

**THE CAYMAN ISLANDS**

**THE COMPANIES LAW**

**(2004 Revision)**

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## **COMPANIES LAW**

**(2004 Revision)**

### **PART I - Introductory**

#### **Short title**

- 1.** This Act may be cited as the Companies Law (2004 Revision).

#### **Definitions and interpretations**

- 2.(1)** In this Law -

“Authority” means the Cayman Islands Monetary Authority established under section 3(1) of the Monetary Authority Law (2004 Revision), and includes a person acting under the Authority’s authorisation;

“bearer share” means a shares in the capital of any company incorporated in the Islands which -

(a) is represented by a certificate that does not record the owner’s name; and

(b) is transferable by delivery of the certificate;

“Court” means the Grand Court of the Cayman Islands;

“company” except where the context excludes exempted companies, means a company formed and registered under this Law or an existing company;

“currency” includes the ECU and any unit of account used at any time by the European Monetary Fund;

“custodian” means -

(a) “an authorised custodian” who is a person licensed under the Companies Management Law (2003 Revision) to act as a custodian of bearer shares or a bank or trust company licensed under the Banks and Trust Companies Law (2003 Revision); or

(b) “a recognised custodian” which is an investment exchange or clearing organisation operating a securities clearance or settlement system and carrying on business in a country specified in Schedule 3 of the Money Laundering Regulations (2003 Revision) and which has been approved by the Authority for the purposes of this Law to act as a custodian of bearer shares;

“ECU” or “European Currency Unit” means the currency basket that is, from time to time, used as the unit of account of the European Community as defined in European Council Regulation No.3320/94;

“euro” means the common currency of participating member states of the European Union that adopt a single currency in accordance with the Treaty;

“exempted company” means a company registered as an exempted company under section 183;

“exempted limited duration company” means an exempted company registered as an exempted limited duration company under section 198;

“existing company” means a company which, prior to the 1st December, 1961, has been incorporated and its memorandum of association recorded in the Islands pursuant to the laws relating to companies then in force in the Islands;

“Judge” means a Judge of the Grand Court;

“non-resident company” bears the meaning ascribed to that term in section 2(1) of the Local Companies (Control) Law (1999 Revision);

“officer” in relation to a company, includes a manager or secretary;

“public notice” means a public notice affixed by the Registrar on the public notice board in George Town, Grand Cayman or such other place as may be fixed, from time to time, by the Governor in Cabinet;

“Registrar” means the Registrar of Companies appointed under section 3 and includes, where appropriate, the Deputy Registrar of Companies;

“special resolution” means a special resolution as defined in section 60; and

“Treaty” means the Treaty on European Union signed in Maastricht on 7<sup>th</sup> February, 1992.

**(2)** Where, in this Law, it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine of ten dollars.

**(3)** In this Law, where it provides that an officer of a company who is in default shall be liable to a default fine, the expression “officer who is in default” means any officer of the company who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

### **Registrar**

**3.(1)** The Governor shall, by instrument under the Public Seal, appoint a Registrar and a Deputy Registrar of Companies for the purposes of this Law, and the Deputy Registrar may, in the absence of the Registrar, act as Registrar for all purposes of this Law.

**(2)** Without divesting the Registrar of any of his powers or duties the Financial Secretary may authorise by name any officer in the Registrar's department to exercise and perform any of such powers and duties under the direction and control of the Registrar and may, at any time, vary or revoke such authorisation.

### **Signature of Registrar**

**4.(1)** Any document purporting to bear the signature of the Registrar or of an officer authorised in accordance with section 3(2) shall be deemed, until the contrary is proved, to have been duly given, made or issued by the authority of the Registrar.

**(2)** In subsection (1) -

“signature” includes a facsimile of a signature however reproduced.

## **PART II - Constitution And Incorporation Of Companies And Associations**

## **Memorandum of Association**

### **Mode of forming company**

**5.** Any one or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with this Law in respect of registration, form an incorporated company, with or without limited liability.

### **Mode of limiting liability of members**

**6.** The liability of the members of a company formed under this Law may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

## **Memorandum of association**

**7.(1)** The memorandum of association shall, subject to subsections (2), (3) and (4) and to sections 8 and 9 contain -

- (a)* the name of the proposed company, with the addition, in the case of any company not being an exempted company or a company formed on the principle of having no limit placed on the liability of its members, in this Law referred to as an unlimited company, of the word "Limited" or the abbreviation "Ltd." as the last word in such name; and
- (b)* the part of the Islands in which the registered office of the company is proposed to be situate.

**(2)** No subscriber shall take less than one share.

**(3)** Each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

**(4)** The memorandum of association may specify objects for which the proposed company is to be established and may provide that the business of the company shall be restricted to the furtherance of the specified objects. If no objects are specified or if objects are specified but the business of the company is not restricted to the furtherance of those objects, then the company shall have full power and the authority to carry out any object not prohibited by this or any other Law.

## **Company limited by shares**

**8.(1)** Subject to subsection (2), where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, in this Law referred to as a company limited by shares, the memorandum of association shall also contain -

- (a)* a declaration that the liability of its members is limited; and

- (b) the amount of capital with which it proposes to be registered, divided into shares of a certain fixed amount to be also therein specified:

Provided that the capital with which an exempted company proposes to be registered may be divided into shares without nominal or par value in which case the memorandum of association shall contain the amount of the aggregate consideration for which such shares may be issued:

Provided further that no exempted company shall divide its capital into both shares of a fixed amount and shares without nominal or par value.

(2) Where the capital of such a company is divided into shares of more than one class, the memorandum of association may contain a declaration that in a winding up of the company the liability of members holding the shares of a particular class shall be unlimited.

(3) The capital, fixed amount of shares and aggregate consideration referred to in subsection (1) may be expressed, and subscribed for, in any one or more currencies.

(4) No authorisation or issue, or purported authorisation or issue, by an exempted company of any share without nominal or par value shall, if that company has its capital divided into such shares only, be invalid only by reason of the fact it was authorised or issued, or purportedly authorised or issued, prior to the 20th November, 1989.

#### **Company limited by guarantee**

9.(1) Subject to subsection (2), where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, (in this Law referred to as a company limited by guarantee), the memorandum of association shall also contain a declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of the winding up of the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specific amount to be therein named.

(2) Where such a company has more than one class of member, the memorandum of association may contain a declaration that in a winding up of the company the amount of the undertaking of the members of a particular class shall be unlimited.

(3) A company limited by guarantee may have a share capital.

#### **Memorandum of association may be altered**

10. Subject to section 13, a company may, by special resolution, alter its memorandum of association with respect to any objects, powers or other matters specified therein.

#### **Location of registered office may be changed**

11.(1) A company may, by resolution of the directors, change the location of the registered office of the company to another location in the Islands:

Provided that, within thirty days from the date on which the resolution changing the location of the

registered office is passed, the company shall deliver to the Registrar a certified copy of the resolution of the directors authorising the same.

**(2)** Until such notice is given, the company shall not be deemed to have complied with this Law with respect to having an office.

### **Signature and effect of memorandum of association**

**12.** The memorandum of association shall be signed by each subscriber in the presence of and be attested by at least one witness. It shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto and there were in the memorandum contained on the part of himself, his heirs, executors and administrators, a covenant to observe all the conditions of such memorandum, subject to this Law, and all monies payable by any member to the company under such memorandum shall be deemed to be a debt due from such member to the company.

### **Power of company limited by shares to alter its share capital**

**13.(1)** A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum to -

*(a)* increase its share capital by new shares of such amount as it thinks expedient:

Provided that an exempted company having no shares of a fixed amount may increase its share capital by such number of shares without nominal or par value, or may increase the aggregate consideration for which such shares may be issued, as it thinks expedient;

*(b)* consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

*(c)* convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;

*(d)* subdivide its shares or any of them, into shares of an amount smaller than that fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in case of the share from which the reduced share is derived; and

*(e)* cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled or, in the case of shares without nominal or par value, diminish the number of shares into which its capital is divided.

Paragraphs (b), (c) and (d) shall have no application to shares without nominal or par value.

**(2)** The powers conferred by subsection (1) may not be exercised except by a resolution of the members of the company.

**(3)** If a currency in which any of the capital of a company limited by shares or by guarantee is replaced by the euro, the provisions of the company's memorandum of association and articles of association shall automatically be altered so as to re-denominate in euros the capital that is denominated in the replaced currency, at the conversion rate specified in, or otherwise calculated in accordance with, the relevant regulations adopted by the Council of the

European Union, and the company, by resolution of the directors, may -

- (a)* take such action to round up or down the euro nominal or par value of each share in the company or the euro guarantee amount to such multiple of the euro as the directors may deem appropriate;
- (b)* notwithstanding the requirement for a special resolution in section 31, if the name of the company includes a reference to a currency replaced by the euro, or an abbreviation thereof -
  - (i)** alter the name of the company to delete the reference or to substitute the reference with a reference to the euro or an abbreviation thereof; and
  - (ii)** add such further distinguishing wording as the directors consider appropriate; and
- (c)* if the memorandum of association or articles of association of the company include a reference or references to a currency replaced by the euro, alter any or all such references in either or both of the memorandum of association and the articles of association by substituting such references to the euro or an abbreviation thereof.

**(4)** A company may, by resolution of the directors, reverse or vary the re-denomination of currency or any other action taken in accordance with the provisions of subsection (3).

**(5)** A company of any resolution passed under subsection (3) or (4) shall be forwarded to the Registrar within fifteen days and shall be recorded by him.

**(6)** A cancellation of shares or a rounding down of the nominal or par value of shares under this section shall not be deemed to be a reduction of share capital within the meaning of this Law.

