation of the company.
- (3) Upon the disposition by a company incorporated under this Act of a treasury share, the consideration in respect of the share is added to surplus.
23. (1) A share issued as a dividend by a company incorporated under this Act shall be treated for all purposes as having been issued for money equal to the surplus that is transferred to capital upon the issue of the share.
- (2) In the case of a dividend of authorized but unissued shares with par value, an amount equal to the aggregate par value of the shares shall be transferred from surplus to capital at the time of the distribution.
- (3) In the case of a dividend of authorized but unissued shares without par value, the amount designated by the directors shall be transferred from surplus to capital at the time of the distribution, except that the directors must designate as capital an amount that is at least equal to the amount that the shares are entitled to as a preference, if any, in the assets of the company upon liquidation of the company.
- (4) A division of the issued and outstanding shares of a class or series of shares into a larger number of shares of the same class or series having a proportionately smaller par value does not constitute a dividend of shares.
24. (1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may amend its Memorandum to increase or reduce its authorized capital, and in connection therewith, the company may
- (a) increase or reduce the number of shares which the company may issue;
- (b) increase or reduce the par value of any of its shares; or
- (c) effect any combination under paragraph (a) and (b).
- (2) Where a company reduces its authorized capital under subsection (1), then, for purposes of computing the capital of the company, any capital that immediately before the reduction was represented by shares but immediately following the reduction is no longer represented by shares shall be deemed to be capital transferred from surplus to capital.
- (3) A company shall, in writing, inform the Registrar of any increase or decrease of its authorized capital.
25. (1) A company incorporated under this Act may amend its Memorandum
- (a) to divide the shares, including issued shares, of a class or series into a larger number of shares of the same class or series; or

- (b) to combine the shares, including issued shares, of a class or series into a smaller number of shares of the same class or series.
 - (2) Where shares are divided or combined under subsection (1), the aggregate par value of the new shares must be equal to the aggregate par value of the original shares.
26. Shares of a company incorporated under this Act are personal property and are not of the nature of real property.
27. (1) A company incorporated under this Act must state in its Articles whether or not certificates in respect of its shares shall be issued.
- (2) If a company incorporated under this Act issues certificates in respect of its shares, the certificates
- (a) must be signed by two directors or two officers of the company, or by one director and one officer; or
 - (b) must be under the common seal of the company, with or without the signature of any director or officer of the company;
- and the Articles may provide for the signatures or common seal to be facsimiles.
- (3) A certificate issued in accordance with subsection (2) specifying a share held by a member of the company is prima facie evidence of the title of the member to the share specified therein.
28. (1) A company incorporated under this Act shall cause to be kept one or more registers to be known as share registers containing
- (a) the names and addresses of the persons who hold registered shares in the company;
 - (b) the number of each class and series of registered shares held by each person;
 - (c) the date on which the name of each person was entered in the share register;
 - (d) the date on which any person ceased to be a member;
 - (e) in the case of bearer shares, the total number of each class and series of bearer shares; and
 - (f) with respect to each certificate for bearer shares,
 - (i) the identifying number of the certificate;
 - (ii) the number of each class or series of shares issued to bearer specified therein;
 - (iii) the date of issue of the certificate;
 - (iv) the name and address of the custodian of the certificate
- but the company may delete from the register information relating to persons who are no longer members or information relating to bearer shares that have been cancelled.
- (2) The share register may be in any such form as the directors may approve but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.
- (3) Repealed by No. 3 of 1988.
- (4) A copy of the share register, commencing from the date of the registration of the company, shall be kept at the registered office of the company referred to in section 38.

- (5) The share register is prima facie evidence of any matters directed or authorized by this Act to be contained therein.
- (6) A company that wilfully contravenes this section is liable to a penalty of \$25 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.
29. (1) If
- (a) information that is required to be entered in the share register under section 28 is omitted therefrom or inaccurately entered therein; or
- (b) there is unreasonable delay in entering the information in the share register,
- a member of the company, or any person who is aggrieved by the omission, inaccuracy or delay, may apply to the court for an order that the share register be rectified, and the court for may either grant or refuse the application, with or without costs to be paid by the applicant, or order the rectification of the share register, and may direct the company to pay all costs of the application and any damages the applicant may have sustained.
- (2) The court may, in any proceedings under subsection (1), determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the share register, whether the question arises between
- (a) two or more members or alleged members; or
- (b) between members or alleged members and the company;
- and generally the court may in the proceedings determine any question that may be necessary or expedient to be determined for the rectification of the share register.
30. (1) Subject to any limitations in the Memorandum or Articles, registered shares of a company incorporated under this Act may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee.
- (2) In the absence of a written instrument of transfer mentioned in subsection (1), the directors may accept such evidence of a transfer of shares as they consider appropriate.
- (3) A company shall not be required to treat a transferee of a registered share in the company as a member until the transferee's name has been entered in the share register.
- (4) Subject to any limitation or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act must, on the application of the transferor or transferee of a registered share in the company, enter in its share register the name of the transferee of the share.
- (5) A transfer of registered shares of a deceased, incompetent or bankrupt member of a company incorporated under this Act made by his personal representative, guardian or trustee, as the case may be, or a transfer of registered shares owned by a person as a result of a transfer from a member by operation of law, is of the same validity as if the personal representative, guardian, trustee or transferee had been the registered holder of the shares at the time of the execution of the instrument of transfer.
- (6) For the purposes of subsection (5), what amounts to incompetence on the part of a person is a matter to be determined by the court after having regard to all the relevant evidence and the circumstances of the case.
31. Subject to Part IIIA, a bearer share is transferable by delivery of a certificate relating to the share.
32. (1) Where a governmental authority, whether it is legally constituted or not, in any jurisdiction outside the British Virgin Islands

- (a) by or in connection with a nationalization, expropriation, confiscation, coercion, force or duress, or similar action; or
- (b) by or in connection with the imposition of any confiscatory tax, assessment or other governmental charge,

takes or seizes any shares or other interest in a company incorporated under this Act, the company itself or a person holding shares or any other interest in the company, including an interest as a creditor, may apply to the court for an order that the company disregard the taking or seizure and continue to treat the person who would have held shares or any other interest in the company but for the taking or seizure of the shares or other interest as continuing to hold the shares or other interest.

- (2) Without affecting subsection (1), where a person whose shares or other interests have been taken or seized as referred to in subsection (1) is other than a natural person, the person making the application under subsection (1), or the company itself, may apply to the court for an additional order for the company to treat the persons believed by the company to have held the direct or indirect beneficial interest in the shares or other interest in the company as the holder of those shares or other interest.
 - (3) The court may, upon application made to it under subsection (1) or (2),
 - (a) grant such relief as it considers equitable and proper; and
 - (b) order that any shares of or other interest in the company vest in such trustees as the court may appoint upon such trusts and for such purposes as the court determines.
33. (1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may purchase, redeem or otherwise acquire and hold its own shares but only out of surplus or in exchange for newly issued shares of equal value.
- (1A) Subject to subsection (1), a company incorporated under this Act may not purchase, redeem or otherwise acquire its own shares without the consent of the member whose shares are to be purchased, redeemed or otherwise acquired, unless the company is permitted to purchase, redeem or otherwise acquire the shares without that consent by virtue of
- (a) the provisions of the Memorandum or Articles of the company;
 - (b) the designations, powers, preferences, rights, qualifications, limitations and restrictions with which the shares were issued; or
 - (c) the subscription agreement for the issue of the shares.
- (2) No purchase, redemption or other acquisition permitted under subsection (1) shall be made unless the directors determine that immediately after the purchase, redemption or other acquisition
- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
 - (b) the realizable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its capital;
- and, in the absence of fraud, the decision of the directors as to the realizable value of the assets of the company is conclusive, unless a question of law is involved.
- (3) A determination by the directors under subsection (2) is not required where shares are purchased, redeemed or otherwise acquired
- (a) pursuant to a right of a member to have his shares redeemed or to have his shares exchanged for money or other property of the company;

- (b) by virtue of a transfer of capital pursuant to paragraph (b) (iii) of section 35 (1);
 - (c) by virtue of the provisions of section 83; and
 - (d) pursuant to an order of the court.
- (4) Subject to any limitations in the Memorandum or Articles, shares that a company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares unless the shares are purchased, redeemed or otherwise acquired by virtue of a reduction in capital in a manner that would be a contravention of the requirements of section 35 (3), in which case they shall be cancelled but they shall be available for reissue; and upon the cancellation of a share, the amount included as capital of the company with respect to that share shall be deducted from the capital of the company.
- (5) A company incorporated under this Act may purchase, redeem or otherwise acquire the shares of the company at a price lower than fair value if permitted by, and then only in accordance with, the terms of
- (a) its Memorandum or Articles; or
 - (b) a written agreement for the subscription for the shares to be purchased, redeemed or otherwise acquired.
34. Where shares in a company incorporated under this Act
- (a) are held by the company as treasury shares; or
 - (b) are held by another company of which the first company holds, directly or indirectly, shares having more than 50 per cent of the votes in the election of directors of the other company,
- the shares of the first company are not entitled to vote or to have dividends paid thereon and shall not be treated as outstanding for any purpose under this Act except for purposes of determining the capital of the first company.
35. (1) Subject to any limitation in the Memorandum or Articles and subject to subsections (3) and (4), the capital of a company incorporated under this Act may, by a resolution of members or by a resolution of directors, be
- (a) increased by transferring an amount out of the surplus of the company to capital; or
 - (b) reduced by transferring an amount out of capital of the company to surplus.
- (2) Repealed by No. 3 of 1988.
- (3) No reduction of capital shall be effected that reduces the capital of the company to an amount that is less than the sum of
- (a) the aggregate par value of
 - (i) all outstanding shares with par value, and
 - (ii) all shares with par value held by the company as treasury shares; and
 - (b) the aggregate of the amounts designated as capital of
 - (i) all outstanding shares without par value, and
 - (ii) all shares without par value held by the company as treasury shares that are entitled to a preference, if any, in the assets of the company upon liquidation of the company.
- (4) No reduction of capital shall be effected under subsection (1) unless the directors determine that immediately after the reduction

- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
- (b) the realizable value of the assets of the company will not be less than its total liabilities, other than deferred taxes, as shown in the books of account, and its remaining capital;

and, in the absence of fraud, the decision of the directors as to the realizable value of the assets of the company is conclusive, unless a question of law is involved.

36. (1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may, by a resolution of directors, declare and pay dividends in money, shares or other property.
- (2) Dividends shall only be declared and paid out of surplus.
- (3) No dividend shall be declared and paid unless the directors determine that immediately after the payment of the dividend
- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
 - (b) the realizable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its capital;

and, in the absence of fraud, the decision of the directors as to the realizable value of the assets of the company is conclusive, unless a question of law is involved.

37. Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may, by a resolution of directors, include in the computation of surplus for any purpose under this Act the net unrealized appreciation of the assets of the company, and, in the absence of fraud, the decision of the directors as to the value of the assets is conclusive, unless a question of law is involved.

- 37A. (1) A mortgage or charge of shares of a company incorporated under this Act must be in writing signed by, or with the authority of, the holder of the bearer share or the registered holder of the registered share to which the mortgage or charge relates.
- (2) A mortgage or charge of a bearer share is not valid and enforceable unless the certificate for the share is deposited with a custodian.; and
- (3) A mortgage or charge of shares of a company incorporated under this Act need not be in any specific form but it must clearly indicate
- (a) the intention to create a mortgage or charge; and
 - (b) the amount secured by the mortgage or charge or how that amount is to be calculated.
- (4) A mortgage or charge of shares of a company incorporated under this Act may be governed by the law of a jurisdiction other than the British Virgin Islands, but if a law other than the law of the British Virgin Islands is specified as the governing law
- (a) the mortgage or charge must be in compliance with the requirements of its governing law in order for the mortgage or charge to be valid and binding on the company; and
 - (b) the remedies available to a mortgagee or chargee shall be governed by the governing law and the instrument creating the mortgage or charge save that the rights between the mortgagor or mortgagee as a member of the company and the company shall continue to be governed by the Memorandum and the Articles of the company and this Act.

- (5) If no law is specified to govern a mortgage or charge of shares of a company incorporated under this Act, the instrument creating the mortgage or charge shall be governed by the laws of the British Virgin Islands and, in the case of a default by the mortgagor or chargor on the terms of the mortgage, the mortgagee or chargee is entitled to the following remedies:
- (a) subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, the right to sell the shares; and
 - (b) the right to appoint a receiver who, subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, may
 - (i) vote the shares,
 - (ii) receive dividends and other payments in respect of the shares, and
 - (iii) exercise other rights and powers of the mortgagor or chargor in respect of the shares,
 until such time as the mortgage or charge is discharged.
- (6) Subsection (5) also applies to a mortgage or charge of shares of a company incorporated under this Act where the law of the British Virgin Islands is specified as the governing law.
- (7) Subject to any provisions to the contrary in the instrument of mortgage or charge of shares of a company incorporated under this Act, all amounts that accrue from the enforcement of the mortgage or charge shall be applied in the following manner:
- (a) firstly, in meeting the costs incurred in enforcing the mortgage or charge;
 - (b) secondly, in discharging the sums secured by the mortgage or charge; and
 - (c) thirdly, in paying any balance due to the mortgagor or chargor.
- (8) The remedies referred to in subsection (5) are not exercisable until
- (a) a default has occurred and has continued for a period of not less than 30 days, or such shorter period as may be specified in the instrument creating the mortgage or charge; and
 - (b) the default has not been rectified within 14 days from service of the notice specifying the default and requiring rectification thereof.
- (9) In the case of the mortgage or charge of registered shares there may be entered in the share register of the company
- (a) a statement that the shares are mortgaged or charged;
 - (b) the name of the mortgagee or chargee; and
 - (c) the date on which the statement and name are entered in the share register.
- (10) The Governor in Council may make regulations providing for such transitional provisions as he considers necessary providing for such transitional provisions as he considers necessary or expedient to have effect in relation to this section consequent upon the coming into operation of Part IIA and the repeal and substitution of subsection (2) by the International Business Companies (Amendment) Act, 2003.