**(7)** If any action is taken by the company under paragraph (a) of subsection (3) to -

- (a)* round up the euro nominal or par value of any issued share in the company, then an amount equal to the increase in nominal or par value of that share shall be transferred from the share premium account or from the profit and loss account (as the directors shall, in their discretion, determine) and shall thereafter be deemed to be and treated as paid up share capital of the company; or
- (b)* round down the euro nominal or par value of any issued share in the company, then an amount equal to the decrease in the nominal or par value of that share shall be transferred from the paid up share capital of the company to the share premium account and shall thereafter be deemed to be and treated as share premium for the purposes of this Law.

#### **Special resolution for reduction of share capital**

**14.(1)** Subject to section 37 and to confirmation by the Court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular (but without prejudice to the generality of the foregoing power) may -

- (a)* extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
- (b)* either with or without extinguishing or reducing liability on any of its shares,

cancel any paid-up share capital which is lost or unrepresented by available assets; or

- (c) either with or without extinguishing or reducing liability of any of its shares, pay off any paid-up share capital which is in excess of the needs of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

**(2)** A special resolution under subsection (1) is, in this Law, referred to as “a resolution for reducing share capital”.

### **Application to court for confirming order, objections by creditors**

**15.(1)** Where a company has passed a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction.

**(2)** Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and, in any other case, if the Court so directs, subject to subsection (3), the following shall have effect -

- (a) every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;
- (b) the Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or period on or within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction; and
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating as the Court may direct, the following amount -
  - (i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim; or
  - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or, if the amount is contingent or not ascertained, then an amount fixed by the Court after the like enquiry and adjudication as if the company were being wound up by the Court.

**(3)** Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital the Court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (2) shall not apply as regards any class or any classes of creditors.

**Order confirming reduction and powers of Court on**

**making such order**

**16.(1)** The Court, if satisfied with respect to every creditor of the company who under section 15 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

**(2)** Where the Court makes any such order, it may -

- (a)* if for any special reason it thinks proper so to do, direct that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last word thereof the words “and reduced”; and
- (b)* require the company to publish as the Court directs the reasons for reduction or such other information in regard thereto as the Court may think expedient with a view to giving proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

**(3)** Where a company is ordered to add to its name the words “and reduced”, those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

#### **Registration of order and minute of reduction**

**17.(1)** The Registrar, on delivery to him of a copy of an order of the Court confirming the reduction of the share capital of a company, and of a minute approved by the Court, showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share, and the amount, if any, at the date of the registration of the order and minute deemed to be paid up on each share, shall register the order and minute.

**(2)** On the registration of the order and minute, and not earlier, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

**(3)** Notice of the registration shall be published in such manner as the Court may direct.

**(4)** The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Law with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

**(5)** The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and alterable as if it had been originally contained therein.

#### **Liability of members in respect of reduced shares**

**18.(1)** In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid or the reduced amount, if any, which is to be deemed to have been paid on the shares, as the case may be:

Provided that, if any, creditor entitled in respect of any debt or claim to object to the reduction of share capital is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the list of creditors, and after the reduction the company is unable, within the meaning of this Law with respect to winding up by the Court, to pay the amount of his debt or claim, then -

- (a)* every person who was a member of the company at the date of the registration of

the order for reduction and minute shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and

(b) if the Company is wound up, the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

#### **Penalty for concealment of names of creditors**

19. Whoever, being a director, manager, secretary or other officer of the company -

(a) wilfully conceals the name of any creditor entitled to object to the reduction;

(b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

is guilty of a misdemeanour and liable on summary conviction to a fine of two hundred dollars or to imprisonment for six months.

#### **Articles prescribing regulations for companies**

20. There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

#### **Regulations required in case of unlimited company or company limited by guarantee**

21.(1) In the case of an unlimited company the articles must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.

(2) In the case of a company limited by guarantee, the articles must state the number of members with which the company proposes to be registered.

#### **Adoption and application of Table A in First Schedule**

22.(1) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule.

(2) In the case of a company limited by shares and registered after the 1st December, 1961, if articles are not registered or, if articles are registered, insofar as the articles do not exclude or modify the regulations contained in Table A in the First Schedule, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

### **Printing, stamping, and signature of articles**

**23.** Articles shall -

- (a)* be divided into paragraphs numbered consecutively;
- (b)* bear the same stamp as if they were contained in a deed; and
- (c)* save as otherwise provided in section 25(2), be signed by each subscriber of the memorandum of association or each existing member, as the case may be, in the presence of at least one witness who shall attest the signature, and that attestation shall be sufficient.

### **Alteration of articles by special resolution.**

**24.(1)** Subject to this Law and to the conditions contained in its memorandum, a company may, by special resolution, alter or add to its articles.

**(2)** Any alteration or addition so made in the articles shall, subject to the provisions of this Law, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

### **Adoption and effect of articles of association.**

**25.(1)** If the memorandum of association is accompanied by articles of association the articles shall be signed by each subscriber to the memorandum in the presence of and be attested by at least one witness.

**(2)** If the memorandum of association is not accompanied by articles of association, the company may, subject to the conditions contained in the memorandum of association, adopt articles of association which shall be signed by each existing member of the company in the presence of and be attested by at least one witness, or may, by passing a special resolution under section 60, adopt articles of association.

**(3)** When registered the said articles of association shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors and administrators to conform to all the regulations contained in such articles subject to this Law; and all monies payable by any member to the company in pursuance of the conditions or regulations shall be deemed to be a debt due from such member to the company.

## **General Provisions**

### **Registration.**

**26.(1)** The memorandum of association and the articles of association, if any, shall be delivered in duplicate to the Registrar who shall file and retain the original thereof and shall return the duplicate thereof endorsed with a memorandum of registration and a memorandum of the particulars set out in subsection (2).

**(2)** Each memorandum of association and the articles of association, if any, shall be numbered and filed consecutively and shall be endorsed with the date of the month and year of such filing.

**(3)** A register of companies shall be kept in which shall be entered the following particulars which shall be annexed to the memorandum of association and articles of association, if any, insofar as they are not included therein

- (a)* the name of the company;
- (b)* the part of the Islands in which the registered office of the company is proposed to be situate;
- (c)* the amount of capital of the company and, in the case of a company having its share capital divided into shares of a nominal or par value, the number of shares into which it is divided and the fixed amounts thereof;
- (d)* the names and addresses of the subscribers to the memorandum and the number of shares taken by each subscriber;
- (e)* the date of execution of the memorandum of association;
- (f)* the date of filing of the memorandum of association;
- (g)* the number assigned to the company; and
- (h)* in the case of a company limited by guarantee or which has no limit placed on the liability of its members, that the same is limited by guarantee or is unlimited, and any of the particulars as hereinbefore specified which may be inappropriate to the case may be omitted.

**(4)** Upon the filing of a memorandum of association under this section, there shall be paid to the Registrar -

- (a)* in respect of a non-resident company -
  - (i)** with no registered capital, or a registered capital not exceeding \$42,000, a fee of \$400; and
  - (ii)** with a registered capital exceeding \$42,000, a fee of \$565;
- (b)* in respect of an exempted company -
  - (i)** with no registered capital, or a registered capital not exceeding \$42,000, a fee of \$470;
  - (ii)** with a registered capital exceeding \$42,000, but not exceeding \$820,000, a fee of \$660;
  - (iii)** with a registered capital exceeding \$820,000, but not exceeding \$1,640,000, a fee of \$1,384; and
  - (iv)** with a registered capital exceeding \$1,640,000, a fee of \$1,968; and
- (c)* in respect of any other company -
  - (i)** with no registered capital or a registered capital not exceeding \$42,000, a fee of \$150; and
  - (ii)** with a registered capital exceeding \$42,000, a fee of \$350.

### **Consequences of incorporation.**

**27.(1)** Upon the filing of the memorandum of association a company shall be deemed to be registered, and the Registrar shall issue a certificate under his hand and seal of office that the company is incorporated with effect from the date of the registration of the memorandum of association and, in the case of a limited company, that the company is limited.

**(2)** From the date of incorporation, the subscribers of the memorandum of association, together with such other persons as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit, and having perpetual succession with power to hold lands but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is provided in this Law. This subsection applies to companies incorporated before, on or after the 18th January, 1988.

**(3)** A certificate of incorporation of a company issued under this Law shall be conclusive evidence that compliance has been made with all the requirements of this Law in respect of incorporation and registration.

**(4)** Every copy of a memorandum or articles of association filed and registered in accordance with this Law or any extract therefrom certified under the hand and seal of office of the Registrar as a true copy shall be received in evidence in any court of the Islands without further proof.

### **Lack of capacity or power; *ultra vires*.**

**28.(1)** No act of a company and no disposition of real or personal property to or by a company shall be invalid by reason only of the fact that the company was without capacity or power to perform the act or to dispose of or receive the property, but the lack of capacity or power may be asserted -

- (a)* in proceedings by a member or a director against the company to prohibit the performance of any act, or the disposition of real or personal property by or to the company; and
- (b)* in proceedings by the company, whether acting directly or through a liquidator or other legal representative or through members of the company in a representative capacity, against the incumbent or former officers or directors of the company for loss or damage through their unauthorised act.

**(2)** This section applies to companies incorporated before, on or after the 18th day of January, 1988.

### **Copies of memorandum and articles to be given to members.**

**29.** A copy of the memorandum of association having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of such reasonable sum, not exceeding one dollar for each copy as may be fixed by any rule of the company, and in the absence of any such rule, such copy shall be given gratuitously; and whichever company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this section, is guilty of an offence and liable, for each default, to a penalty of two dollars.

### **Restrictions on registration of certain names.**

**30.(1)** No company shall be registered by a name which -

- (a)* is identical with that by which a company in existence is already registered or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signified its consent in such manner as the Registrar requires;
- (b)* contains the words “Chamber of Commerce” unless the company is a company which is to be registered under a licence granted by the Governor under section 80 without the addition of the word “Limited” or the abbreviation “Ltd.” to its name; or
- (c)* contains the words “building society”.

**(2)** Except with the consent of the Registrar, no company shall be registered by a name which -

- (a)* contains the words “royal”, “imperial” or “empire” or in the opinion of the Registrar suggests, or is calculated to suggest the patronage of Her Majesty or of any member of the Royal Family or connection with Her Majesty’s Government or any department thereof in the United Kingdom or elsewhere;
- (b)* contains the words “municipal” or “chartered” or any words which in the opinion of the Registrar suggest, or are calculated to suggest, connection with any public board or other local authority or with any society or body incorporated by Royal Charter; or
- (c)* contains the words “co-operative”, “assurance”, “bank”, “insurance” or any similar word which in the opinion of the Registrar connotes any of such activities or any derivative of any of such four words or of such similar words, whether in English or in any other language, or in the opinion of the Registrar suggests or is calculated to suggest any of such activities.

**(3)** A company that is not an exempted limited duration company shall not be registered by a name which includes at its end “Limited Duration Company” or “LDC”.

### **Change of name.**

**31.(1)** Any company may, by special resolution, change its name.

**(2)** Where a company changes its name, the Registrar, on receiving the special resolution authorising the same together with the fees provided under section 219(1)(a) and (b), and on being satisfied that the change of name conforms with section 30, shall enter the new name on the register in place of the former name and lodge the special resolution for record and shall issue a certificate of incorporation altered to meet the circumstances of the case.

**(3)** If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which in any way contravenes section 30 or which, in the opinion of the Registrar, is misleading or undesirable, then the company may, with the sanction of the Registrar, change its name and shall, if the Registrar so directs, change its name within six weeks of the date of such direction or within such longer period as the Registrar may think fit.

**(4)** Whichever company makes default in complying with a direction under subsection (3) is liable to a fine of ten dollars for every day during which the default continues.

### **Company with power to issue bearer shares not to hold land in the Islands.**

**32.(1)** A company which is empowered by any law or by its articles of association to issue bearer shares, certificates or coupons, has no power to hold land in the Islands:

Provided that the Financial Secretary may, at his discretion, in the case of an exempt company so empowered that has never issued bearer shares, certificates or coupons, exempt that company in writing from subsection (1) for as long as it does not issue bearer shares, certificates or coupons.

**(2)** If a company is in breach of subsection (1), section 205(2), (3) and (4) shall apply, *mutatis mutandis*, to the company as if it were a foreign company which had failed to comply with Part IX.

**(3)** In this section -

“hold land” means to be the proprietor of a legal or beneficial interest in or claim to, or over immovable property whether freehold or leasehold and includes being the proprietor of a legal or beneficial interest in the equity capital of a company which holds land; and

“equity capital” with respect to company includes shares, stock and scrip whether registered, inscribed or bearer which (other than by way of a fixed and predetermined right to interest and repayment of subscribed capital at par) entitles the owner to any variable right of participation in the profits of the company whether by way of dividend, bonus or conversion, or to share in the distribution of the assets of the company upon a winding up.

## **PART III - Distribution Of Capital And Liability Of Members Of Companies And Associations**

### **Distribution of Capital**

#### **Share or interest in company to be personalty**

**33.(1)** A share or other interest of a member in a company -

(a) is personal estate and not of the nature of real estate; and

(b) is capable of being transferred if -

(i) a transfer is expressly or impliedly permitted by the regulations of the company; and

(ii) any restriction or condition on the transfer of the shares or interest set out in the regulations of the company is observed.

**(2)** The shares in a company having a capital divided into shares must each be distinguished by an appropriate number except that if, at any time -

(a) all the issued shares in the company; or

(b) all the issued shares in the company of a particular class,

are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all the shares in the company or all the shares of the particular class of shares, as the case may be, for the time being issued and fully paid up.

**(3)** A company limited by shares, or a company limited by guarantee and having a share capital, if so authorised by its articles, may issue fractions of a share and, unless and to the extent otherwise provided in its articles, a fraction of a share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to nominal or par value, premium, contribution, calls or otherwise howsoever), limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share of the same class of shares; and in this Law the expression “share” includes a fraction of a share and no issue or purported issue of a fraction of a share shall be invalid by reason only of the fact that it was issued or purportedly issued prior to the 30th September, 1985.

**(4)** The nominal or par value of a share may be expressed in an amount which is a fraction or a percentage of the lowest available unit of legal tender of the currency in which the capital of the company is expressed.

### **Share premium account**

**34.(1)** Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the value of the premiums on those shares shall be transferred to an account called “the share premium account”. Where a company issues shares without nominal or par value, the consideration received shall be paid up share capital of the company.

**(2)** The share premium account may be applied by the company subject to the provisions, if any, of its memorandum or articles of association in such manner as the company may, from time to time, determine including, but without limitation -

- (a)* paying distributions or dividends to members;
- (b)* paying up unissued shares of the company to be issued to members as fully paid bonus shares;
- (c)* in the manner provided in section 37;
- (d)* writing off the preliminary expenses of the company;
- (e)* writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company; and
- (f)* providing for the premium payable on redemption or purchase of any shares or debentures of the company:

Provided that no distribution or dividend may be paid to members out of the share premium account unless, immediately following the date on which the distribution or dividend is proposed to be paid, the company shall be able to pay its debts as they fall due in the ordinary course of business; and the company and any director or manager thereof who knowingly and wilfully authorises or permits any distribution or dividend to be paid in contravention of the foregoing provision is guilty of an offence and liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for five years.

**(3)** Where a company has, before the 18th day of January, 1988, issued any shares at a premium, this section shall apply as if the shares had been issued after such date.

**(4)** At the option of the company, subsection (1) shall not apply to premiums on shares of a company allotted in pursuance of any arrangement in consideration for the acquisition or cancellation of shares in any other company, whether a company within the meaning of this Law or not, and issued at a premium.

**(5)** At the option of the company, an amount corresponding to any amount representing the premiums or part of the premiums on shares issued by a company which, by virtue of subsection (4), is not included in such company's share premium account may also be disregarded in determining the amount at which any shares or other

consideration provided for the shares issued is to be included in such company's balance sheet.

**(6)** For the purposes of subsection (4) -

“arrangement” means any agreement, scheme or arrangement, whether of reconstruction, merger, take-over, acquisition, purchase or otherwise whereby the allotting company acquires a controlling interest in the company whose shares it acquires or cancels.

**(7)** The relief allowed by subsections (4) and (5) shall apply even if the issue of shares took place prior to the 18th day of January, 1988.

### **Power to issue shares at a discount**

**35.(1)** Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued:

Provided that -

- (a)* the issue of the shares at a discount have been authorised by resolution of the company, and have been sanctioned by the Court;
- (b)* the resolution specify the maximum rate of discount at which the shares are to be issued;
- (c)* not less than one year, at the date of the issue, has elapsed since the date on which the company was entitled to commence business; and
- (d)* the shares to be issued at a discount are issued within one month after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

**(2)** Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Court for an order sanctioning the issue, and on any such application the Court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

**(3)** Every prospectus relating to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as had not been written off at the date of the issue of the prospectus. If default is made in complying with this subsection, the company and every officer of the company who is in default is liable to a default fine.

**(4)** This section does not apply to shares issued, or proposed to be issued, without nominal or par value.

### **Power of company to pay commissions**

**36.(1)** A company has the power, and shall be deemed always to have had the power, to pay a commission to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the company, if the payment of the commission is authorised by the articles of association of the company.

**(2)** Nothing in subsection (1) affects the power of a company to pay such brokerage as has previously been lawful.

**(3)** A vendor to, or promoter of, or other person who receives payment in money or shares from a

company has, and is deemed always to have had, power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been lawful under subsection (1).

### **Redemption and purchase of shares**

**37.(1)** Subject to this section, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles of association, issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder.

**(2)** Subject to this section, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles of association, purchase its own shares, including any redeemable shares.

- (3)**
- (a)* No share may be redeemed or purchased unless it is fully paid.
  - (b)* A company may not redeem or purchase any of its shares if, as a result of the redemption or purchase, there would no longer be any other member of the company holding shares.
  - (c)* Redemption of shares may be effected in such manner as may be authorised by or pursuant to the company's articles of association.
  - (d)* If the articles of association do not authorise the manner of purchase, a company shall not purchase any of its own shares unless the manner of purchase has first been authorised by a resolution of the company.
  - (e)* The premium, if any, payable on redemption or purchase must have been provided for out of the profits of the company or out of the company's share premium account before or at the time the shares are redeemed or purchased or in the manner provided for in subsection (5).
  - (f)* Shares may only be redeemed or purchased out of profits of the company or out of the proceeds of a fresh issue of shares made for the purposes of the redemption or purchase or in the manner provided for in subsection (5).
  - (g)* Shares redeemed or purchased under this section shall be treated as cancelled on redemption or purchase, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption or purchase of shares by a company is not to be taken as reducing the amount of the company's authorised share capital.
  - (h)* Without prejudice to paragraph (g), where a company is about to redeem or purchase shares, it has power to issue shares up to the nominal value of the shares to be redeemed or purchased as if those shares had never been issued:

Provided that where new shares are issued before the redemption or purchase of the old shares the new shares shall not, so far as relates to fees payable on or accompanying the filing of any return or list, be deemed to have been issued in pursuance of this subsection if the old shares are redeemed or purchased within one month after the issue of the new shares.

- (4)**
- (a)* Where, under this section, shares of a company are redeemed or purchased wholly out of the company's profits, the amount by which the company's issued share capital is diminished in accordance with paragraph (g) of subsection (3) on cancellation of the shares redeemed or purchased shall be transferred to a reserve called "the capital redemption reserve".