PART IIIA

IMMOBILISATION OF BEARER SHARES

37B. In this Part

“authorized custodian” means a person approved by the Commission as an authorized custodian under section 50A(1) or section 50A(2) of the Financial Services Commission Act, 2001;

“custodian” means an authorized custodian or a recognized custodian

“existing bearer share” means a share in a company that was issued as or converted to a bearer share prior to the effective date and that remains a bearer share in the company on the effective date; and

“recognized custodian” means a person recognized by the Commission as a custodian under section 50B of the Financial Services Commission Act, 2001.

- 37C. (1) During the period in which a bearer share is disabled, that share does not carry any of the entitlements which it would otherwise carry and, subject to subsection (3), any transfer or purported transfer of an interest in the bearer share is void and of no effect.
- (2) Without limiting subsection (1), “entitlement” includes an entitlement to vote, an entitlement to dividend and an entitlement to a share in the assets of the company on its winding up or on its dissolution.
- (3) Subsection (1) does not apply to the transfer or delivery of a bearer share in a company
- (a) to a custodian in accordance with this Part
- (b) to the company where the share is to be, or has been
- (i) converted to, or exchanged for, a registered share,
- (ii) redeemed, purchased or otherwise acquired by the company, or
- (iii) foreited and cancelled, and the company does not hold the bearer share for or on behalf of any other person; or
- (c) to the registered agent of the company in accordance with section 37I(1)(c), 37I(4)(b) or 37J(2).
- 37D. (1) Where a company issues a bearer share, or disposes of a treasury share that is a bearer share, on or after the effective date, it shall not deliver the share to any person other than a custodian who has agreed to hold the share.
- (2) A company shall not, on or after the effective date, deliver a bearer share converted from a registered share to any person other than a custodian who has agreed to hold the share.
- 37E. (1) Every existing bearer share of a company shall, on or before the transition date
- (a) be deposited with a custodian who has agreed to hold the share; or
- (b) be converted to, or exchanged for, a registered share
- (2) Subsection (1) does not apply to a bearer share that before the transition date
- (a) is cancelled; or
- (b) is redeemed, purchased or otherwise acquired by the company as a treasury share
- (3) An existing bearer share in a company is deemed not to have been deposited with a custodian for the purposes of subsection (1) until the registered agent of the company has received
- (a) in the case of a bearer share deposited with an authorized custodian, notification of the deposit from the authorized custodian in accordance with section 37H(1); or

- (b) in the case of a bearer share deposited with a recognized custodian, the proof of the deposit of the share and the notice required to be sent by section 37G(3).
- (4) The Court may, on the application of the company or a person interested in a bearer share, extend the period specified in subsection (1) by such further period or periods not exceeding one year in total as it considers fit.
- (5) On an existing bearer share being deposited with a custodian accordance with subsections (1)(a) and (3), it shall for all purposes of this Part cease to be regarded as an existing bearer share and shall thereafter be treated as if it had been issued after the effective date.
- 37F. (1) Subject to subsections (2), (3) and (4), a bearer share in a company is disabled for any period which it is held by person other than custodian.
- (2) Subsection (1) shall not have effect with respect to an existing bearer share until after the transition date.
- (3) Subject to section 37J(7), subsection (1) does not apply to a bearer share in a company
- (a) that is held by the registered agent of the company under section 37(I1)(c), 37I(4)(b) or 37J (2); or
- (b) that is held by a person who received the share at a time when he was a custodian but who has ceased to be a custodian.
- (4) Subsection (1) does not apply where
- (a) a bearer share in a company is held by the company;
- (b) the bearer share is to be , or has been
- (i) converted to, or exchanged for, a registered share,
- (ii) redeemed, purchased or otherwise acquired by the company, or
- (iii) cancelled and forfeited; and
- (c) the company does not hold the bearer share for or on behalf of any other person.
- 37G. (1) Where a bearer share in a company is delivered to or deposited with an authorized custodian, the company, where it delivers the share or the authorized custodian delivering or the person depositing the share, shall provide the authorized custodian with notice in the prescribed form
- (a) stating the full name of the beneficial owner of the bearer share;
- (b) stating the full name of any other person having an interest in that share, whether by virtue of a charge on the share or otherwise, or containing a statement that no other person has an interest in that share; and
- (c) containing such other information as may be prescribed.
- (2) an authorised custodian shall not accept a bearer share unless it is accompanied by notice complying with subsection (1).
- (3) Where a bearer share in a company is delivered to or deposited with a recognized custodian, the company, where it delivers the share, or the person depositing the share shall, within 14 days of the date on which the share is delivered or deposited with the recognized custodian, send to the registered agent proof, in such form as may be prescribed from containing the information specified in paragraphs (a), (b) and (c) of subsection (1).

- 37H (1) An authorized custodian shall, within 14 days of the receipt of a bearer share in a company that is delivered to it, other than by the registered agent of the company, or deposited with it, send notification to the registered agent of the company that it is the custodian of the share.
- (2) An authorised custodian who holds a bearer share
- (a) Shall keep the notice provided to it under section 37G(1), any notice filed under section 37K(1), any notice sent to the registered agent under section 37M(1) or (4) and a record of the location of the bearer share
- (i) in the case of an authorized custodian approved section 50A(1) of the Financial Services Commission Act, 2001 at its principal office in the British Virgin Islands or at such other office in the British Virgin Islands as may be approved by the Commission in writing, or
- (ii) in the case of an authorized custodian approved under section 50A(2) of the Financial Services Commission Act, 2001, at such office as may be approved by the Commission in writing; and
- (b) whether the bearer share is kept inside or outside the British Virgin Islands, shall ensure that the bearer share remains at all within its custody and control.
- (3) Where an authorized custodian desires to cease acting as custodian in respect of a bearer share in a company, it shall give the registered agent of the company, the beneficial owner and any person who has an interest in that share not less than 60 days notice of its intention to cease acting as custodian in respect of the share.
- 37I (1) An authorized custodian holding a bearer share in a company shall not transfer possession of that share to any person other than
- (a) another authorised custodian who has agreed to hold the share,
- (b) the company where the bearer share is to be, or has been
- (i) converted to, or exchanged for, a registered share
- (ii) redeemed, purchased or otherwise acquired by the company, or
- (iii) cancelled and forfeited; or
- (c) The registered agent of the company.
- (2) Where an authorized custodian transfers possession of a bearer share in accordance with subsection (1), it shall
- (a) make a copy of all notices provided to it under section 37G(1) or section 37K(1) and any notices sent to the registered agent under section 37M(1) or (4) and retain the copies made for such period as may be prescribed; and
- (b) deliver, with the bearer share, all original notices provided to it under section 37G(1) or section 37K(1) and copies of any notices sent to the registered agent under section 37M(1) or (4).
- (3) Where an authorized custodian transfers possession of a bearer share in a company to another authorized custodian or to the company, it shall, within 7 days, send a notice of transfer in the prescribes from to the registered agent of the company.
- (4) A recognised custodian shall not transfer possession of a bearer share in a company to any person other than
- (a) the company where the bearer share is to be or has been
- (i) converted to, or exchanged for, a registered share,

- (ii) redeemed, purchased or otherwise acquired by the company, or
 - (iii) cancelled and forfeited; or
 - (b) the registered agent of the company.
 - (5) Where a recognized custodian transfers possession of a bearer share in a company, it shall deliver, with the bearer share, a copy of any notice sent to the registered agent under section 37M(1) or (4).
 - (6) Where possession of a bearer share in a company is transferred by a recognized custodian to the company, the company shall, within 14 days of the receipt of the share, send notification of its receipt of the share to its registered agent.
 - (7) The registered agent of a company shall not transfer possession of a bearer share in the company to any person other than
 - (a) a custodian who has agreed to hold the share, or
 - (b) the company where the bearer share is to be, or has been
 - (i) converted to, or exchanged for, a registered share,
 - (ii) redeemed, purchased or otherwise acquired by the company, or
 - (iii) cancelled and forfeited.
 - (8) Where a registered agent transfers possession of a bearer share received from an authorized custodian, to an authorized custodian he shall
 - (a) make a copy of all notices provided to him under subsection (2)(b) and retain the copies made for such period as may be prescribed; and
 - (b) deliver, with the bearer share
 - (i) the original notices, and
 - (ii) any copies of notices,
 received under subsection (2)(b).
- 37 J (1) Where the Commission revokes the approval of an authorized custodian or ceases to recognise a person as a recognised custodian, it shall
- (a) publish a notice in the *Gazette* and in a newspaper published and circulating in the Virgin Islands; and
 - (b) send a notice to the person whose approval has been revoked or who has ceased to be recognized.
- (2) A person whose approval as an authorized custodian has been revoked or who has ceased to be recognized by the Commission as a recognized custodian shall, in respect of each bearer share in a company that he holds,
- (a) forthwith give the registered agent of the company, the beneficial owner of the share and any person who has an interest in that share notice in the prescribed form that has ceased to be an authorized or recognized custodian; and
 - (b) deliver to the registered agent of the company, within 14 days of his ceasing to be custodian
 - (i) the bearer share in the company ; and

- (ii) all original notices provided to him under section 37G(1) or section 37K(1) and a copy of any notice sent to the registered agent under section 37M(1) or (4).
- (3) A registered agent of a company who receives a bearer share in a company under subsection (2), shall hold the share on behalf of the beneficial owner of the share and shall only transfer possession of that share in accordance with instructions received under subsection (4) or, if he does not receive such instructions within the time period specified in subsection (4), in accordance with subsection (5).
- (4) The beneficial owner of a bearer share received by a registered agent under subsection (1) or (4) shall, within 90 days of the date of publication in the Gazette of a notice under subsection (1)(a), provide the registered agent with written instructions as to the transfer of possession of the share to
 - (a) a custodian who has agreed to hold the share, or
 - (b) the company where the bearer share is to be, or has been
 - (i) converted to, or exchanged for, a registered share,
 - (ii) redeemed, purchased or otherwise acquired by the company, or
 - (iii) cancelled and forfeited
- (5) If the registered agent does not receive instructions from the beneficial owner of a bearer share complying with subsection (4) within the time period specified in subsection (4), the registered agent shall transfer possession of the share to such authorized custodian as he considers fit.
- (6) Where a registered agent fails to transfer possession of a bearer share in accordance with subsection (5), the Commission may apply to the Court for an order that the bearer share be disabled, notwithstanding section 37F(3).
- (7) On an application made under subsection (6), the Court may make such order as it considers appropriate.
- (8) A registered agent commits an offence and is liable on summary conviction to a fine \$10,000 if he
 - (a) transfers possession of a bearer share otherwise than in accordance with subsection (4); or
 - (b) fails to transfer possession of a bearer share in accordance with subsection (5).
- 37K. (1) A transfer of the beneficial ownership of, or an interest in, a bearer share held by an authorized custodian is not effective until a notice in the prescribed form amending the notice provided under section 37G(1) is submitted to the authorized custodian.
- (2) A transfer of the beneficial ownership of, or an interest in, a bearer share in a company held by a recognized custodian is not effective until a notice in the prescribed form amending the notice provided under section 37G(3) is submitted to the registered agent of the company.
- 37L (1) Where an existing bearer share in a company is not deposited with a custodian who has agreed to hold the share on or before the transition date, the company may, notwithstanding section 33(1A) or any provision in the memorandum or articles, in any shareholders' agreement, ordinary other agreement redeem the share.
- (2) Subject to subsection (3), sections 81 (3) and 83 apply to the redemption of bearer shares under subsection (1).
- (3) Where a company is unable, on making reasonable enquiries, to ascertain the identity or address of the holder of a bearer share
 - (a) it is not required to give the member notice under section 81(3); and

- (b) the company shall hold the proceeds of redemption on trust for the owner of the bearer share.
- 37M (1) The custodian of a bearer share in a company may deliver to the registered agent of the company a notice specifying the name and address of the person who is to be regarded as having the right to those entitlements carried by the share that are specified in the notice.
- (2) A notice under subsection (1) may extend to all the entitlements carried by the share or may be limited to certain specific entitlements, including the right to vote at meetings of the company generally or to vote at a specified meeting of the company.
- (3) Subject to sections 37C and 37F, where the registered agent of a company receives a notice under subsection (1) that has not been revoked, notwithstanding that the bearer share is in the custody of a custodian, the company shall treat the person specified in the notice as the bearer of the share for the purposes of the entitlements carried by the share that are specified in the notice.
- (4) The custodian of a bearer share may by written notice delivered to the registered agent of a company, revoke a notice delivered under subsection (1)
- (5) A notice of revocation under subsection (4) takes effect from the time that the notice is received by the registered agent of at such later time as may be specified in the notice.
- 37N (1) Where, after the transition date, a company has one or more existing bearer shares that have not been deposited with a custodian in accordance with this Part, the Commission may apply to the Court for the winding up of the company under the Companies Act.
- (2) Section 97 applies to any application by the Commission to wind up a company under this section.
- 37O Without limiting section 112, regulations may provide that where
- (a) notice is required or permitted to be given by a custodian, former custodian, to the beneficial owner of a bearer share or to any person who has an interest in a bearer share, or
- (b) instructions are required or permitted to be given by the beneficial owner of a bearer share in a company to a custodian, or former custodian, or to the registered agent of the company, the notice or instructions may be given to or by some other person or persons instead of or in addition to the beneficial owner or, in the case of a notice, instead of or in addition to the person interested in the share.