- (b)* If the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.
  - (c)* Paragraph (b) does not apply if the proceeds of the fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under subsection (5).
  - (d)* The provisions of this Law relating to the reduction of a company's share capital apply as if the capital redemption reserve were paid-up share capital of the company, except that the reserve may be applied by the company in paying up its unissued shares to be allotted to members of the company as fully paid bonus shares.
- (5)**
- (a)* Subject to this section, a company limited by shares or limited by guarantee and having a share capital may, if so authorised by its articles of association, make a payment in respect of the redemption or purchase of its own shares otherwise than out of its profits or the proceeds of a fresh issue of shares.
  - (b)* References in subsections (6) to (9) to payment out of capital are, subject to paragraph (f), references to any payment so made, whether or not it would be regarded apart from this subsection as a payment out of capital.
  - (c)* The amount of any payment which may be made by a company out of capital in respect of the redemption or purchase of its own shares is such an amount as, taken together with -
    - (i)** any available profits of the company are being applied for purposes of the redemption or purchase; and
    - (ii)** the proceeds of any fresh issue of shares made for the purpose of the redemption or purchase,
 is equal to the price of redemption or purchase, and the payment out of capital permitted under this paragraph is referred to in subsections (6) to (9) as the capital payment for the shares. Nothing in this paragraph shall be taken to imply that a company shall be obliged to exhaust any available profits before making any capital payment.
  - (d)* Subject to paragraph (f), if the capital payment for shares redeemed or purchased and cancelled is less than their nominal amount, the amount of the difference shall be transferred to the company's capital redemption reserve.
  - (e)* Subject to paragraph (f), if the capital payment is greater than the nominal amount of the shares redeemed or purchased and cancelled, the amount of any capital redemption reserve, share premium account or fully paid share capital of the company may be reduced by a sum not exceeding, or by sums not in the aggregate exceeding, the amount by which the capital payment exceeds the nominal amount of the shares.
  - (f)* Where the proceeds of a fresh issue are applied by a company in making any redemption or purchase of its own shares in addition to a payment out of capital under this subsection, the references in paragraphs (d) and (e) to the capital payment are to be read as referring to the aggregate of that payment and those proceeds.
- (6)**
- (a)* A payment out of capital by a company for the redemption or purchase of its own shares is not lawful unless immediately following the date on which the payment out of capital is proposed to be made the company shall be able to pay its debts as they fall due in the ordinary course of business.

*(b)* The company and any director or manager thereof who knowingly and wilfully authorises or permits any payment out of capital to effect any redemption or purchase of any share in contravention of paragraph (a) is guilty of an offence and liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for five years.

**(7)** *(a)* Where a company is being wound up and, at the commencement of the winding up, any of its shares which are or are liable to be redeemed have not been redeemed or which the company has agreed to purchase have not been purchased, the terms of redemption or purchase may be enforced against the company, and when shares are redeemed or purchased under this subsection they shall be treated as cancelled:

Provided that this paragraph shall not apply if -

**(i)** the terms of redemption or purchase provided for the redemption or purchase to take place at a date later than the date of the commencement of the winding up; or

**(ii)** during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up the company could not, at any time, have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.

*(b)* There shall be paid in priority to any amount which the company is liable by virtue of paragraph (a) to pay in respect of any shares -

**(i)** all other debts and liabilities of the company (other than any due to members in their character as such); and

**(ii)** if other shares carry rights whether as to capital or as to income which are preferred to the rights as to capital attaching to the first mentioned shares, any amount due in satisfaction of those preferred rights,

but subject to that, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.

**(8)** *(a)* Any redeemable preference shares issued by a company before the 18th day of January, 1988, are subject to redemption in accordance with this section.

*(b)* Any capital redemption reserve fund established by a company before the 18th day of January, 1988, is to be known as the company's capital redemption reserve and to be treated as if it had been established for the purposes of subsection (4), and accordingly, a reference in any law, the articles of association of any company or any other instrument to a company's capital redemption reserve fund is to be construed as a reference to the company's capital redemption reserve.

**(9)** This section shall apply to shares without nominal or par value, and shall, in relation to such shares, be read and construed as if-

*(a)* in subsection (3) -

**(i)** for the words "the nominal value of" appearing in paragraph (g), there were substituted the words "an amount equal to the consideration received for"; and

**(ii)** for the words "nominal value" appearing in paragraph (h), there was substituted the word "number";

- (b)* in subsection (4) for the words “aggregate nominal value of” appearing in paragraph (b), there were substituted the words “aggregate consideration received for”; and
- (c)* in subsection (5) -
  - (i)** for the words “their nominal amount” appearing in paragraph (d), there were substituted the words “the consideration received for such shares”; and
  - (ii)** for the words “nominal amount of” appearing in paragraph (e), there were substituted the words “consideration received for”.

### **Definition of member**

**38.** The subscribers of the memorandum of association of any company shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned, and every other person who has agreed to become a member of a company and whose name is entered on the register of members, shall be deemed to be a member of the company.

### **Transfer by personal representative**

**39.** Any transfer of the share or other interest of a deceased member of a company made by his personal representative, shall, notwithstanding that such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

### **Register of members**

**40.(1)** Every company shall cause to be kept in writing on one or more sheets, whether bound or unbound, a register of its members and there shall be entered therein -

- (a)* the names and addresses of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number (so long as the share has a number), and of the amount paid, or agreed to be considered as paid, on the shares of each member;
- (b)* the date on which the name of any person was entered on the register as a member; and
- (c)* the date on which any person ceased to be a member:

Provided that in the case of shares of an exempted company issued to bearer there shall only be entered in the register particulars of the date of issue of the share or shares, distinguishing each share by its number (so long as the share has a number), the name of the custodian of its bearer shares and the fact that a certificate in respect thereof was issued to bearer.

**(2)** Any company making default in complying with this section shall incur a penalty of ten dollars for every day during which the default continues; and every director or manager of the company who knowingly and wilfully authorises or permits such contravention shall incur the like penalty.

**Annual list of members and return of capital, shares, calls, etc.**

**41.(1)** Every company, other than an exempted company, having a capital divided into shares shall make a list of all persons who, on the fourteenth day following the date on which the ordinary general meeting, or if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings, is held, are members of the company; and such lists shall state the names and addresses of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the -

- (a) amount of the capital of the company and the number of shares into which it is divided;
- (b) number of shares taken from the commencement of the company up to the date of the summary;
- (c) amount of calls made on each share;
- (d) total amount of calls received;
- (e) total amount of calls unpaid;
- (f) total number of shares forfeited; and
- (g) names and addresses of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

This list and summary shall be contained in a separate part of the register of the company and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall be forwarded to the Registrar in January of each year after the year of its incorporation.

**(2)** Every company, other than an exempted company, shall, in January of each year after the year of its registration, pay to the Treasury -

- (a) in the case of a non-resident company -
  - (i) with no registered capital, or a registered capital not exceeding \$42,000, an annual fee of \$400; and
  - (ii) with a registered capital exceeding \$42,000, an annual fee of \$565; and
- (b) in the case of any other company -
  - (i) with no registered capital, or a registered capital not exceeding \$42,000, an annual fee of \$150; and
  - (ii) with a registered capital exceeding \$42,000, an annual fee of \$350.

**(3)** Each such annual fee shall be tendered with the list and summary required under subsection (1). A company which has failed to forward to the Registrar any copy required to be forwarded in any January shall be deemed not to have made any default in complying with this section relating to the time within which such copy is required to be forwarded if the company forwards the copy either -

- (a) within such further period, if any, as the Registrar, acting in his discretion may, by notice, addressed to the company specify; or
- (b) within the period of twelve months next following such month of January,

whichever is the shorter, together with the fee payable under subsection (2) and the penalty specified in section

42.

#### **Penalty on company not making return**

**42.** Any company, not being an exempted company, who defaults in forwarding to the Registrar such lists of members or summary or the payment of any fee specified in section 41(1) and (2) shall incur a penalty of -

- (a) 33.33% of the annual fee specified in section 41 if the documents are submitted or the fee and penalty are paid between the 1<sup>st</sup> April and the 30<sup>th</sup> June;
- (b) 66.67% of the annual fee specified in section 41 if the documents are submitted or the fee and penalty are paid between the 1<sup>st</sup> July and the 30<sup>th</sup> September; and
- (c) 100% of the annual fee specified in section 41 if the documents are submitted or the fee and penalty are paid between the 1<sup>st</sup> October and the 31<sup>st</sup> December,

and every director and manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

#### **Certificate of shares or stock**

**43.** A certificate -

- (a) specifying the shares or stock held by a member of a company; and
- (b) purportedly signed by a person (including by facsimile or other mechanically affixed signature) with the express or implied authority of that company,

is admissible in evidence as proof of the title of that member to those shares or that stock.

#### **Inspection of register**

**44.** The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company or, in the case of an exempted company, at any other place within or without the Islands. Except in the case of an exempted company and when closed as hereinafter provided it shall, during business hours, subject to such reasonable restrictions as the company in general meeting may impose, so that no less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis and to the inspection of any other person on payment of ten dollars or such less sum as the company may specify for each inspection; and every such member or other person may receive a copy of such register or any part thereof, or of such list or summary of members, on payment of one dollar for every page required to be copied. If such inspection or copy is refused, the company shall incur for each refusal a penalty of four dollars and a further penalty of four dollars for every day during which such refusal continues; and every director and manager of the company who knowingly authorises or permits such refusal shall incur the like penalty; and in addition to the above penalty, a Judge sitting in chambers may, by order, compel an immediate inspection of the register.

#### **Notice of increase of capital and of members to be given to Registrar**

**45.(1)** Where a company has a capital divided into shares, whether such shares have or have not been

converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number shall be given to the Registrar, in the case of an increase of capital, within thirty days from the date of the passing of the resolution by which such increase has been authorised; and, in the case of an increase of members, within thirty days from the time at which such increase of members has been resolved on or has taken place; and the Registrar shall forthwith record the amount of such increase of capital or members.