PART IV

Registered Office and Agent

38. A company incorporated under this Act shall at all times have a registered office in the British Virgin Islands, and the registered office must be an office maintained in the British Virgin Islands by the company or its registered agent.
39. (1) A company incorporated under this Act shall at all times have a registered agent in the British Virgin Islands.
- (2) No person shall be a registered agent unless he has been licensed as a registered agent under the Company Management Act or under the Banks and Trust Companies Act.
40. Repealed by No. 3 of 1988.

- 40A. (1) The Registrar shall maintain a register of licensed registered agents in which the following details shall be recorded:
- (a) the name of the registered agent;
 - (b) the address of the registered agent;
 - (c) the names of the individuals authorised to sign on behalf of any firm or corporation that is a registered agent;
 - (d) the date when the first license to act as a registered agent was issued pursuant to the Company Management Act, 1990 or the Banks and Trust Companies Act, 1990; and
 - (e) in a case where a registered agent ceases to be a registered agent,
 - (i) the date on which the registered agent ceased to be licensed, and
 - (ii) whether the cessation was due to failure to renew his licence, death or liquidation or revocation under the Company Management Act or under the Banks and Trust Companies Act.
- (2) The Registrar shall, during the month of February in each year, publish in the Gazette a list of registered agents as appeared on the Register of licensed registered agents on 31st January in that year.
- (3) Any change in the details kept by the Registrar in the register of registered agents pursuant to subsection (1) shall be notified immediately by the registered agent to the Registrar, and, upon payment of such fee as may be prescribed by the Governor in Council, the Registrar shall record the change in the register of registered agents.
- (4) Where the registered agent of a company desires to cease to act as registered agent and the registered agent is unable to reach an agreement with the company for which he is registered agent concerning his replacement, the following provisions apply:
- (a) the registered agent shall give not less than 90 days written notice to any director or officer of the company of which he is the registered agent at the director's or officer's last known address, or if the registered agent is not aware of the identity of any director or officer then the person from whom the registered agent last received instructions concerning the company, specifying the wish of the registered agent to resign as registered agent and shall together with the notice provide a list of all registered agents in the British Virgin Islands with their names and addresses;
 - (b) the registered agent shall submit to the Registrar a copy of the notice and list of registered agents referred to in paragraph (a);
 - (c) if, at the time of expiry of the notice, the company has not adopted a resolution to amend its Memorandum to change its registered agent, the registered agent shall inform the Registrar in writing that the company has not changed its registered agent whereupon the Registrar shall publish a notice in the Gazette that the name of the company will be struck off the Register, unless the company, within 30 days from the date of the publication of the notice in the Gazette, registers with the Registrar a copy of a resolution amending its Memorandum to change its registered agent; and
 - (d) if a company fails within 30 days from the date of the publication of the notice referred to in paragraph (c) to register with the Registrar a copy of a resolution amending its Memorandum to change its registered agent, the Registrar shall strike the name of the company off the Register and shall publish in the Gazette a notice that the name of the company has been struck off the Register.
- (5) Where the licence of a registered agent has been revoked under the Company Management Act, 1990 or the Banks and Trust Companies Act, 1990, or if a registered agent dies or fails to renew his licence the Inspector of Company Managers or the Inspector of Banks and Trust Companies, as the case may be, shall, for the purpose of changing the registered agent of the company, communicate with each company for which the

person whose licence has been revoked or who has died or has failed to renew his licence is the registered agent and the provisions of subsection (4) have effect mutatis mutandis for the purpose of providing the procedures for changing the registered agent.

- (6) A company that has been struck off the Register under this section remains liable for all claims, debts, liabilities and obligations of the company, and the striking-off does not affect the liability of any of its members, directors, officers or agents.
41. A company that wilfully contravenes section 38 or 39 is liable to a penalty of \$25 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

PART V

Directors, Officers, Agents and Liquidators

42. Subject to any limitations or provisions to the contrary in its Memorandum or Articles, the business and affairs of a company incorporated under this Act shall be managed by a board of directors that consists of one or more persons who may be individuals or companies.
43. (1) The first directors of a company incorporated under this Act shall be elected by the subscribers to the Memorandum within 30 days of the date of incorporation of the company and thereafter, the directors shall be elected by the members for such term as the members may determine and where permitted by the Memorandum or Articles of a company incorporated under this Act, the directors may also elect directors for such term as the directors may determine.
- (2) Each director holds office until his successor takes office or until his earlier death, resignation or removal.
- (3) Subject to any limitations in the Memorandum or Articles
- (a) a director may be removed from office by a resolution of members or by a resolution of directors; and
- (b) a director may resign his office by giving written notice of his resignation to the company and the registration has effect from the date the notice is received by the company or from such later date as may be specified in the notice.
- (4) Subject to any limitations in the Memorandum or Articles, a vacancy in the board of directors may be filled by a resolution of members or of a majority of the remaining directors.
- 43A. (1) A company incorporated under this Act shall keep a register to be known as a register of directors containing
- (a) the names and addresses of the persons who are directors of the company;
- (b) the date on which each person whose name is entered in the register was appointed as a director of the company;
- (c) the date on which each person named as a director ceased to be a director of the company; and,
- (d) such other information as may be prescribed.
- (2) The register of directors may be in such form as the directors approve, but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.
- (3) A copy of the register of directors, commencing from the date of the registration of the company, shall be kept at the registered office of the company referred to in section 38.

- (4) The register of directors is prima facie evidence of any matters directed or authorized by this Act to be contained therein.
- (5) The following transitional provisions apply with respect to a company incorporated before the effective date (“an existing company”):
- (a) an existing company shall establish a register of directors complying with subsection (1) within 12 months of the effective date and share thereafter maintain the register in accordance with this section;
- (b) notwithstanding paragraph (a), the register of directors, when established, shall contain details of the directors of the company on the effective date together with all changes in, or respect of, its directors thereafter;
- (c) where an existing company maintained an optional register of directors under this section prior to the effective date, a copy of that register shall be retained at the registered office of the company for a period of at least ten years following the effective date.
44. The number of directors shall be fixed by the Articles and, subject to any limitations in the Memorandum or Articles, the Articles may be amended to change the number of directors.
45. The directors have all the powers of the company that are not reserved to the members under this Act or in the Memorandum or Articles.
46. Subject to any limitations in the Memorandum or Articles, the directors may, by a resolution of directors, fix the emoluments of directors in respect of services to be rendered in any capacity to the company.
47. (1) The directors may, by a resolution of directors, designate one or more committees, each consisting of one or more directors.
- (2) Subject to any limitations in the Memorandum or Articles, each committee has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the resolution of directors establishing the committee, except that no committee has any power or authority with respect to the matters requiring a resolution of directors under section 43 and 53.
48. (1) Subject to any limitations in the Memorandum or Articles, the directors of a company incorporated under this Act may meet at such times and in such manner and places within or outside the British Virgin Islands as the directors may determine to be necessary or desirable.
- (2) A director shall be deemed to be present at a meeting of directors if
- (a) he participates by telephone or other electronic means; and
- (b) all directors participating in the meeting are able to hear each other.
49. (1) Subject to a requirement in the Memorandum or Articles to give longer notice, a director shall be given not less than 3 days notice of meetings of directors.
- (2) Notwithstanding subsection (1), subject to any limitations in the Memorandum or Articles, a meeting of directors held in contravention of that subsection is valid if all the directors, or such majority thereof as may be specified in the Memorandum or Articles entitled to vote at the meeting, have waived the notice of the meeting; and, for this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on his part.
- (3) The inadvertent failure to give notice of a meeting to a director, or the fact that a director has not received the notice, does not invalidate the meeting.

50. The quorum for a meeting of directors is that fixed by the Memorandum or Articles; but, where no quorum is so fixed, a meeting of directors is properly constituted for all purposes if at the commencement of the meeting one half of the total number of directors are present in person or by alternate.
51. Subject to any limitations in the Memorandum or Articles, an action that may be taken by the directors or a committee of directors at a meeting may also be taken by a resolution of directors or a committee of directors consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice.
52. (1) Subject to any limitations in the Memorandum or Articles, a director may by a written instrument appoint an alternate who need not be a director.
- (2) An alternate for a director appointed under subsection (1) is entitled to attend meetings in the absence of the director who appointed him and to vote or consent in the place of the director.
53. (1) The directors may, by a resolution of directors, appoint any person, including a person who is a director, to be an officer or agent of the company.
- (2) Subject to any limitations in the Memorandum or Articles, each officer or agent has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the Articles or in the resolution of directors appointing the officer or agent, except that no officer or agent has any power or authority with respect to the matters requiring a resolution of directors under this Act.
- (3) The resolution of directors appointing any person to be an agent of the company may authorize the agent to appoint one or more substitutes or delegates to exercise some or all of the powers conferred on the agent by the company.
- (4) The directors may remove an officer or agent appointed under subsection (1) and may revoke or vary a power conferred on him under subsection (2).
54. (1) Every director, officer, agent and liquidator of a company incorporated under this Act, in performing his functions, shall act honestly and in good faith with a view to the best interests of the company and exercise the care, diligence and skill that a reasonable prudent person would exercise in comparable circumstances.
- (2) No provisions in the Memorandum or Articles of a company incorporated under this Act or in any agreement entered into by the company relieves a director, officer, agent or liquidator of the company from the duty to act in accordance with the Memorandum or Articles or from any personal liability arising from his management of the business and affairs of the company.
55. Every director, officer, agent and liquidator of a company incorporated under this Act, in performing his functions, is entitled to rely upon the share register kept under section 28, the books of accounts and records and the minutes and copies of consents to resolutions kept under subsection 66 and any report made to the company by any other director, officer, agent or liquidator or by any person selected by the company to make the report.
56. (1) Subject to any limitations in the Memorandum or Articles, no agreement or transaction between
- (a) a company incorporated under this Act; and
- (b) one or more of its directors or liquidators, or any person in which any director or liquidator has a financial interest or to whom any director or liquidator is related, including as a director or liquidator of that other person,
- is void or voidable for this reason only or by reason only that the director or liquidator is present at the meeting of directors or liquidators, or at the meeting of the committee of directors or liquidators, that approves the agreement or transaction or that the vote or consent of the director or liquidator is counted for that purpose.
- (2) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, an agreement or transaction referred to in subsection (1) is valid if

- (a) the material facts of the interest of each director or liquidator in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the other directors or liquidators; and
 - (b) the agreement or transaction is approved or ratified by a resolution of directors or liquidators that has been approved
 - (i) without counting the vote or consent of any interested director or liquidator, or
 - (ii) by the unanimous vote or consent of all disinterested directors or liquidators if the votes or consents of all disinterested directors or liquidators is insufficient to approve a resolution of directors or liquidators.
- (3) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, an agreement or transaction referred to in subsection (1) is valid if
- (a) the material facts of the interest of each director or liquidator in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the members entitled to vote at a meeting or members; and
 - (b) the agreement or transaction is approved or ratified by a resolution of members.
- (3A) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, an agreement or transaction referred to in subsection (1) is valid unless it is shown that at the time the agreement or transaction was authorized, approved or ratified by resolution of directors or by resolution of members the agreement or transaction was unfairly prejudicial to one or more members of the company or to the creditors of the company except that no person who voted in favour of the resolution authorizing, approving or ratifying the agreement or transaction shall be capable subsequently of impugning or objecting to the agreement or transaction.
- (4) Subject to any limitations in the Memorandum or Articles, a director or liquidator who has an interest in any particular business to be considered at a meeting of directors, liquidators or members may be counted for purposes of determining whether the meeting is duly constituted in accordance with section 50 or otherwise.
57. (1) Subject to subsection (2) and any limitations in its Memorandum or Articles, a company incorporated under this Act may indemnify against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who
- (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was and director, an officer or a liquidator of the company; or
 - (b) is or was, at the request of the company, serving as a director, officer or liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise.
- (2) Subsection (1) only applies to a person referred to in that subsection if the person acted honestly and in good faith with a view to the best interests of the company and, in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.
- (3) The decision of the directors as to whether the person acted honestly and in good faith and with a view to the best interests of the company and as to whether the person had no reasonable cause to believe that his conduct was unlawful is in the absence of fraud, sufficient for the purposes of this section, unless a question of law is involved.
- (4) The termination of any proceedings by any judgement, order, settlement, conviction or the entering of a nolle prosequi does not, by itself, create a presumption that the person did not act honestly and in good faith and

with a view to the best interests of the company or that the person had reasonable cause to believe that his conduct was unlawful.

- (5) If a person referred to in subsection (1) has been successful in defence of any proceedings referred to in subsection (1), the person is entitled to be indemnified against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.
58. A company incorporated under this Act may purchase and maintain insurance in relation to any person who is or was a director, an officer or a liquidator of the company, or who at the request of the company is or was serving as a director, an officer or a liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under subsection (1) of section 57.

PART VI

Protection of Members and Creditors

59. (1) Subject to any limitations in the Memorandum or Articles, the directors of a company incorporated under this Act may convene meetings of the members of the company at such times and in such manner and places within or outside the British Virgin Islands as the directors consider necessary or desirable.
- (2) Subject to a provision in the Memorandum or Articles, for a lesser percentage, upon the written request of members holding more than 50 percent of the votes of the outstanding voting shares in the company, the directors shall convene a meeting of members.
- (3) Subject to any limitations in the Memorandum or Articles, a member shall be deemed to be present at a meeting of members if
- (a) he participates by telephone or other electronic means; and
 - (b) all members participating in the meeting are able to hear each other.
- (4) A member may be represented at a meeting of members by a proxy who may speak and vote on behalf of the member.
- (5) The following apply in respect of joint ownership of shares:
- (a) if 2 or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of members and may speak as a member;
 - (b) if only one of them is present in person or by proxy, he may vote on behalf of all of them; and
 - (c) if 2 or more are present in person or by proxy, they must vote as one.
60. (1) Subject to a requirement in the Memorandum or Articles to give longer notice, the directors shall give not less than 7 days notice of meetings of members to those persons whose names on the date the notice is given appear as members in the share register referred to in section 28 and are entitled to vote at the meeting.
- (2) Notwithstanding subsection (1), and subject to any limitations in the Memorandum or Articles, a meeting of members held in contravention of the requirement to give notice is valid if members holding a 90 percent majority, or such lesser majority as may be specified in the Memorandum or Articles, of
- (a) the total number of shares entitled to vote on all the matters to be considered at the meeting; or

- (b) the votes of each class or series of shares where members are entitled to vote thereon as a class or series together with an absolute majority of the remaining votes,

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

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

61. The quorum for meetings of members for purposes of a resolution of members is that fixed by the Memorandum or Articles; but, where no quorum is so fixed, a meeting of members is properly constituted for all purposes if at the commencement of the meeting there are present in person or by proxy, one-half of the votes of the shares of each class or series of shares entitled to vote as a class or series thereon and the same proportion of the votes of the remaining shares entitled to vote thereon.

62. (1) Except as otherwise provided in the Memorandum or Articles, all shares vote as one class and each whole share has one vote.

- (2) The directors of a company incorporated under this Act may fix the date notice is given of a meeting as the record date for determining those shares that are entitled to vote at the meeting.

62A. (1) One or more members of a company incorporated under this Act may by agreement in writing deposit bearer shares with, or transfer registered shares to, any person authorized to act as trustee for the purpose of vesting in such person, who may be designated voting trustee, the right to vote thereon and the following provisions shall apply:

- (a) the period of time for which the trustee may vote shall not exceed 10 years;
- (b) subject to paragraph (a), the agreement may contain any other provisions not inconsistent with the purpose of the agreement;
- (c) a copy of the agreement shall be filed at the registered office of the company and shall be open to the inspection of members of the company
 - (i) in the case of any beneficiary of the trust under the agreement, daily during business hours, and
 - (ii) in the case of members of the company, subject to the provisions of section 67;
- (d) where certificates for registered shares have been issued for shares that are to be transferred to a trustee pursuant to this section, new certificates shall be issued to the voting trustee to represent the shares so transferred and the certificates formerly representing the shares that have been transferred shall be surrendered and cancelled;
- (e) where a certificate is issued to a voting trustee, an endorsement shall be made on the certificate that the shares represented thereby in the case of registered shares and the certificates in case of bearer shares are held by the person named therein pursuant to an agreement;
- (f) there shall be noted in the share register of the company against the record of the shares held by the trustee the fact that such an agreement exists;
- (g) the voting trustee may vote the shares so issued or transferred during the period specified in the agreement;
- (h) shares registered in the name of the voting trustee may be voted either in person or by proxy and, in voting the shares, the voting trustee shall not incur any liability as member or trustee, except in so far as he may be liable for his own conduct or acts;

- (i) where two or more persons are designated as voting trustees and the right and method of voting any shares registered in their names at any meeting of members or on any resolution of members are not fixed by the agreement appointing the trustees, the right to vote shall be determined by a majority of the trustees, or if they are equally divided as to the right and manner of voting the shares in any particular case, the votes of the shares in such case shall be divided equally among the trustees;
 - (j) at any time within 2 years prior to the time of expiration of any voting trust agreement as originally fixed or as last extended as provided in this subsection, one or more beneficiaries of the trust under the voting trust agreement may, by written agreement and with the written consent of the voting trustee, extend the duration of the voting trust agreement for an additional period not exceeding 10 years from the expiration date of the trust as originally fixed or as last extended; and
 - (k) the voting trustee shall, prior to the time of expiration of a voting trust agreement, as originally fixed or as previously extended, as the case may be, file at the registered office of the company a copy of the extension agreement and of his consent thereto, and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement, but no extension agreement shall affect the rights or obligations of persons not parties thereto.
- (2) Two or more members of a company incorporated under this Act may by agreement in writing provide that in exercising any voting rights the shares held by them shall be voted
- (a) as provided by the agreement;
 - (b) as the parties may agree; or
 - (c) as determined in accordance with such procedure as they may agree upon.
- (3) No agreement made pursuant to subsection (2) shall be effective for a period of more than 10 years from the date it is made, but at any time within the 2 years immediately preceding the date of the expiration of the agreement the parties may extend its duration for an additional period, not exceeding 10 years at any one time, as they may desire.
- (4) The validity of any voting trust or other voting agreement is not affected during a period of 10 years from the date when it was created or last extended by reason only of the fact that under its terms it will or may last beyond a period of 10 years.
- (5) This section shall be deemed not to invalidate any voting or other agreement among members or any irrevocable proxy that is not otherwise illegal.
63. Subject to any limitations in the Memorandum or Articles, an action that may be taken by members at a meeting of members may also be taken by a resolution of members consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice.
64. (1) Any notice, information or written statement required under this Act to be given by a company incorporated under this Act to members must be served
- (a) in the case of members holding registered shares,
 - (i) in the manner prescribed in the Memorandum or Articles, as the case may be, or
 - (ii) in the absence of a provision in the Memorandum or Articles, by personal service or by mail addressed to each member at the address shown in the share register; and
 - (b) in the case of members holding bearer shares, in the absence of a provision in the Memorandum or Articles, or if the notice, information or written statement can no longer be served as specified in the Memorandum and Articles, if the notice, information or written statement is published in a newspaper in the place where the company has its principal office.

- (2) Subject to a requirement in the Memorandum or Articles to give a specific length of notice, the directors must give sufficient notice of meetings of members to members holding bearer shares to allow a reasonable opportunity for them to take action in order to secure or exercise the right or privilege, other than the right or privilege to vote, that is the subject of the notice.
 - (3) For purposes of subsection (2), what amounts to sufficient notice is a matter of fact to be determined after having regard to all the circumstances.
- 65.
- (1) Any summons, notice, order, document, process, information or written statement to be served on a company incorporated under this Act may be served by leaving it, or by sending it by registered mail addressed to the company, at its registered office, or by leaving it with, or by sending it by registered mail to, the registered agent of the company.
 - (2) Service of any summons, notice, order, document, process, information or written statements to be served on a company incorporated under this Act may be proved by showing that the summons, notice, order, document, process, information or written statement
 - (a) was mailed in such time as to admit its being delivered in the normal course of delivery, within the period prescribed for service; and
 - (b) was correctly addressed and the postage was prepaid.
- 66.
- (1) A company incorporated under this Act shall keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company.
 - (2) A company incorporated under this Act shall keep
 - (a) minutes of all meetings of
 - (i) directors,
 - (ii) members,
 - (iii) committees of directors,
 - (iv) committees of officers, and
 - (v) committees of members; and
 - (b) copies of all resolutions consented to by
 - (i) directors,
 - (ii) members,
 - (iii) committees of directors,
 - (iv) committees of officers, and
 - (v) committees of members.
 - (3) The books, records and minutes required by this section shall be kept at the registered office of the company or at such other place as the directors determine.
 - (3A) A company incorporated under this Act shall have a common seal and an imprint thereof shall be kept at the registered office of the company.

- (4) A company that wilfully contravenes this section is liable to a penalty of \$25 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.
67. (1) A member of a company incorporated under this Act may, in person or by attorney and in furtherance of proper purpose, request in writing specifying the purpose to inspect during normal business hours the share register of the company or the books, records, minutes and consents kept by the company and to make copies or extracts therefrom.
- (2) For purposes of subsection (1), a proper purpose is a purpose reasonably related to the member's interest as a member.
- (3) If a request under subsection (1) is submitted by an attorney for a member, the request must be accompanied by a power of attorney authorizing the attorney to act for the member.
- (4) If the company, by a resolution of directors, determines that it is not in the best interest of the company or of any other member of the company to comply with a request under subsection (1), the company may refuse the request.
- (5) Upon refusal by the company of a request under subsection (1), the member may before the expiration of a period of 90 days of his receiving notice of the refusal, apply to the court for an order to allow the inspection.
68. (1) Contracts may be entered into on behalf of a company incorporated under this Act as follows:
- (a) a contract that, if entered into between individuals, is required by law to be in writing and under seal, may be entered into by or on behalf of the company in writing under the common seal of the company, and may, in the same manner, be varied or discharged;
- (b) a contract that, if entered into between individuals, is required by law to be in writing and signed by the parties, may be entered into by or on behalf of the company in writing and signed by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged; and
- (c) a contract that, if entered into between individuals, is valid although entered into orally, and not reduced to writing, may be entered into orally by or on behalf of the company by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged.
- (2) A contract entered into in accordance with this section is valid and is binding on the company and its successors and all other parties to the contract.
- (3) Without affecting paragraph (a) of subsection (1), a contract, agreement or other instrument executed by or on behalf of a company by a director or an authorized officer or agent of the company is not invalid by reason only of the fact that the common seal of the company is not affixed to the contract, agreement or instrument.
69. (1) A person who enters into a written contract in the name of or on behalf of a company incorporated under this Act before the company comes into existence, 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) Within a reasonable time after a company incorporated under this Act comes into existence, the company may, by any action or conduct signifying its intention to be bound thereby, adopt a written contract entered into in its name or on its behalf before it came into existence.
- (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 in existence 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.

70. (1) If any contract, agreement, deed or other instrument relating to the payment of a claim or the delivering or transferring of property, whether real or personal, wherever situate, is entered into by a company incorporated under this Act and the contract, agreement, deed or other instrument designates a payee or beneficiary to receive the payment or property

- (a) upon the death of the person making the designation;
- (b) upon the death of another person; or
- (c) upon the happening of any other event specified in the contract, agreement, deed or other instrument,

then, any such payment, delivery or transfer, the rights of any payee or beneficiary, and the ownership of any property received, are not impaired or defeated by any law or rule of law governing the transfer of property by will, gift or intestacy.

(2) Subsection (1) applies to a contract, agreement, deed or other instrument referred to in that subsection notwithstanding anything to the contrary in the law of any other jurisdiction, including the law of any jurisdiction where the person making the designation referred to in subsection (1) resides or is domiciled, and notwithstanding that

- (a) the designation is revocable or subject to change; or
- (b) the claim or property
 - (i) is not yet payable or transferable, as the case may be, at the time the designation is made, or
 - (ii) is subject to withdraw, collection or assignment by the person making the designation.

70A. (1) A company incorporated under this Act may create a mortgage, charge or other encumbrance over any of its assets situate in any part of the world in accordance with the law of any jurisdiction of the company's choice and the mortgage, charge or other encumbrance shall be binding on the company to the extent, and in accordance with, the requirements, of the chosen law.

(2) A company incorporated under this Act may maintain at its registered office a register of mortgages, charges and other encumbrances in which there shall be entered particulars regarding each mortgage, charge and other encumbrances as follows:

- (a) the sum secured;
- (b) the assets secured;
- (c) the name and address of the mortgagee, chargee or other encumbrancer;
- (d) the date of creation of the mortgage, charge or other encumbrance; and
- (e) the date on which the particulars specified in paragraphs (a) to (d) in respect of the mortgage, charge or other encumbrance are entered in the register.