(2) The fees payable on an increase of capital shall be in the case of -

- (a) an exempted company which has a capital divided into shares, a fee of one-tenth of one per cent of the increased value of the registered capital of the exempted company, with a maximum of twelve hundred dollars;
- (b) an exempted company which has not a capital divided into shares, a fee of one-tenth of one per cent of the increased aggregate amount over the previous aggregate amount by which members have agreed to contribute to the assets of the exempted company in the event of the same being wound up, with a maximum of twelve hundred dollars;
- (c) a company other than an exempted company which has a capital divided into shares, a fee of one-twentieth of one per cent of the increased value of the registered capital of the company, with a maximum of four hundred and fifty dollars;
- (d) a company which has not a capital divided into shares a fee of one-twentieth of one per cent of the increased aggregate amount over the previous aggregate amount by which members have agreed to contribute to the assets of the company in the event of the same being wound up, with a maximum of four hundred and fifty dollars.

(3) If such notice is not given within the period aforesaid the company in default shall incur a penalty of ten dollars for every day during which such neglect to give notice continues, and every director and officer of the company who knowingly and wilfully authorises or permits such default shall incur a like penalty.

#### **Remedy for improper entry or omission of entry in register**

46. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved or any member of the company or the company itself may, by motion to the Court, apply for an order that the register be rectified; and the Court may either refuse such application with or without costs to be paid by the applicant or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application or petition, and any damages the party aggrieved may have sustained. The Court may, in any proceeding under this section, decide any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally, the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register:

Provided that the Court may direct an issue to be tried, on which any question of law may be raised.

#### **Notice to Registrar of rectification of register**

47. Whenever any order has been made rectifying the register, in the case of a company required by this Law to send a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

### **Register to be evidence**

**48.** The register of members shall be *prima facie* evidence of any matters by this Law directed or authorised to be inserted therein.

### **Liability of Members**

#### **Liability of present and past members of company**

**49.** In the event of a company being wound up every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges and expenses of the winding up and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves:

Provided that -

- (a) a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member;
- (c) a past member shall not be liable to contribute to the assets of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them under this Law;
- (d) in case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member except where such member or past member holds or held shares of a class which are expressly stated in the memorandum of association to carry unlimited liability, as provided in section 8(2);
- (e) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association, except where the amount of the undertaking of such member is unlimited, as provided in section 9(2);
- (f) nothing in this Law shall invalidate any provisions contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract; and
- (g) no sum due to any member of a company in his character of a member by way of dividends, profits or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

## **PART IV - Management And Administration Of Companies And Associations**

### **Provisions for Protection of Creditors**

#### **Registered office of company**

**50.** Every company shall have a registered office to which all communications and notices may be addressed. Any company who carries on business without having such an office, shall incur a penalty of ten dollars for every day during which business is so carried on.

#### **Notice of situation of registered office**

**51.(1)** Notice of the situation of such registered office shall be given to the Registrar and recorded by him and shall be published by Public Notice. Until such notice is given and published, the company shall not be deemed to have complied with this Law with respect to having a registered office.

**(2)** Any member of the public shall be entitled to be informed by the Registrar, on request, of the location of the registered office of any company or exempted company registered under this Law.

#### **Publication of name by a limited company**

**52.** Every company, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, or in any corridor, passage or hallway adjacent or proximate thereto, in a conspicuous position, in letters easily legible, and shall have its name in legible characters on any seal it uses, and shall have its name set out in legible characters in all notices, advertisements and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

#### **Penalties on non-publication of name**

**53.** Any company who does not paint or affix, and keep painted or affixed, its name in manner directed by this Law is liable to a penalty of ten dollars for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed, and every director and manager of the company who knowingly and wilfully authorises or permits such default shall be liable to the like penalty; and any director, manager or officer of such company, or any person on its behalf, who uses or authorises the use of any seal purporting to be a seal of the company, whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement or other official publication of such company, or signs or authorises to be signed on behalf of such company any bills of exchange, promissory note, endorsement, cheque or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not set out in the manner aforesaid, is liable to a penalty of one hundred dollars, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the company.

#### **Register of mortgages**

**54.(1)** Every limited company shall keep at its registered office in writing on one or more sheets, whether bound or unbound, a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created and the names of the mortgagees or persons entitled to such charge.

**(2)** If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager or other officer of the company who knowingly and wilfully authorises or permits the omission of such entry, shall incur a penalty of one hundred dollars.

**(3)** The register of mortgages required by subsection (1) shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorising or knowingly and wilfully permitting such refusal shall incur a penalty of four dollars for every day during which such refusal continues; and in addition to the above penalty, the Judge sitting in chambers may, by order, compel an immediate inspection of the register.

#### **List of directors to be sent to Registrar**

**55.** Every company shall keep at its registered office a register containing the names and addresses of its directors and officers, and shall send to the Registrar a copy of such register, and shall within thirty days notify the Registrar of any change that takes place in such directors or officers.

#### **Penalty on company not keeping a register of directors**

**56.** Any company who fails to comply with any of the provisions of section 55, shall incur a penalty of ten dollars for every day during which the default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

#### **Meetings**

**57.** Subject to the memorandum and articles of association of the company, a meeting of -

- (a)* members;
- (b)* a class of members;
- (c)* the board of directors; or
- (d)* any committee of the directors,

may be validly convened and business conducted, as provided by the articles of association, with only one such member or director being present in person or otherwise as may be provided by the articles of association.

#### **Provisions for Protection of Members**

##### **General meetings**

**58.** A general meeting of every company, other than an exempted company, shall be held at least once in every year.

#### **Accounts and audits**

**59.(1)** Every company shall cause to be kept proper books of account with respect to -

- (a)* all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b)* all sales and purchases of goods by the company; and
- (c)* the assets and liabilities of the company.

**(2)** For the purposes of subsection (1), proper books of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

#### **Definition of special resolution**

**60.(1)** A resolution is a special resolution when -

- (a)* it has been passed by a majority of not less than two-thirds (or such greater number as may be specified in the articles of association of the company) of such members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given; or
- (b)* if so authorised by its articles of association, it has been approved in writing by all of the members entitled to vote at a general meeting of the company in one or more instruments each signed by one or more of the members aforesaid, and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed.

**(2)** At any meeting mentioned in this section, unless a poll is demanded by at least one member, a declaration of the chairman that the resolution has been carried shall be conclusive evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against the same.

**(3)** Notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held, whenever such notice is given and the meeting held in manner prescribed by the regulations of the company.

**(4)** In computing the majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled by the regulations of the company.

#### **Provisions where no regulations as to meetings**

**61.** In default of any regulations as to voting, every member shall have one vote, and in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which five days' notice has been served on every member; and in default of any regulations as to the persons to summon meetings,

three members shall be competent to summon the same; and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

### **Recording of special resolutions**

**62.** A copy of any special resolution passed by any company under this Law shall be forwarded within fifteen days to the Registrar and shall be recorded by him.

### **Copies of special resolutions**

**63.(1)** Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in, every copy of the articles of association that may be issued after the passing of such resolution.

**(2)** Where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same, on payment of ten cents or such less sum as the company may direct.

**(3)** Any company who fails to comply with this section shall incur a penalty of two dollars for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

### **Appointment of inspectors to report on affairs of companies**

**64.** The Court may appoint one or more than one competent inspectors to examine into the affairs of any company and to report thereon in such manner as the Court may direct -

- (a)* in case of a banking company having a capital divided into shares, upon the application of members holding not less than one-third of the shares of the company for the time being issued;
- (b)* in the case of any other company having a capital divided into shares, upon application of members holding not less than one-fifth of the shares of the company for the time being issued; and
- (c)* in the case of a company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the total number of persons for the time being entered on the register of the company as members.

### **Powers of inspectors**

**65.** It shall be the duty of all officers and agents of the company to produce for examination by an inspector all books and documents in their custody or power; any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly; and any officer or agent who refuses or neglects to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, shall incur a penalty not exceeding forty dollars in respect of each such offence.

### **Report of inspectors**

- 66.(1)** Upon the conclusion of the examination, the inspectors shall report their opinions to the Court.
- (2)** Such report shall be filed by the Clerk of the Court, but shall not, unless the Court so directs, be open to public inspection.
- (3)** All expenses of and incidental to any such examination and report shall be defrayed by the members upon whose application the inspectors were appointed, unless the Court shall direct the same to be paid out of the assets of the company, which it is hereby authorised to do.

### **Inspection by resolution of the company**

**67.** Any company as aforesaid may, by special resolution, appoint inspectors for the purpose of examining into the affairs of such company; and inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Court, except that instead of making their report to the Court, they shall make the same in such manner and to such persons as the company by resolution of its members directs, and the officers and agents of the company shall incur the same penalties in case of any refusal or neglect to produce any book or document hereby required to be produced to such inspectors or answer any question, as they would have incurred if such inspectors had been appointed by the Court.

### **Inspectors' report admissible as evidence**

**68.** The report of any inspectors appointed under this Law, or any copy thereof certified and signed by the inspectors, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report.

### **Notices**

#### **Returns, etc., to Registrar**

**69.** Any list, return, notice or information required by this Law to be made, given or supplied to the Registrar shall be authenticated by the signature of the secretary or manager or one of the directors of the company.

#### **Service of notices on company**

**70.** Any writ, notice, order or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a prepaid letter, addressed to the company at its registered office.

#### **Postal service**

**71.** Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period, if any, prescribed for the service thereof; and in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was

put as a prepaid letter into the post office.

#### **Authentication of summons, notice, etc.**

**72.** Any summons, notice, order or proceeding requiring authentication by the company may be signed by a director, secretary or other authorised officer of the company, and may be in writing or print or partly in writing and partly in print.