(3) In the event that an application is made to a court in the British Virgin Islands to enforce any mortgage, charge or other encumbrance created by a company incorporated under this Act and there are assets of the

company which are subject to two or more mortgages, charges or other encumbrances, then, notwithstanding the provisions of any other law, priorities shall be determined in accordance with the dates of entry in the register of mortgages and charges; and, unregistered mortgages, charges and other encumbrances created after 1st January, 1991 shall rank after registered mortgages, charges and other encumbrances, but unregistered mortgages, charges and other encumbrances created prior to 1st January, 1991 shall have priority over mortgages, charges and other encumbrances registered pursuant to this provision and shall rank in order of their creation.

71. A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed by a company incorporated under this Act if it is made, accepted or endorsed in the name of the company
- (a) by or on behalf or on account of the company; or
 - (b) by a person acting under the express or implied authority of the company;
- and if so endorsed, the person signing the endorsement is not liable thereon.
72. (1) A company incorporated under this Act may, by an instrument in writing, whether or not under its common seal, authorize a person, either generally or in respect of any specified matters, as its agent to act on behalf of the company and to execute contracts, agreements, deeds and other instruments on behalf of the company.
- (2) A contract, agreement, deed or other instrument executed on behalf of the company by an agent appointed under subsection (1), whether or not under his seal, is binding on the company and has the same effect as if it were under the common seal of the company.
73. (1) A document requiring authentication or attestation by a company incorporated under this Act may be signed by a director, a secretary or by an authorized officer or agent of the company, and need not be under its common seal.
- (2) If the signature of any director, officer or agent authenticating or attesting any document is verified in writing by the registered agent of a company the company is bound by the document.
74. If at any time there is no member of a company incorporated under this Act, any person doing business in the name of or on behalf of the company is personally liable for the payment of all debts of the company contracted during the time and the person may be sued therefor without joinder in the proceedings of any other person.

PART VII

Merger, Consolidation, Sale of Assets, Forced Redemptions, Arrangements and Dissenters

75. In this Part,
- "consolidated company" means the new company that results from the consolidation of 2 or more constituent companies;
- "consolidation" means the uniting of 2 or more constituent companies into a new company;
- "constituent company" means an existing company that is participating in a merger or consolidation with one or more other existing companies;
- "merger" means the merging of 2 or more constituent companies into one of the constituent companies;
- "parent company" means a company that owns at least 90 per cent of the outstanding shares of each class and series of shares in another company;

"subsidiary company" means a company at least 90 per cent of whose outstanding shares of each class and series of shares are owned by another company;

"surviving company" means the constituent company into which one or more other constituent companies are merged.

76. (1) Two or more companies incorporated under this Act may merge or consolidate in accordance with subsections (3) to (5).
- (2) One or more companies incorporated under this Act may merge or consolidate with one or more companies incorporated under the Companies Act in accordance with subsections (3) to (5), if the surviving company or the consolidated company will satisfy the requirements prescribed for an International Business Company under section 5.
- (3) The directors of each constituent company that proposes to participate in merger or consolidation must 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) in respect to each constituent company,
 - (i) the designation and number of outstanding shares of each class and series of shares, specifying each such class and series entitled to vote on the merger or consolidation, and
 - (ii) a specification of each such class and series, if any, entitled to vote as a class or series;
 - (c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other property, or a combination thereof;
 - (d) in respect of a merger, a statement of any amendment to the Memorandum or Articles of the surviving company to be brought about by the merger; and
 - (e) in respect of a consolidation, everything required to be included in the Memorandum and Articles for a company incorporated under this Act, except statements as to facts not available at the time the plan of consolidation is approved by the directors.
- (4) Some of all shares of the same class or series of shares in each constituent company may be converted into a particular or mixed kind of property and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property.
- (5) The following apply in respect of a merger or consolidation under this section:
- (a) the plan of merger or consolidation must be authorized by a resolution of members and the outstanding shares of a class or series of shares are entitled to vote on the merger or consolidation as a class or series if the Memorandum or Articles so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the Memorandum or Articles, would entitle the class or series to vote on the proposed amendment as a class or series;
 - (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, must be given to each member, whether or not entitled to vote on the merger or consolidation;
 - (c) if it is proposed to obtain the written consent of members, a copy of the plan of merger or consolidation must be given to each member, whether or not entitled to consent to the plan of merger or consolidation;

- (d) after approval of the plan of merger or consolidation by the directors and members of each constituent company, articles of merger or consolidation must be executed by each company and must contain
 - (i) the plan of merger or consolidation and, in the case of a consolidation, any statement required to be included in the Memorandum and Articles for a company incorporated under this Act;
 - (ii) the date on which the Memorandum and Articles of each constituent company were registered by the Registrar;
 - (iii) the manner in which the merger or consolidation was authorized with respect to each constituent company;
 - (e) the articles of merger or consolidation must be submitted to the Registrar who must retain and register them in the Register; and
 - (f) Upon the registration of the articles of merger or consolidation, the Registrar shall issue a certificate under his hand and seal certifying that the articles of merger or consolidation have been registered.
- (6) A certificate of merger or consolidation issued by the Registrar is prima facie evidence of compliance with all requirements of this Act in respect of the merger or consolidation.
77. (1) A parent company incorporated under this Act may merge with one or more subsidiary companies incorporated under this Act or under the Companies Act, without the authorization of the members of any company, in accordance with subsections (2) to (6), if the surviving company is a company incorporated under this Act and will satisfy the requirements prescribed for an International Business Company under section 5.
- (2) The directors of the parent company must approve a written plan of merger containing
- (a) the name of each constituent company and the name of the surviving company;
 - (b) in respect to each constituent company,
 - (i) the designation and number of outstanding shares of each class and series of shares, and
 - (ii) the number of shares of each class and series of shares in each subsidiary company owned by the parent company; and
 - (c) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other property, or a combination thereof.
- (3) Some or all shares of the same class or series of shares in each company to be merged may be converted into property of a particular or mixed kind and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property; but, if the parent company is not the surviving company, shares of each class and series of shares in the parent company may only be converted into similar shares of the surviving company.
- (4) A copy of the plan of merger or an outline thereof must be given to every member of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that member.
- (5) Articles of merger must be executed by the parent company and must contain
- (a) the plan of merger;
 - (b) the date on which the Memorandum and Articles of each constituent company were registered by the Registrar; and

- (c) if the parent company does not own all shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or an outline thereof was made available to the members of each subsidiary company.
 - (6) The articles of merger must be submitted to the Registrar who must retain and register them in the Register.
 - (7) Upon the registration of the articles of merger, the Registrar shall issue a certificate under his hand and seal certifying that the articles of merger have been registered.
 - (8) A certificate of merger issued by the Registrar is prima facie evidence of compliance with all requirements of this Act in respect of the merger.
78. (1) A merger of consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation.
- (2) As soon as a merger or consolidation becomes effective
- (a) the surviving company or the consolidated company in so far as is consistent with its Memorandum and Articles, as amended or established by the articles of merger or consolidation, has all rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;
 - (b) in the case of a merger, the Memorandum and Articles of the surviving company are automatically amended to the extent, if any, that changes in its Memorandum and Articles are contained in the articles of merger;
 - (c) in the case of a consolidation, the statements contained in the articles of consolidation that are required or authorized to be contained in the Memorandum and Articles of a company incorporated under this Act, are the Memorandum and Articles of the consolidated company;
 - (d) property of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and
 - (e) the surviving company or the consolidated company is liable for all claims, debts, liabilities and obligations of each of the constituent companies.
- (3) Where a merger or consolidation occurs
- (a) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any member, director, officer or agent thereof, is released or impaired by the merger or consolidation; and
 - (b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any member, director, officer or agent thereof, are abated or discontinued by the merger or consolidation, but
 - (i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, officer or agent thereof, as the case may be, or
 - (ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.
- (4) The Registrar shall strike off the Register
- (a) a constituent company that is not the surviving company in a merger; or
 - (b) a constituent company that participates in a consolidation.

79. (1) One or more companies incorporated under this Act may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside the British Virgin Islands in accordance with subsections (2) to (4), including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of the jurisdictions in which the companies incorporated outside the British Virgin Islands are incorporated.
- (2) The following apply in respect of a merger or consolidation under this section:
- (a) a company incorporated under this Act shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of companies incorporated under this Act and a company incorporated under the laws of a jurisdiction outside the British Virgin Islands shall comply with the laws of that jurisdiction; and
- (b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside the British Virgin Islands, it must submit to the Registrar
- (i) an agreement that a service of process may be effected on it in the British Virgin Islands in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company incorporated under this Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company incorporated under this Act against the surviving company or the consolidated company;
- (ii) an irrevocable appointment of the Registrar as its agent to accept service of process in proceedings referred to in subparagraph (i);
- (iii) an agreement that it will promptly pay to the dissenting members of a constituent company incorporated under this Act the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting members; and
- (iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated; or, if no certificate of merger is issued by the appropriate authority of the foreign jurisdiction, then, such evidence of the merger or consolidation as the Registrar considers acceptable.
- (3) The effect under this section of a merger or consolidation is the same as in the case of a merger or consolidation under section 76 if the surviving company or the consolidated company is incorporated under this Act, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside the British Virgin Islands, the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 76 except in so far as the laws of the other jurisdiction otherwise provide.
- (4) If the surviving company or the consolidated company is incorporated under this Act, the merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation; but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside the British Virgin Islands, the merger or consolidation is effective as provided by the laws of that other jurisdiction.
80. Subject to any limitations or provisions to the contrary in its Memorandum or Articles, any sale, transfer, lease, exchange or other disposition, other than a mortgage, charge or other encumbrance or the enforcement thereof, of more than 50 per cent of the assets of a company incorporated under this Act, other than a transfer pursuant to the power described in subsection (2) of section 9, if not made in the usual or regular course of the business carried on by the company, shall be made as follows:
- (a) the proposed sale, transfer, lease, exchange or other disposition must be approved by the directors;
- (b) upon approval of the proposed sale, transfer, lease, exchange or other disposition, the directors must submit the proposal to the members for it to be authorized 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 proposal, must be given to each member, whether or not he is entitled to vote on the sale, transfer, lease, exchange or other disposition; and
 - (d) if it is proposed to obtain the written consent of members, an outline of the proposal must be given to each member, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.
81. (1) Subject to any limitations in the Memorandum or Articles,
- (a) members holding 90 per cent of the votes of the outstanding shares entitled to vote; and
 - (b) members holding 90 per cent of the votes of the outstanding shares of each class and series of shares entitled to vote as a class or series,
- on a merger or consolidation under section 76, may give a written instruction to a company incorporated under this Act directing the company to redeem the shares held by the remaining members.
- (2) Upon receipt of the written instruction referred to in subsection (1), the company shall redeem the shares specified in the written instruction irrespective of whether or not the shares are by their terms redeemable.
 - (3) The company must 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.
82. (1) In this section, "arrangement" means
- (a) an amendment to the Memorandum or Articles;
 - (b) a reorganization or reconstruction of a company incorporated under this Act;
 - (c) a merger or consolidation of one or more companies incorporated under this Act with one or more other companies, if the surviving company or the consolidated company is a company incorporated under this Act;
 - (d) a separation of two or more businesses carried on by a company incorporated under this Act;
 - (e) any sale, transfer, exchange or other disposition of any part of the property, assets or business of a company incorporated under this Act to any person in exchange for shares, debt obligations or other securities of that other person, or money or other property, or a combination thereof;
 - (f) any sale, transfer, exchange or other disposition of shares, debt obligations or other securities in a company incorporated under this Act held by the holders thereof for shares, debt obligations or other securities in the company or money or other property, or a combination thereof;
 - (g) a winding-up and dissolution of a company incorporated under this Act; and
 - (h) any combination of any of the things specified in paragraph (a) to (g).
- (2) If the directors of a company incorporated under this Act determine that it is in the best interests of the company or the creditors or members thereof, the directors of the company may, by resolution of directors, approve a plan of arrangement that contains details of the proposed arrangement, even though the proposed arrangement may be authorized or permitted by any other provision of this Act or otherwise permitted.
 - (3) Upon approval of the plan of arrangement by the directors, the company must make application to the court for approval of the proposed arrangement.
 - (4) The court may, upon an application made to it under subsection (3), make an interim or a final order that is not subject to an appeal unless a question of law is involved and in which case notice of appeal must be given

within the period of 20 days immediately following the date of the order, and in making the order the court may

- (a) determine what notice, if any, of the proposed arrangement is to be given to any person;
 - (b) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;
 - (c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under section 83;
 - (d) conduct a hearing and permit any interested person to appear; and
 - (e) approve or reject the plan of arrangement as proposed or with such amendments as it may direct.
- (5) Where the court makes an order approving a plan of arrangement, the directors of the company, if they are still desirous of executing the plan, shall confirm the plan of arrangement as approved by the court whether or not the court has directed any amendments to be made thereto.
- (6) The directors of the company, upon confirming the plan of arrangement, shall
- (a) give notice to the persons to whom the order of the court requires notice to be given; and
 - (b) submit the plan of arrangement to those persons for such approval, if any, as the order of the court requires.
- (7) After the plan of arrangement has been approved by those persons by whom the order of the court may require approval, articles of arrangement must be executed by the company and must 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 must be submitted to the Registrar who must retain and register them in the Register.
- (9) Upon the registration of the articles of arrangement, the Registrar shall issue a certificate under his hand and seal certifying that the articles of arrangements have been registered.
- (10) A certificate of arrangement issued by the Registrar is prima facie evidence of compliance with all requirements of this Act in respect of the arrangement.
- (11) An arrangement is effective on the date the articles of arrangement are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of arrangement.
83. (1) A member of a company incorporated under this Act is entitled to payment of the fair value of his shares upon dissenting from
- (a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;
 - (b) a consolidation, if the company is a constituent company;

- (c) any sale, transfer, lease, exchange or other disposition of more than 50 per cent of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including
 - (i) a disposition pursuant to an order of the court having jurisdiction in the matter;
 - (ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition; or
 - (iii) a transfer pursuant to the power described in subsection (2) of section 9;
 - (d) a redemption of his shares by the company pursuant to section 81; and
 - (e) an arrangement, if permitted by the court.
- (2) A member who desires to exercise his entitlement under subsection (1) must give to the company, before the meeting of members at which the action is submitted to a vote, or at the meeting but before the vote, written objection to the action; but an objection is not required from a member to whom the company did not give notice of the meeting in accordance with this Act or where the proposed action is authorized by written consent of members without a meeting.
- (3) An objection under subsection (2) must include a statement that the member proposes to demand payment for his shares if the action is taken.
- (4) Within 20 days immediately following the date on which the vote of members authorizing the action is taken, or the date on which written consent of members without a meeting is obtained, the company must give written notice of the authorization or consent to each member who gave written objection or from whom written objection was not required, except those members who voted for, or consented to in writing, the proposed action.
- (5) A member to whom the company was required to give notice who elects to dissent must, within 20 days immediately following the date on which the notice referred to in subsection (4) is given, give to the company a written notice of his decision to elect to dissent, stating
- (a) his name and address;
 - (b) the number and classes or series 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 77 must give to the company a written notice as his decision to elect to dissent within 20 days immediately following the date on which the copy of the plan of merger or an outline thereof is given to him in accordance with Section 77.
- (6) A member who dissents must do so in respect of all shares that he holds in the company.
- (7) Upon the giving of a notice of election to dissent, the member to whom the notice relates ceases to have any of the rights of a member except the right to be paid the fair value of his shares.
- (8) Within 7 days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within 7 days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company must make a written offer to each dissenting member to purchase his shares at a specified price that the company determines to be their fair value; and if, within 30 days immediately following the date on which the offer is made, the company making the offer and the dissenting member agree upon the price to be paid for his shares, the company shall pay to the member the amount in money upon the surrender of the certificates representing his shares.

- (9) If the company and a dissenting member fail, within the period of 30 days referred to in subsection (8), to agree on the price to be paid for the shares owned by the member, within 20 days immediately following the date on which the period of 30 days expires, the following shall apply:
- (a) the company and the dissenting member shall each designate an appraiser;
 - (b) the 2 designated appraisers together shall designate an appraiser;
 - (c) the 3 appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorizing the action was taken or the date on which written consent of members without a meeting obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and
 - (d) the company shall pay to the member the amount in money upon the surrender by him of the certificates representing his shares.
- (10) Shares acquired by the company pursuant to subsection (8) or (9) shall be cancelled but if the shares are shares of a surviving company, they shall be available for reissue.
- (11) The enforcement by a member of his entitlement under this section excludes the enforcement by the member of a right to which he might otherwise be entitled by virtue of his holding shares, except that this section does not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.
- (12) Only subsections (1) and (8) to (11) shall apply in the case of a redemption of shares by a company pursuant to the provisions of section 81 and in such case the written offer to be made to the dissenting member pursuant to subsection (8) shall be made within 7 days immediately following the direction given to a company pursuant to section 81 to redeem its shares.

PART VIII

Continuation

84. (1) A company incorporated under the Companies Act or incorporated under the laws of a jurisdiction outside the British Virgin Islands may, if it will satisfy the requirements prescribed for an International Business Company under section 5, continue as a company incorporated under this Act as follows:
- (a) articles of continuation, written in the English language or if written in a language other than the English language, accompanied by a certified translation into the English language, must be approved
 - (i) by a majority of the directors or the other persons who are charged with exercising the powers of the company, or
 - (ii) in such other manner as may be established by the company for exercising the powers of the company;
 - (b) the articles of continuation must contain
 - (i) the name of the company and the name under which it is being continued,
 - (ii) the jurisdiction under which it is incorporated,
 - (iii) the date on which it was incorporated,

- (iv) the information required to be included in a Memorandum under subsection (1) of section 12, and
 - (v) the amendments to its Memorandum and Articles, or their equivalent, that are to be effective upon the registration of the articles of continuation;
- (c) the articles of continuation, accompanied by a copy of the Memorandum and Articles of the company, or their equivalent, written in the English language, or if written in a language other than the English language, accompanied by a certified translation into the English language and, in the case of a foreign company, evidence satisfactory to the Registrar that the company is in good standing, must be submitted to the Registrar who must retain and register them in the Register; and
- (d) upon the registration of the articles of continuation, the Registrar shall issued a certificate of continuation under his hand and seal certifying that the company is incorporated under this Act.
- (2) A company incorporated under the laws of a jurisdiction outside the British Virgin Islands is entitled to continue as a company incorporated under this Act notwithstanding any provision to the contrary in the laws of the jurisdiction under which it is incorporated.
- (3) Notwithstanding any provisions of the Companies Act, a company incorporated under that Act may, by resolution of the directors, continue the incorporation of the company under this Act.
- (4) Where a company incorporated under the Companies Act has continued its incorporation under this Act, the Registrar shall strike the name of the company off the Register maintained under that Act and publish notice of the striking-off in the Gazette.
85. (1) A company incorporated under the laws of a jurisdiction outside the British Virgin Islands that is permitted under section 84 to continue as a company incorporated under this Act, may, after complying with paragraphs (a) and (b) of subsection (1) of section 84, submit to the Registrar the following documents:
- (a) articles of continuation, accompanied by a copy of its Memorandum and Articles, or their equivalent, written in the English language, or if written in a language other than the English language accompanied by a certified translation into the English language; and
 - (b) a written authorization designating one or more persons who may give notice to the Registrar, by telex, telegram, cable or by registered mail, that the articles of continuation should become effective.
- (2) The Registrar shall not, prior to the receipt of the notice referred to in subsection (1), permit any person to inspect the documents referred to in subsection (1) and shall not divulge any information in respect thereof.
- (3) Upon receipt of the notice referred to in subsection (1), the Registrar shall
- (a) register the documents referred to in subsection (1) in the Register; and
 - (b) issue a certificate of continuation under his hand and seal certifying that the company is incorporated under this Act.
- (4) For purposes of subsection (3), the Registrar may rely on a notice referred to in subsection (1) sent, or purported to be sent, by a person named in the written authorization.
- (5) Prior to the registration of the documents referred to in subsection (1), a company may rescind the written authorization referred to in subsection (1) by delivering to the Registrar a written notice of rescission.
- (6) If the Registrar does not receive a notice referred to in subsection (1) from a person named in the written authorization within one year immediately following the date on which the documents referred to in subsection (1) were submitted to the Registrar, the articles of continuation are rescinded.

- (7) A company entitled to submit to the Registrar the documents referred to in subsection (1) may authorize the Registrar to accept as resubmitted the documents referred to in that subsection, before or after the documents previously submitted referred to in subsection (1) have been rescinded.
86. A certificate of continuation issued by the Registrar under paragraph (d) of subsection (1) of section 84 or under subsection (3) of section 85 is prima facie evidence of compliance with all requirements of this Act in respect of continuation.
87. (1) From the time of the issue by the Registrar of a certificate of continuation under paragraph (d) of subsection (1) of section 84 or under subsection (3) of section 85
- (a) the company to which the certificates relates
 - (i) continues to be body corporate, incorporated under this Act, under the name designated in the Articles of continuation,
 - (ii) is capable of exercising all powers of a company incorporated under this Act, and
 - (iii) is no longer to be treated as a company incorporated under the Companies Act or a company incorporated under the laws of a jurisdiction outside the British Virgin Islands;
 - (b) the Memorandum and Articles of the company, or their equivalent, as amended by the articles of continuation, are the Memorandum and Articles of the company;
 - (c) property of every description, including choses in action and the business of the company, continue to be vested in the company; and
 - (d) the company continues to be liable for all of its claims, debts, liabilities and obligations.
- (2) Where a company is continued under this Act
- (a) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under this Act; and
 - (b) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation under paragraph (d) of subsection (1) of section 84 or under subsection (3) of section 85 by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.
- (3) All shares in the company that were outstanding prior to the issue by the Registrar of a certificate of continuation under paragraph (d) of subsection (1) of section 84 or under subsection (3) of section 85 in respect to the company shall be deemed to have been issued in conformity with this Act, but a share that at the time of the issue of the certificate of continuation was not fully paid shall be paid up no later than one year immediately following the date of the issue of the certificate of continuation and until the share is paid up, the member holding the share remains liable for the amount unpaid on the share.
- (4) If at the time of the issue by the Registrar of a certificate of continuation under paragraph (d) of subsection (1) of section 84 or under subsection (3) of section 85 in respect to the company any provisions of the Memorandum and Articles of the company do not in any respect accord with this Act
- (a) the provisions of the Memorandum and Articles continue to govern the company until the provisions are amended to accord with this Act or for a period of 2 years immediately following the date of the issue of the certificate of continuation, whichever is the sooner;
 - (b) any provisions of the Memorandum and Articles of the company that are in any respect in conflict with this Act cease to govern the company when the provisions are amended to accord with this Act

or after the expiration of a period of 2 years after the date of the issue of the certificate of continuation, whichever is sooner; and

- (c) the company shall make such amendments to its Memorandum and Articles as may be necessary to accord with this Act within a period that is not later than 2 years immediately following the date of the issue of the certificate of continuation.
88. (1) Subject to any limitation in its Memorandum or Articles, a company incorporated under this Act and for which the Registrar would issue a certificate of good standing pursuant to subsection (1) of section 114 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 British Virgin Islands in the manner provided under those laws.
- (2) A company incorporated under this Act that continues as a company incorporated under the laws of a jurisdiction outside the British Virgin Islands does not cease to be a company incorporated under this Act unless the laws of the jurisdiction outside the British Virgin Islands permit the continuation and the company has complied with those laws.
- (2A) The registered agent of a company incorporated under this Act that continues as a company incorporated under the laws of a jurisdiction outside the British Virgin Islands may within 30 days of the continuation of the company under the laws of the foreign jurisdiction submit to the Registrar an affidavit to the effect that the company has continued its incorporation under the laws of the named foreign jurisdiction and the Registrar shall retain and register the affidavit.
- (2B) Upon registration of the affidavit referred to in subsection (2A) the Registrar shall
- (a) strike the name of the company off the Register;
 - (b) issue a certificate of discontinuance; and
 - (c) publish the striking off in the Gazette.
- (3) Where a company incorporated under this Act is continued under the laws of a jurisdiction outside the British Virgin Islands
- (a) the company continues to be liable for all of its claims, debts, liabilities and obligations that existed prior to its continuation as a company under the laws of the jurisdiction outside the British Virgin Islands;
 - (b) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside the British Virgin Islands;
 - (c) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside the British Virgin Islands, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be; and
 - (d) service of process may continue to be effected on the registered agent of the company in the British Virgin Islands in respect of any claim, debt, liability or obligation of the company during its existence as a company incorporated under this Act.

PART IX

Winding-Up, Dissolution and Striking-Off

89. A company incorporated under this Act shall commence to wind up and dissolve by a resolution of directors upon expiration of such time as may be prescribed by its Memorandum or Articles for its existence or upon the happening of an event which has been specified in the Memorandum or Articles as an event that shall terminate the existence of the company.
90. (1) A company incorporated under this Act that has never issued shares may voluntarily commence to wind up and dissolve by a resolution of directors.
- (2) subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act that has previously issued shares may voluntarily commence to wind up and dissolve by a resolution of members or by a resolution of directors.
91. Upon the commencement of a winding-up and dissolution required under section 89 or permitted under section 90, the directors may only
- (a) authorize a liquidator, by a resolution of directors, 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; and
- (b) determine to rescind the articles of dissolution as permitted under paragraph (a) of subsection (1) of section 95.
92. (1) A liquidator shall, upon his appointment in accordance with this Part and upon the commencement of a winding-up and dissolution, proceed
- (a) to identify all assets of the company;
- (b) to identify all creditors of and claimants against the company;
- (c) to pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the company;
- (d) to distribute any surplus assets of the company to the members in accordance with the Memorandum and Articles;
- (e) to prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and
- (f) to send a copy of the statement of account to all members if so required by the plan of dissolution required by section 94.
- (2) A transfer, including a prior transfer, described in subsection (2) of section 9 of all or substantially all of the assets of a company incorporated under this Act for the benefit of the creditors and members of the company, is sufficient to satisfy the requirements of paragraphs (c) and (d) of subsection (1).
93. In order to perform the duties imposed on him under section 92, a liquidator has all powers of the company that are not reserved to the members under this Act or in the Memorandum or Articles, including, but not limited to, the power
- (a) to take custody of the assets of the company and, in connection therewith, to the 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 authorization to do so in the plan of liquidation or by a resolution of directors permitted under section 91, 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 paragraph (h) of subsection (1), a liquidator shall not, without the permission of the court, carry on for a period in excess of 2 years the business of a company that is being wound up and dissolved under this Act.
94. (1) The directors of a company required under section 89 or proposing under section 90 to wind up and dissolve the company must approve a plan of dissolution containing
- (a) a statement of the reason for the winding-up and dissolving;
 - (b) a statement that the company is, and will continue to be, able to discharge or pay or provide for the payment of all claims, debts, liabilities and obligations in full;
 - (c) a statement that the winding-up will commence on the date when articles of dissolution are submitted to the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution;
 - (d) a statement of the estimated time required to wind up and dissolve the company;
 - (e) a statement as to whether the liquidator is authorized 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;
 - (f) a statement of the name and address of each person to be appointed a liquidator and the remuneration proposed to be paid to each liquidator; and
 - (g) a statement as to 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) If a winding-up and dissolution is being effected in a case where subsection (2) of section 90 is applicable,
- (a) the plan of dissolution must be authorized by a resolution of members, and the holders of the outstanding shares of a class or series of shares are entitled to vote on the plan of dissolution as a class or series only if the Memorandum or Articles so provide;
 - (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of dissolution, must be given to each member, whether or not entitled to vote on the plan of dissolution; and
 - (c) if it is proposed to obtain the written consent of members, a copy of the plan of dissolution must be given to each member, whether or not entitled to consent to the plan of dissolution.