#### **Minutes of proceedings**

**73.(1)** Every company shall cause minutes of all resolutions and proceedings of its members, whether at general meetings or otherwise, and of its directors or managers (where there are directors or managers), whether at meetings or otherwise, to be duly kept in writing.

**(2)** Any minute of a general meeting of the company or a meeting of the directors or managers, if purporting to be signed by the chairman of the meeting, or by the chairman of the next succeeding meeting, shall be received as evidence of the proceedings at that meeting; and until the contrary is proved, every general meeting of the company or meeting of the directors or managers in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly held and convened and all resolutions passed thereat, or proceedings had, to have been duly passed and had, and all appointments of directors, managers or liquidators shall be deemed to be valid, and all acts done by such directors, managers and liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

#### **Security for costs in actions brought by limited companies**

**74.** Where a company is plaintiff in any action, suit or other legal proceeding, any Judge having jurisdiction in the matter, if he is satisfied that there is reason to believe that if the defendant is successful in his defence the assets of the company will be insufficient to pay his costs, may require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

#### **Declaration in action against members**

**75.** In any action or suit brought by the company against any member to recover any call or other monies due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company and is indebted to the company in respect of a call made or other monies due whereby a right of action has accrued to the company.

#### **Arbitration**

##### **Power of companies to refer matters to arbitration**

**76.** Any company may, from time to time, by writing, agree to refer and may refer to arbitration any existing or future difference, question or other matter whatsoever in dispute between itself and any other company or person; and the companies, parties to the arbitration, may delegate to the person or persons to whom the reference is made

power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves or by the directors or other managing body of such companies.

## **General Penalty**

### **General penalty; application of fines**

**77.(1)** Where a duty is imposed by this Law on any company, director or officer of any company and no special penalty or fine has been provided for the breach of such duty, then any such company director or officer guilty of such breach is guilty of an offence and liable on conviction to a fine of one hundred dollars.

**(2)** All fines shall be recovered in a summary way and shall be applied in aid of the general revenue of the Islands.

### **Unlimited Liability of Directors and Managers**

#### **Unlimited liability of directors and managers**

**78.** The liability of the directors, managers or the managing director of a company may, if so provided by the memorandum of association, be unlimited.

### **Modification of section 49**

**79.** In the event of a company being wound up, section 49 as respects the contribution to be required from any director or manager whose liability is unlimited by virtue of section 78 shall have effect subject to the following modifications -

- (a)* subject as hereinafter contained, any such director, managing director or manager whether past or present shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding up a member of an unlimited company;
- (b)* no contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of such winding up, shall exceed the amount, if any, which he is liable to contribute as an ordinary member of the company;
- (c)* no contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount, if any, which he is liable to contribute as an ordinary member of the company; and
- (d)* subject to the regulations of the company, no contribution required from any director or manager shall exceed the amount, if any, which he is liable to contribute as an ordinary member, unless the Court thinks it necessary to require such contribution in order to satisfy the debts and liabilities of the company and the costs, charges and expenses of the

winding up.

### **Association not for Profit**

#### **Circumstances in which the Governor may license a company to be registered without “limited” in its name**

**80.(1)** Where any association is about to be formed as a limited company, if it is proved to the satisfaction of the Governor that it is to be formed for the purpose of promoting commerce, art, science, religion, charity or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association in promoting its objects, and to prohibit the payment of any dividend to the members of the association, the Governor may, by licence under his hand and the Public Seal, direct such association to be registered with limited liability without the addition of the word “limited” to its name, and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to all the obligations by this Law imposed on companies, except that none of the provisions of this Law that require a company to use the word “limited” as any part of its name, or to publish its name, or to send a list of its members, directors or managers to the Registrar or to pay the fees prescribed by sections 41 and 188, shall apply to an association so registered.

**(2)** The licence aforesaid may be granted upon such conditions and subject to such regulations as the Governor may think fit to impose, and such conditions and regulations shall be binding on the association, and shall be inserted or endorsed on the memorandum or articles of association.

### **Contracts**

#### **How contracts may be made**

**81.(1)** Contracts on behalf of any company may be made as follows -

- (a)* a contract which, if made between individuals, would by law be required to be in writing, and to be made by deed or under seal, may be made by instrument -
  - (i)** sealed with any seal of the company; or
  - (ii)** expressed to be, or is executed on behalf of the company and expressed to be executed as, or otherwise makes clear on its face it is intended to be, a deed;
- (b)* any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company; and
- (c)* any contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company.

**(2)** Where a contract or other transaction purports to be made by a company or by a person on its behalf at a time when the company has not been registered, then subject to any agreement to the contrary, the contract or other transaction has effect as one entered into by the person purporting to act on behalf of the company and, subject to subsection (3), that person is personally liable on the contract or other transaction.

**(3)** A contract or other transaction purported to be entered into by a company prior to its registration or by a person on behalf of the company prior to its registration may be ratified by the company after its registration and thereupon the company shall become bound by and entitled to the benefit thereof from the date of registration, and the person so entering into such contract or other transaction shall be deemed to have been duly authorised to act on behalf of the company and shall cease to be personally liable on the contract or other transaction.

**(4)** Any contract made according to this section may be varied or discharged in the same manner as it is authorised by this section to be made.

**(5)** All contracts made according to this section shall be effectual in law and shall be binding upon the company and its successors and all other parties thereto, their heirs, executors or administrators as the case may be.

### **Bills of exchange and promissory notes**

**82.** A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

### **Execution of deeds, etc., by attorney**

**83.(1)** A company may, by deed or instrument under seal, empower a person either generally or in respect of any specified matter to be its attorney to execute deeds or instruments under seal on its behalf.

**(2)** A deed or instrument under seal signed by an attorney on behalf of a company shall bind the company and have effect as if it were executed as such by the company.

### **Power of company to have official seal for use abroad**

**84.(1)** A company shall maintain a common seal, which shall bear the name of the company engraved in legible characters, at such place as the company may, from time to time, determine and in default of any such determination, at its registered office, and may, if so authorised by its articles of association, maintain a duplicate seal or seals, each of which shall be a facsimile of its common seal at such place or places throughout the world as it may authorise and any such duplicate seal may, but shall not be obliged to, bear on its face the name of any country, territory, district, or place where it is to be used.

**(2)** A deed or instrument under seal to which any such duplicate seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

**(3)** A company having any such duplicate seal may authorise any person appointed for the purpose to affix the duplicate seal to any deed or other document to which the company is party.

**(4)** The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, specified in the instrument conferring the authority, or if no period is so specified, then until notice of the revocation or determination of the authority of the agent has been given to such person.

**(5)** The person affixing any such duplicate seal shall, by writing under his hand, certify on the deed or other instrument to which the seal is affixed the date on which it is affixed.

### **Authentication of documents**

**85.** A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company.

### **Arrangements and Reconstructions**

#### **Power to compromise with creditors and members**

**86.(1)** Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application of the company or of any creditor or member of the company, or where a company is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.

**(2)** If a majority in number representing seventy-five per cent in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, where a company is in the course of being wound up, on the liquidator and contributories of the company.

**(3)** An order made under subsection (2) shall have no effect until a copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of association of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

**(4)** If a company makes default in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a fine of two dollars for each copy in respect of which default is made.

**(5)** In this section the expression “company” means any company liable to be wound up under this Law and the expression “arrangement” includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

#### **Provisions for facilitating reconstruction and amalgamation of companies**

**87.(1)** Where an application is made to the Court under section 86 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are specified in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purpose of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as “a transferor company”) is to be transferred to another company (in this section referred to as “the transferee company”) the Court, may either by the order sanctioning the compromise or arrangement or by any subsequent order make provision for -

- (a)* the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
- (b)* the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or

arrangement are to be allotted or appropriated by that company to or for any person;

- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (d) the dissolution, without winding up, of any transferor company;
- (e) the provisions to be made for any person who within such time and in such manner as the Court directs dissent from the compromise or arrangement; and
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

**(2)** Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and any such property shall, if the order so directs, be freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

**(3)** Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof to be delivered to the Registrar for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

**(4)** In this section -

“property” includes property, rights and powers of every description;

“liabilities” includes duties; and

“transferee company” means any company or body corporate established in the Islands or in any other jurisdiction.

### **Power to acquire shares of dissentient shareholders**

**88.(1)** Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as “the transferor company”) to another company, whether a company within the meaning of this Law or not (in this section referred to as “the transferee company”) has, within four months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than ninety per cent in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given, the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company.

**(2)** Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

**(3)** Any sums received by the transferor company under this section shall be paid into a separate bank

account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sum or other consideration were respectively received.

**(4)** In this section -

“dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company, in accordance with the scheme or contract.

## **PART V - Winding Up of Companies and Associations**

### **Preliminary**

#### **“Contributory” defined**

**89.** The term “contributory” means every person liable to contribute to the assets of a company in the event of the same being wound up under this Law; and for the purpose of any proceedings for determining the persons who are to be deemed to be contributories and of any proceedings prior to the final determination of such persons, includes any person alleged to be a contributory.

#### **Nature of liability of contributory**

**90.** The liability of any person to contribute to the assets of a company in the event of its being wound up shall be taken to create a debt of the nature of a speciality accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter provided for enforcing such liability; and it shall be lawful in the case of the bankruptcy of any contributory to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

#### **Death of contributory**

**91.** If any contributory dies, either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs and devisees shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability, and deemed to be contributories accordingly.

#### **Bankruptcy of contributory**

**92.** If any contributory becomes bankrupt, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such bankrupt for all the purposes of winding up, and shall be deemed to be contributories accordingly, and may be called upon to admit to proof against the estate of such bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any moneys due from such bankrupt in respect of his liability to contribute to the assets of the company being wound up.

#### **Marriage of contributory**

**93.** If any female contributory marries, either before or after she has been placed on the list of contributories, her husband shall, during the continuance of the marriage, be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly.