- (3) After approval of the plan of dissolution by the directors, and if required, by the members in accordance with subsection (2), articles of dissolution must be executed by the company and must contain
 - (a) the plan of dissolution; and
 - (b) the manner in which the plan of dissolution was authorized.
 - (4) Articles of dissolution must be submitted to the Registrar who must retain and register them in the Register and within 30 days immediately following the date on which the articles of dissolution are submitted to the Registrar, the company must cause to be published, in the Gazette, in a publication of general circulation in the British Virgin Islands and in a publication of general circulation in the country or place where the company has its principal office, a notice stating
 - (a) that the company is in dissolution;
 - (b) the date of commencement of the dissolution; and
 - (c) the names and addresses of the liquidators.
 - (5) A winding-up and dissolution commences of the date the articles of dissolution are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution.
 - (6) A liquidator shall, upon completion of a winding-up and dissolution, submit to the Registrar a statement that the winding-up and dissolution has been completed and upon receiving the notice, the Registrar shall
 - (a) strike the company off the Register; and
 - (b) issue a certificate of dissolution under his hand and seal certifying that the company has been dissolved.
 - (7) Where the Registrar issues a certificate of dissolution under his hand and seal certifying that the company has been dissolved
 - (a) the certificate is prima facie evidence of compliance with all requirements of this Act in respect of dissolution; and
 - (b) the dissolution of the company is effective from the date of the issue of the certificate.
 - (8) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (6), the liquidator shall cause to be published in the Gazette, a notice that the company has been dissolved and has been struck off the Register.
 - (9) A company that wilfully contravenes subsection (4) is liable to a penalty of \$50 for every day or part thereof during which the contravention continues, and a director or liquidator who knowingly permits the contravention is liable to a like penalty.
95. (1) In the case of a winding-up and dissolution permitted under section 90, a company may, prior to submitting to the Registrar a notice specified in subsection (4) of section 94, rescind the articles of dissolution by
 - (a) a resolution of directors in the case of a winding-up and dissolution under subsection (1) of section 90; or
 - (b) a resolution of members in the case of a winding-up and dissolution under subsection (2) of section 90.
- (2) A copy of a resolution referred to in subsection (1) must be submitted to the Registrar who must retain and register it in the Register.

- (3) Within 30 days immediately following the date on which the resolution referred to in subsection (1) has been submitted to the Registrar, the company must cause a notice stating that the company has rescinded its intention to wind up and dissolve to be published in the Gazette, in a publication of general circulation in the British Virgin Islands and in a publication of general circulation in the country or place where the company has its principal office.
96. (1) Where
- (a) the directors or, as the case may be, the members of a company that is required under section 89 or is permitted under section 90 to wind up and dissolve, at the time of the passing of the resolution to wind up and dissolve the company, have reason to believe that the company will not be able to pay or provide for the payment of or discharge all claims, debts, liabilities and obligations of the company in full; or
- (b) the liquidator after his appointment has reason so to believe,
- then, the directors, the members or the liquidator, as the case may be, shall immediately give notice of the fact to the Registrar.
- (2) Where a notice has been given to the Registrar under subsection (1), all winding-up and dissolution proceedings after the notice has been given shall be in accordance with the provisions of the Companies Act relating to winding-up and dissolution and those provisions shall apply mutatis mutandis to the winding-up and dissolution of the company.
97. (1) Notwithstanding the provisions of this Act relating to winding-up and dissolution, a company incorporated under this Act may be wound up by the court under any of the circumstances, in so far as they are applicable to a company incorporated under this Act, in which a company incorporated under the Companies Act may be wound up by the court and, in that case, the provisions of the Companies Act relating to winding-up and dissolution apply mutatis mutandis to the winding-up and dissolution of the company.
- (2) Any person who, pursuant to the provisions of subsection (1), files, or causes to be filed, a petition for the winding up of a company incorporated under this Act, shall forthwith serve on the Registrar a notice that the petition has been filed, and the Registrar must retain and register the notice.
98. (1) The provisions of the Companies Act regarding receivers and managers govern mutatis mutandis the appointment, duties, powers and liabilities of receivers and managers of the assets of any company incorporated under this Act.
- (2) This section comes into operation on such date as the Governor may appoint by proclamation published in the Gazette.
99. (1) Notwithstanding section 6, where the Registrar has reasonable cause to believe that a company incorporated under this Act no longer satisfies the requirements prescribed for an International Business Company under section 5, the Registrar must serve on the company a notice that the name of the company may be struck off the Registrar if the company no longer satisfies those requirements.
- (2) If the Registrar does not receive a reply within 30 days immediately following the date of the service of the notice referred to in subsection (1), he must serve on the company another notice that the name of the company may be struck off the Register if a reply to the notice is not received within 30 days immediately following the date thereof and that a notice of the contemplated striking-off will be published in the Gazette.
- (3) If the Registrar
- (a) receives from the company a notice stating that the company no longer satisfies the requirements prescribed for an International Business Company under section 5, in reply to a notice served on the company under subsection (1) or (2); or
- (b) does not receive a reply to a notice served on the company under subsection (2) as required by that subsection,

he must publish a notice in the Gazette that the name of the company will be struck off the Register unless the company or another person satisfies the Registrar that the name of the company should not be struck off.

- (4) At the expiration of a period of 90 days immediately following the date of publication of the notice under subsection (3), the Registrar shall strike the name of the company off the Register, unless the company or any other person satisfies the Registrar that the name of the company should not be struck off, and the Registrar must publish notice of the striking-off in the Gazette.
 - (5) If a company fails to pay the increased licence fee due under subsection (3) of section 105 on or before the expiration period of a period of 2 months from the time specified in subsection (1) or (2), as the case may be, of section 105, the Registrar shall within 2 months from the expiration of the said period of 2 months send to the registered agent of the company a written notice that the name of the company will be struck off the Register if the licence fee specified in subsection (4) of section 105 is not paid on or before the next licence fee final payment date.
 - (6) If a company fails to pay the increased fee stated in the notice referred to in subsection (5) at or before the next licence fee final payment date, the Registrar shall strike the name of the company off the Register on the date immediately following the next licence fee final payment date.
 - (7) Within one month following each licence fee final payment date, the Registrar shall send to the registered agent of each company the name of which has been struck off the Register notice of striking off.
 - (8) Within 2 months following each licence fee final payment date the Registrar shall publish in the Gazette the names of all companies struck off the register on the date immediately following the licence fee final payment date.
 - (9) A company the name of which has been struck off the Register under this section remains liable for all claims, debts, liabilities and obligations of the company, and the striking off does not affect the liability of any of its members, directors, officers or agents.
 - (10) 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.
 - (11) Subsections (5) to (8) do not apply to a company in the process of being wound up and dissolved.
100. (1) If the name of a company has been struck off the Register under subsection (4) of section 99, the company, or a creditor, member or liquidator thereof, may apply to the court to have the name of the company restored to the Register.
- (2) If upon an application under subsection (1) the court is satisfied that
- (a) at the time the name of the company was struck off the Register, the company did satisfy the requirements prescribed for an International Business Company under section 5; and
 - (b) it would be fair and reasonable for the name of the company to be restored to the Register,
- the court may order the name of the company to be restored to the Register upon payment to the registrar of all fees due under section 104 and all licence fees due under section 105 without any increase for late payment, and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.
- (3) If the name of a company has been struck off the Register under subsection (6) of section 99, the company, or a creditor, member or liquidator thereof, may, within 10 years immediately following the date of the striking-off, apply to the Registrar to have the name of the company restored to the Registrar, and upon payment of
- (a) all fees due under section 104;
 - (b) the increased license fee due under subsection (3) of section 105; and

- (c) the increased license fee due under subsection (3) of section 105 for each year during which the name of the company remains struck off the Register,

the Registrar shall restore the name of the company to the Register and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.

- (3A) If the name of the company has been struck off the Register under subsection (5) or subsection (6) of section 40A, the company, or a creditor, member or liquidator thereof, may apply to the Registrar to have the name of the company restored to the Register.

- (3B) If upon an application under subsection (3A) the Registrar 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 name of the company to be restored to the Register,

the Registrar may restore the name of the company to the Register upon satisfaction of the condition set forth in subsection (3C) and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.

- (3C) The conditions referred to in subsection (3B) are as follows:

- (a) the submission to the Registrar by the applicant for the restoration of a copy of the resolution amending the Memorandum of the company to change the registered agent; and
- (b) payment to the Registrar by the applicant for the restoration of:
 - (i) all fees due under section 104, and
 - (ii) all license fees due under section 105 without increase for late payment.

- (4) For purposes of this Part, the appointment of an official receiver under section 102 operates as an order to restore the name of the company to the Register.

- 101. (1) Where the name of a company has been struck off the Register, the company, and the directors, members, liquidators and receivers thereof, may not legally
 - (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 the name of the company has been struck off the Register, the company, or a director, member, liquidator or receiver thereof, may
 - (a) make application for restoration of the name of the company to the Register;
 - (b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and
 - (c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.
- (3) The fact that the name of a company is struck off the Register does not prevent

- (a) the company from incurring liabilities;
 - (b) any creditor from making a claim against the company and pursuing the claim through to judgement or execution; or
 - (c) the appointment by the court of an official liquidator for the company under section 102.
102. The court may appoint a person to be the official liquidator in respect of a company the name of which has been struck off the Register.
103. (1) If the name of a company has been struck off the Register under section 99 and remains struck off continuously for a period of 10 years, the company shall be deemed to have been dissolved, but the Registrar may, if he determines that it is in the best interests of the Crown to do so, apply to the court on or before the expiration of the period of 10 years to have the company put into liquidation and a person appointed by the court shall be the official liquidator thereof.
- (2) The duties of an official liquidator in respect of a company in liquidation pursuant to subsection (1) are limited to
- (a) identifying and taking possession of all assets of the company;
 - (b) calling for claims by advertisement in the Gazette and in such other manner as he deems appropriate, requiring all claims to be submitted to him within a period of not less than 90 days immediately following the date of the advertisement; and
 - (c) applying those assets that he recovers in the following order of priority:
 - (i) in satisfaction of all outstanding fees, licence fees and penalties due to the Registrar, and
 - (ii) in satisfaction *pari passu* of all other claims admitted by the official liquidator.
- (3) In order to perform the duties with which he is charged under subsection (2), the official liquidator may exercise such powers as the court may as it considers reasonable confer on him.
- (4) The official liquidator may require such proof as he considers necessary to substantiate any claim submitted to him and he may admit, reject or settle claims on the basis of the evidence submitted to him.
- (5) When the official liquidator has completed his duties, he shall submit a written report of his conduct of the liquidation proceedings to the Registrar and, upon receipt of the report by the Registrar, all assets of the company, wherever situate, that are not disposed of, vest in the Crown and the company is dissolved.
- (6) The official liquidator is entitled to such remuneration out of the assets of the company for his services as the court approves, but if the company is unable to discharge all of its claims, debts, liabilities and obligations, payment of the official liquidator's remuneration shall be a charge on the Consolidated Fund.
- (7) No liability attaches to an official liquidator
- (a) to account to creditors of the company who have not submitted claims within the time allowed by him; or
 - (b) for any failure to locate any assets of the company.

PART X

Fees and Penalties

104. There shall be paid to the Registrar fees as follows:

- (a) \$300 upon the registration of a company incorporated under this Act if
 - (i) the authorized capital of does not exceed \$50,000,
 - (ii) all the shares of which have a par value, and
 - (iii) the company is prohibited by its memorandum from issuing bearer shares;
- (b) \$1,000 upon the registration of a company incorporated under this Act if either or both of the following apply to the company:
 - (i) the authorized capital of the company exceeds \$50,000;
 - (ii) the company is not prohibited by its memorandum from issuing bearer shares.;
- (c) upon the registration by the Registrar of a copy of a resolution of members or a resolution of directors amending the Memorandum or Articles of a company incorporated under this Act,
 - (i) \$25 if the registration is within 30 days immediately following the passing of the resolution authorizing the amendment,
 - (ii) \$50 if the registration is within 60 days immediately following the passing of the resolution authorizing the amendment,
 - (iii) \$75 if the registration is within 90 days immediately following the passing of the resolution authorizing the amendment, and
 - (iv) \$100 if the registration is later than 90 days following the passing of the resolution authorizing the amendment.