### **Winding up by Court**

#### **Circumstances in which company may be wound up by Court**

- 94.** A company may be wound up by the Court if -
- (a)* the company has passed a special resolution requiring the company to be wound up by the Court;
  - (b)* the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
  - (c)* the company is unable to pay its debts; or
  - (d)* the Court is of opinion that it is just and equitable that the company should be wound up.

#### **When company deemed unable to pay its debts**

- 95.** A company shall be deemed to be unable to pay its debts if -
- (a)* a creditor by assignment or otherwise to whom the company is indebted at law or in equity in a sum exceeding one hundred dollars then due, has served on the company by leaving at its registered office a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor;
  - (b)* execution of other process issued on a judgement, decree or order obtained in the Court in favour of any creditor at law or in equity in any proceedings instituted by such creditor against the company, is returned unsatisfied in whole or in part; or
  - (c)* it is proved to the satisfaction of the Court that the company is unable to pay its debts.

#### **Application for winding up to be made by petition**

**96.** Any application to the Court for the winding up of a company shall be by petition which may be presented by the company, or by any one or more than one creditor or contributory of the company, or by all or any of the above parties, together or separately; and every order which may be made on any such petition shall operate in favour of all creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

### **Sittings in chambers**

**97.** The Judge may do in chambers any act which the Court is hereby authorised to do.

### **Commencement of winding up**

**98.** A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

### **Court may grant injunction**

**99.** The Court may, at any time after the presentation of a petition for winding up a company under this Law, and before making an order for winding up the company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action, suit or proceeding against the company upon such terms as the Court thinks fit; and the Court may also, at any time after the presentation of such petition and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the company.

### **Powers of Court on hearing of petition**

**100.** Upon hearing the petition the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally and may make any interim order or any other order that it thinks just, and any such order shall be published by Government Notice.

### **Stay of proceedings after order for winding up**

**101.** When an order has been made for winding up a company no suit, action or other proceeding shall be proceeded with or commenced against the company except with the leave of the Court and subject to such terms as the Court may impose.

### **Copy of order to be forwarded to Registrar**

**102.** When an order has been made for winding up a company a copy of such order shall forthwith be forwarded by the company to the Registrar, who shall make a minute thereof in his books relating to the company.

### **Power of Court to stay any proceedings**

**103.** The Court may, at any time after an order has been made for winding up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding up ought to be stayed, make an order staying the same either altogether or for a limited time, on such terms and subject to such conditions as it thinks fit, and any such order shall be published by Government Notice.

### **Effect of order on share capital of company limited by guarantee**

**104.** When an order has been made for winding up a company limited by guarantee and having a capital divided into shares, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a debt of the nature of a specialty due to the company from each member to the extent of any sums that may be unpaid on any shares held by him and payable at such time as may be appointed by the Court.

### **Court may have regard to wishes of creditors or contributories**

**105.** The Court may, as to all matters relating to the winding up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held and conducted in such manner as the Court directs for the purpose of ascertaining their wishes and may appoint a person to act as chairman of any such meeting, and to report to the Court the result of such meeting; and regard shall be had, as respects creditors, to the value of the debts due to each creditor, and as respects contributories, to the number of votes conferred on each contributory by the regulations of the company.

## **Official Liquidators**

### **Appointment of official liquidator**

**106.** For the purpose of conducting the proceedings in winding up a company and assisting the Court therein, there may be appointed one or more than one person to be called an official liquidator or official liquidators; and the Court may appoint to such office such person or persons, either provisionally or otherwise, as it thinks fit, and if more persons than one are appointed to such office, the Court shall declare whether any act hereby required or authorised to be done by the official liquidator is to be done by all or any or more of such persons. The Court may also determine whether any and what security is to be given by an official liquidator on his appointment; if no official liquidator is appointed, or during any vacancy in such office, all the property of the company shall be in the custody of the Court.

### **Resignations, removals, filling of vacancies and compensation**

**107.(1)** Any official liquidator may resign or be removed by the Court on due cause shown; and any vacancy in the office of an official liquidator appointed by the Court shall be filled by the Court.

**(2)** There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and if more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the Court directs.

### **Style and duties of official liquidators**

**108.** An official liquidator shall be described by the style of official liquidator of the particular company in respect of which he is appointed, and not by his individual name; he shall take into his custody or under his control all the property, effects and things in action to which the company is or appears to be entitled, and shall perform such duties in reference to the winding up of the company as may be imposed by the Court.

### **Powers of official liquidator**

**109.** An official liquidator shall have power, with the sanction of the Court -

- (a)* to bring or defend any action, suit, prosecution or other legal proceedings, whether civil or criminal, in the name and on behalf of the company;
- (b)* to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof;
- (c)* to sell the real and personal property, effects and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- (d)* to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, any seal of the company;
- (e)* to prove, rank, claim and draw a dividend in the matter of the bankruptcy or insolvency of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of bankruptcy or insolvency as a separate debt due from such bankruptcy or insolvency, and rateably with the other separate creditors;
- (f)* to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, and from time to time to raise upon the security of the assets of the company any requisite sum or sums of money; and the drawings, accepting, making or endorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of such company in the course of the carrying on of the business thereof;
- (g)* to take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate, but cannot be conveniently done in the name of the company, and in any such case any moneys due shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself; and
- (h)* to do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

### **Discretion of official liquidator**

**110.** The Court may, by any order, provide that the official liquidator may exercise any of the powers listed in section 109 without the sanction or intervention of the Court, and where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

### **Appointment of attorney to official liquidator**

**111.** The official liquidator may, with the sanction of the Court, appoint an attorney-at-law to assist him in the performance of his duties.

### **Ordinary Powers of Court**

#### **Collection and application of assets**

**112.(1)** Subject to subsection (2), as soon as may be after making an order for winding up the company, the Court shall settle a list of contributories and may rectify the register of members in all cases where such rectification is required in pursuance of this Law, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

**(2)** The collection in and application of the assets of the company referred to in subsection (1) is without prejudice to and after taking into account and giving effect to the rights of preferred and secured creditors to any agreement between the company and any creditors that the claims of such creditors shall be subordinated or otherwise deferred to the claims of any other creditors and to any rights of set-off or netting of claims between the company and any persons, whether conferred by agreement or law, and subject to any agreement between the company and any persons to waive or limit the same.

#### **Provisions as to representative contributories**

**113.** In settling the list of contributories the Court shall distinguish between persons who are contributories as being representatives of or being liable for the debts of others; it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added as and when the Court thinks fit.

#### **Power to require delivery of property**

**114.** The Court, may at any time after making an order for winding up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker or agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith or within such time as the Court directs, to or into the hands of the official liquidator, any sum or balance and any books, papers, estate or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

#### **Power to order payment of debts by contributory**

**115.(1)** The Court may, at any time after making an order for winding up the company, make an order on any contributory for the time being on the list of contributories, directing payment to be made, in manner directed by the order, of any moneys due from him or from the estate of the person whom he represents, to the company, exclusive of any moneys payable by him or the estate by virtue of any call made or to be made by the Court in pursuance of this Part.

**(2)** The Court may, in making such order when the company is not limited, allow to such contributory by way of set-off any moneys due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any moneys due to him as a member of the company in respect of any dividend or profit.

**(3)** When all the creditors of any company whether limited or unlimited are paid in full, any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls.

#### **Power to make calls**

**116.** The Court may, at any time after making an order for winding up a company and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being on the list of contributories, to the extent of their liability, for payment of all or any sum it thinks necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the call is made may partly or wholly fail to pay their respective portions of the same.

#### **Power to order payment into bank**

**117.** The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into a bank to the account of the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

#### **Regulation of account**

**118.** All moneys, bills, notes, and other securities paid and delivered into a bank in the event of a company being wound up by the Court, shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in or investment and payment and delivery out of the same as the court may direct.

#### **Default by representative contributory**

**119.** If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering either or both the personal and real estate of such deceased contributory, and of compelling payment thereof of the moneys due.

#### **Order to be conclusive evidence**

**120.** Any order made by the Court in pursuance of this Law upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due or ordered to be paid, are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall be only *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the making of the order.

**Power to exclude creditors not proving within time**

**fixed**

**121.** The Court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

#### **Court to adjust rights of contributories**

**122.** The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

#### **Order as to costs**

**123.** The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the company of the costs, charges and expenses incurred in winding up any company in such order of priority as the Court thinks just.

#### **Dissolution of company**

**124.** When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

#### **Registrar to record dissolution**

**125.** Any order so made shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such company.

#### **Penalty for not reporting dissolution of company**

**126.** If the official liquidator makes default in reporting to the Registrar, in the case of a company being wound up by the Court, the order that the company be dissolved, he shall be liable on summary conviction to a penalty of ten dollars for every day during which he is so in default.

#### **Extraordinary Powers of Court**

##### **Power of Court to summon persons suspected of having property of company**

**127.(1)** The Court may, after it has made an order for winding up the company, summon before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may think capable of giving information concerning the trade, dealings, estate or effects of the company; and the Court may require any such officer or person to produce any books, papers, deeds, writings or other documents in his custody or power relating to the company.

**(2)** If any person so summoned, after being tendered a reasonable sum for his expenses refuses to

come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination; nevertheless, where any person claims any lien on papers, deeds, writings or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to such lien.

### **Examination of parties by Court**

**128.** The Court may examine upon oath, either orally or upon written interrogatories, any person appearing or brought before it in manner aforesaid concerning the affairs, dealings, estate or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

### **Power to arrest contributory in certain cases**

**129.** The Court may, at any time before or after it has made an order for winding up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit the Islands or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

### **Powers of Court cumulative**

**130.** Any powers by this Law conferred on the Court shall be deemed to be in addition to and not in restriction of any other powers subsisting either at law or in equity of instituting proceedings against any contributory or the estate of any contributory or against any debtor of the company for the recovery of any call or other sums due from such contributory or debtor or his estate, and such proceedings may be instituted accordingly.