(ca) a fee of \$700.00 upon the registration by the Registrar of a copy of a resolution of members or a resolution of directors amending the memorandum of a company incorporated under this Act that has the effect of permitting the company to issue bearer shares;
- (d) \$500 upon the registration by the Registrar of articles of merger or consolidation, but \$700 if the articles of merger or consolidation
 - (i) also constitute the memorandum of a company which, if it was being registered, would be liable to pay a fee of \$1,000.00 under paragraph (b), or
 - (ii) amend the memorandum of a company such that the company, if it was being registered, would be liable to pay a fee of \$1000.00 under paragraph (b);
- (e) \$500 upon the registration by the Registrar of articles of arrangement, but \$700 if the articles of arrangement
 - (i) also constitute the memorandum of a company which, if it was being registered, would be liable to pay a fee of \$1,000.00 under paragraph (b), or
 - (ii) amend the memorandum of a company such that the company, if it was being registered, would be liable to pay a fee of \$1000.00 under paragraph (b);
- (f) \$250 upon the submission to the Registrar of articles of continuation for a company incorporated under the Companies Act the authorized capital of which does not exceed \$50,000, and which is prohibited by its memorandum from issuing bearer shares, and, in addition, in the case of a company that continues its incorporation under this Act before 30th April in any year, such sum as would have been payable by that company under the Companies Act if that company had not so continued its incorporation under this Act;
- (g) \$1,000 upon the submission to the Registrar of articles of continuation for a company incorporated under the Companies Act and which, if it was being registered, would be liable to pay a fee of \$1000.00 under

paragraph (b), and, in addition, in the case of a company that continues its incorporation under this Act before 30th April in any year, such sum as would have been payable by that company under the Companies Act if that company had not so continued its incorporation under this Act;

- (h) \$500 upon the submission to the Registrar of articles of continuation for a company not incorporated under the Companies Act the authorized capital of which does not exceed \$50,000 and which is prohibited by its memorandum from issuing bearer shares;
- (i) \$1,000 upon the submission to the Registrar of articles of continuation for a company not incorporated under the Companies Act which, if it was being registered, would be liable to pay a fee of \$1000.00 under paragraph (b);
- (j) \$100 upon the registration by the Registrar of articles of dissolution;
- (k) \$100 upon the registration by the Registrar of a resolution rescinding articles of dissolution;
- (l) \$25 upon the issue by the Registrar of a duplicate, or certified copy of a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution, discontinuance or good standing;
- (m) \$15 upon the issue by the Registrar of a copy or extract, whether or not certified, of a document or a part of a document, other than a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing;
- (n) \$10 for an inspection of the documents kept by the Registrar pursuant to this Act;
- (o) upon the restoration by the Registrar to the Register of a company incorporated under this Act, the name of which was struck off the Register,
 - (i) \$300 if the restoration is applied for within 6 months immediately following the striking of the name off the Register; or
 - (ii) \$600 if the restoration is applied for more than 6 months immediately following the striking of the name off the Register;
- (p) \$25 for the reservation of a name as provided for in subsection (7) of section 11;
- (q) \$10 for an inspection of each entry in the Register of International Business Companies;
- (r) \$500 upon submission to the Registrar of documents referred to in subsection (1) of section 85;
- (s) \$100 upon resubmission to the Registrar of the documents referred to in subsection (7) of section 85;
- (t) \$350 upon the registration by the Registrar of a company incorporated under this Act that is prohibited by its memorandum from issuing bearer shares, if,
 - (i) the authorized capital of the company does not exceed \$50,000 and some of all of its shares have no par value, or
 - (ii) the company has no authorised capital and all of its shares have no par value;
- (u) \$25 upon the registration by the Registrar of a notice of increase or decrease of authorized capital of a company incorporated under this Act, but \$700 in the case of a notice of increase of authorized capital from \$50,000 or less to more than \$50,000;
- (v) \$50 upon initial registration by the Registrar of a copy of a share register, a register of directors or a register of mortgages;

- (w) \$50 upon registration by the Registrar of a copy of a share register, a register of directors or a register of mortgages and charges showing changes from the copy of the particular register a copy of which was last registered by the Registrar;
 - (x) \$50 upon registration by the Registrar of a notice that a company has elected to cease to register a copy of a share register, a register of directors or a register of mortgages and charges showing changes from the copy of the particular register a copy of which was last registered with the Registrar;
 - (y) \$100 upon the registration by the Registrar of an affidavit attesting to a company incorporated under this Act continuing its incorporation under the laws of another jurisdiction; and
 - (z) \$50 upon registration by the Registrar of any document referred to in section 111B.
105. (1) A company that is incorporated in the first 6 months of a year shall on or before 31st May in the following year and in each succeeding year pay to the Registrar a licence fee as follows:-
- (a) \$300 if on the licence fee payment date
 - (i) the authorised capital of the company does not exceed 50,000.00;
 - (ii) all the shares of the company have a par value; and
 - (iii) the company is prohibited by its memorandum from issuing bearer shares;
 - (b) \$1,000 if either or both of the following apply to the company on the licence fee payment date
 - (i) the authorized capital of the company exceeds \$50,000;
 - (ii) the company is not prohibited by its memorandum from issuing bearer shares.;
 - (c) \$350 if, on the licence fee payment date, the company is prohibited by its memorandum from issuing bearer shares and
 - (i) its authorised capital does not exceed \$50,000 and some or all of its shares have no par value; or
 - (ii) it has no authorised capital and all its shares have no par value.
- (2) A company that is incorporated in the second 6 months of a year shall on or before 30th November in the following year and in each succeeding year pay to the Registrar a licence fee as follows:-
- (a) \$300 if on the licence fee payment date
 - (i) the authorised capital of the company does not exceed 50,000.00;
 - (ii) all the shares of the company have a par value; and
 - (iii) the company is prohibited by its memorandum from issuing bearer shares;
 - (b) \$1,000 if either or both of the following apply to the company on the licence fee payment date
 - (i) the authorized capital of the company exceeds \$50,000;
 - (ii) the company is not prohibited by its memorandum from issuing bearer shares.;
 - (c) \$350 if, on the licence fee payment date, the company is prohibited by its memorandum from issuing bearer shares and

- (i) its authorized capital does not exceed \$50,000 and some or all of its shares have no par value; or
 - (ii) it has no authorized capital and all its shares have no par value.
 - (3) If a company fails to pay the amount due as the licence fee under subsection (1) or (2), as the case may be, by the time specified therein, then the licence fee increases by 10 per cent of that amount.
 - (4) If a company fails to pay the amount due as an increased licence fee under subsection (3) at or before the expiration of a period of 2 months from the time specified in subsection (1) or (2), as the case may be, then the licence fee increases by 50 per cent of that amount.
 - (5) This section does not apply to a company in the process of being wound up and dissolved.
106. Any penalty incurred under this Act shall be paid to the Registrar.
107. Any fee, licence fee or penalty payable under this Act that remains unpaid for 30 days immediately following the date on which demand for payment is made by the Registrar is recoverable at the instance of the Attorney General before a magistrate in civil proceedings as a debt due to the Crown notwithstanding the amount sought to be recovered.
108. A company incorporated under this Act continues to be liable for all fees, licence fees and penalties payable under this Act notwithstanding that the name of the company has been struck off the Register and all those fees, licence fees and penalties have priority to all other claims against the assets of the company.
109. All fees, licence fees and penalties paid under this Act shall be paid by the Registrar into the Consolidated Fund.
110. (1) The Registrar may refuse to take any action required of him under this Act for which a fee is prescribed until all fees have been paid.
- (2) The Registrar may refuse to continue under this Act a company incorporated under the Companies Act until all fees prescribed as payable by the company under the Companies Act have been paid.

PART XI

Income Taxes, Stamp Duties and Registration of Documents

111. (1) Notwithstanding any provision of the Income Tax Act,
- (a) a company incorporated under this Act;
 - (b) all dividends, interest, rents, royalties, compensations and other amounts paid by the company to persons who are not persons resident in the British Virgin Islands; and
 - (c) capital gains realized with respect to any shares, debt obligations or other securities of a company incorporated under this Act by persons who are not persons resident in the British Virgin Islands,
- are exempt from all provisions of the Income Tax Act.
- (2) No estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by persons who are not persons resident in the British Virgin Islands with respect to any shares, debt obligations or other securities of a company incorporated under this Act.
- (3) Notwithstanding any provision of the Stamp Act,
- (a) all instruments relating to transfers of property to or by a company incorporated under this Act;

- (b) all instruments relating to transactions in respect of the shares, debt obligations or other securities of a company incorporated under this Act; and
- (c) all instruments relating to other transactions relating to the business of a company incorporated under this Act,

are exempt from the payment of stamp duty.

- (4) Notwithstanding any provisions of the Registration and Records Act, all deeds and other instruments relating to
 - (a) transfers of property to or by a company incorporated under this Act;
 - (b) transactions in respect of the shares, debt obligations or other securities of a company incorporated under this Act; and
 - (c) other transactions relating to the business of a company incorporated under this Act,

are exempt from the provisions of that Act.

111A. (1) A company incorporated under this Act may elect to submit for registration by the Registrar any of the following registers:

- (a) its share register; or
- (b) its register of mortgages and charges.

- (2) A company that has elected to submit for registration a copy of a register shall, until it otherwise notifies the Registrar pursuant to subsection (3), submit for registration any changes in a register by submitting for registration a copy of the register containing the changes.
- (3) A company that submits for registration a copy of a register with the Registrar may elect to cease registration of changes in the register by so informing the Registrar in writing.
- (4) If a company elects to submit for registration any register pursuant to subsection (1), then, until such time as the company informs the Registrar pursuant to subsection (3) that it elects to cease to register changes in any register, the company is bound by the contents of each copy register submitted to the Registrar.

111B. A company incorporated under this Act may submit to the Registrar for registration

- (a) any document or copy of a document creating a mortgage, charge or other encumbrance over some or all its assets;
 - (b) any document or copy of a document amending any document referred to in paragraph (2); and
 - (c) any document releasing or discharging a mortgage, charge or other encumbrance over any or all its assets,
- and the Registrar must retain and register the document or, as the case may be, the copy thereof.

PART XII

Miscellaneous

112. (1) The Governor in Council may make regulations generally for giving effect to the provisions of this Act and specifically for prescribing any thing required or permitted to be prescribed by this Act.
- (2) Without limiting or affecting subsection (1), the Governor in Council may make regulations with respect to the conduct, duties and responsibilities of registered agents.
- (3) Regulations made under this section may make different provision in relation to different persons, circumstances or cases.
113. Any certificate or other document required to be issued by the Registrar under this Act shall be in such form as the .. Governor in Council may approve.
114. (1) The Registrar shall, upon request by any person, issue a certificate of good standing under his hand and seal certifying that a company incorporated under this Act is of good standing if the Registrar is satisfied that
- (a) the name of the company is on the Register; and
- (b) the company has paid all fees, licence fees and penalties due and payable.
- (2) The certificate of good standing issued under subsection (1) must contain a statement as to whether
- (a) the company has submitted to the Registrar articles of merger or consolidation that have not yet become effective;
- (b) the company has submitted to the Registrar articles of arrangement that have not yet become effective;
- (c) the company is in the process of being wound up and dissolved; or
- (d) any proceedings to strike the name of the company off the Register have been instituted.
115. (1) Except as provided in subsection (2) of section 85, a person may
- (a) inspect the documents kept by the Registrar pursuant to this Act; and
- (b) require a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing of a company incorporated under this Act, or a copy or an extract of any document or any part of a document of which he has custody, to be certified by the Registrar; and a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing or a certified copy or extract is prima facie evidence of the matters contained therein.
- (2) A document or a copy or an extract of any document or any part of a document certified by the Registrar under subsection (1) is admissible in evidence in any proceedings as if it were the original document.
116. 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 incorporated under this Act is in the British Virgin Islands.
117. (1) A company incorporated under this Act may, without the necessity of joining any other party, apply to the court, by summons supported by an affidavit, for a declaration on any question of interpretation of this Act or of the Memorandum or Articles of the company.

- (2) A person acting on a declaration made by the court as a result of an application under subsection (1) shall be deemed, in so far as regards the discharge of any fiduciary or professional duty, to have properly discharged his duties in the subject matter of the application.
118. A judge of the Supreme Court may exercise in Chambers any jurisdiction that is vested in the court by this Act and in exercise of that Jurisdiction, the judge may award costs as may be just.
119. This Act, except for section 98, comes into operation on such day as the Governor appoints by proclamation published in the Gazette.

Passed by the Legislative Council

This 29th day of June, 1984

K.L. Flax,
Speaker