### **Enforcement Orders**

#### **Power to enforce orders**

**131.(1)** All orders made by the Court under this Law may be enforced in the same manner in which orders of such Court made in any suit pending therein may be enforced.

**(2)** Appeals from any order or decision made or given in the matter of winding up of a company before the Judge may be made to the Court of Appeal, in the same manner, and subject to the same rules and conditions as an appeal from any order or decision of the Court.

### **Voluntary Winding up of Company**

**Circumstances in which company may be wound up**

**voluntarily**

**132.** Subject to section 200(3), a company may be wound up voluntarily -

- (a)* when the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company has, by resolution of its members, adopted a resolution requiring the company to be wound up voluntarily; or
- (b)* if the company has passed a special resolution requiring the company to be wound up voluntarily.

### **Commencement of voluntary winding up**

**133.(1)** A voluntary winding up and dissolution is to be taken to have commenced -

- (a)* at the time of the passing of the resolution referred to in paragraph (a) or (b) of section 132, authorising the winding up; or
- (b)* where the articles of association of a company provide that -
  - (i)** on the termination of any period; or
  - (ii)** the happening of any event,

the company shall be wound up and dissolved on the termination of that period or the happening of that event.

**(2)** Where the winding up and dissolution has commenced by virtue of paragraph (b) of subsection (1), the person, if any, designated by resolution of the members passed prior to such commencement, failing whom the person, if any, designated in the articles of association shall, upon such commencement and without further action, become the liquidator, failing which the directors at the time of such commencement shall, upon such commencement and without further action, become the liquidators, failing which section 144 shall apply.

**(3)** Where a person has without further action become the liquidator pursuant to section 133(2), paragraphs (c) and (d) of section 136 have no application.

### **Effect of voluntary winding up on status of company**

**134.** When a company is wound up voluntarily the company shall, from the date of the commencement of such winding up, cease to carry on its business, except in so far as may be required for the beneficial winding up thereof, and all transfers of shares except transfers made to or with the sanction of the liquidator or any alteration in the status of the members of the company taking place after the commencement of such winding up shall be void, but its corporate state and all its corporate powers shall, (whether otherwise provided by its regulations or not) continue until the affairs of the company are wound up.

### **Notice to be published**

**135.** There shall be published in the Gazette notice of -

- (a)* any resolution referred to in paragraph (a) or (b) of section 132 authorising the

winding up of a company; or

- (b) the commencement of the winding up and dissolution of a company pursuant to paragraph (b) of section 133(1) or section 200,

but failure so to publish the same shall not prejudice the validity of the commencement of the winding up and dissolution.

### **Consequences of voluntary winding up**

**136.** The following consequences shall ensue upon the voluntary winding up of a company -

- (a) subject to paragraph (b), the property of the company shall be applied in satisfaction of its liabilities *pari passu* and subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company;
- (b) the collection in and application of the property of the company referred to in paragraph (a) is without prejudice to and after taking into account and giving effect to the rights of preferred and secured creditors, to any agreement between the company and any creditors that the claims of such creditors shall be subordinated or otherwise deferred to the claims of any other creditors and to any rights of set-off or netting of claims between the company and any persons, whether conferred by agreement or law, and subject to any agreement between the company and any persons to waive or limit the same;
- (c) liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property;
- (d) the company, by resolution of its members, shall appoint such person or persons as it thinks fit to be liquidator or liquidators and may fix the remuneration to be paid to him or them;
- (e) if one liquidator only is appointed, all provisions herein contained in reference to several liquidators shall apply to him;
- (f) upon the appointment of liquidators all the powers of the directors shall cease, except in so far as the company, by resolution of its members or the liquidators, may sanction the continuance of such powers;
- (g) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment or, in default of such determination, by any number not less than two;
- (h) the liquidators may without the sanction of the Court exercise any powers by this Law conferred on the official liquidators;
- (i) the liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
- (j) the liquidators may, at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums that the liquidators

think necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions thereof; and

- (k) the liquidators shall pay the debts of the company and shall adjust the rights of the contributories amongst themselves.

#### **Effect of winding up on share capital of company limited by guarantee**

**137.** Where a company limited by guarantee and having a capital divided into shares is being wound up voluntarily, any share capital that may not have been called upon shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

#### **Power of company to delegate authority to appoint liquidators**

**138.** A company about to be or in the course of being wound up voluntarily may, by a special resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and of filling any vacancies among the liquidators, or may, by a like resolution, enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised; and any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the company.

#### **Arrangement, when binding on creditors**

**139.** Any arrangement entered into between a company about to be wound up voluntarily and its creditors shall be, subject to the right of appeal under section 139, binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by seventy-five per cent in number and value of the creditors.

#### **Right of creditor or contributory to appeal**

**140.** Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon amend, vary or confirm the arrangement as it thinks just.

#### **Liquidators or contributories in voluntary winding up may apply to Court**

**141.** Where a company is being wound up voluntarily the liquidators or any contributory of the company may apply to the Court to determine any question arising in the matter of such winding up, or to exercise, in respect of the enforcing of calls or of any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court; and the Court, if satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or may make such other decree on such application as the Court thinks just.

### **Liquidators may call general meetings**

**142.** Where a company is being wound up voluntarily, the liquidators may, from time to time during the continuance of such winding up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution, or for any other purposes they think fit; and in the event of the winding up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year and of each succeeding year from the commencement of the winding up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings and the manner in which the winding up has been conducted during the preceding year.

### **Vacancy among liquidators**

**143.** If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation or otherwise, the company in general meeting may, subject to any arrangement with its creditors, fill such vacancy, and a general meeting for the purpose of filling such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the Court.

### **Power to appoint liquidators**

**144.** If, from any cause whatever, there is no liquidator acting in the case of a voluntary winding up, the Court may, on the application of a contributory, appoint a liquidator or liquidators; and the Court may, on due cause shown, remove any liquidator and appoint another liquidator to act in the matter of a voluntary winding up.

### **Liquidators' account on conclusion of winding up**

**145.** As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which such winding up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidators, and the meeting shall be called by Public Notice or otherwise as the Registrar may direct, specifying the time, place, and object of such meeting, and such advertisement shall be published one month at least before the meeting.

### **Liquidators to report meeting to Registrar**

**146.** The liquidators shall make a return to the Registrar of such meeting having been held and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved, and if the liquidators make default in making such return to the Registrar they shall incur a penalty of ten dollars for every day during which such default continues.

### **Costs of voluntary liquidation**

**147.** All costs, charges and expenses properly incurred in the voluntary winding up of a company,

including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

### **Saving of rights of creditors**

**148.** The voluntary winding up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding up.

### **Power to adopt proceedings of voluntary winding up**

**149.** Where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding up.

### **Winding up Subject to the Supervision of the Court**

#### **Power to direct voluntary winding up to be subject to supervision**

**150.** When a resolution has been passed by a company to wind up voluntarily, the Court may make an order directing that the voluntary winding up should continue, be subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just.

#### **Petition for winding up subject to supervision**

**151.** A petition praying wholly or in part that a voluntary winding up should continue but subject to the supervision of the Court (which winding up is hereinafter referred to as a winding up subject to the supervision of the Court) shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding up the company by the Court.

#### **Court may have regard to wishes of creditors**

**152.** The Court, in determining whether a company is to be wound up altogether by the Court or subject to the supervision of the Court, in the appointment of any liquidator and in all other matters relating to the winding up subject to supervision, may have regard to the wishes of such of the creditors or contributories as proven to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting and to report the result of such meeting to the Court; and regard shall be had, as respects creditors, to the value of the debts due to each creditor, and as respects contributories, to the number of votes conferred on each contributory by the regulations of the company.

### **Power to appoint additional liquidators in winding up subject to supervision**

**153.(1)** Where any order is made by the court for a winding up subject to the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidator or liquidators; and any liquidator so appointed shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company.

**(2)** The Court may, from time to time, remove any liquidator so appointed and fill any vacancy occasioned by such removal or by death or resignation.

### **Effect of order for winding up subject to supervision of Court**

**154.** Where an order is made for a winding up subject to the supervision of the Court, the liquidators appointed to conduct such winding up may, subject to any restriction imposed by the Court, exercise all their powers without the sanction or intervention of the Court in the same manner as if the company were being wound up altogether voluntarily; but, save as aforesaid any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes (including the staying of actions, suits and other proceedings) be deemed to be an order of the Court for winding up the company by the Court, and shall confer on the Court full authority to make calls or to enforce calls made by the liquidators and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court, and in any provision of this Law empowering the Court, to direct any act or thing to be done to or in favour of the official liquidators, the expression “official liquidators” shall be construed as meaning the liquidators conducting the winding up subject to the supervision of the Court.

### **Appointment in certain cases of voluntary liquidators as official liquidators**

**155.** Where any order has been made for the winding up of a company subject to the supervision of the Court is afterwards superseded by an order directing the company to be wound up compulsorily, the Court may, in such last mentioned order or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently and either with or without the addition of any other persons, to be official liquidators.

## **Supplemental Provisions**

### **Dispositions after the commencement of the winding up void**

**156.** Where any company is being wound up by the Court or subject to the supervision of the Court all dispositions of the property, effects and things in action of the company, and every transfer of shares, or alteration in the status of the members of the company made between the commencement of the winding up and the order for winding up shall, unless the Court otherwise orders, be void.

### **Books of the company to be evidence**

**157.** Where any company is being wound up all books, accounts and documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

### **As to disposal of books, accounts and documents of the company**

**158.(1)** Where any company has been wound up under this Law and is about to be dissolved, the books, accounts and documents of the company and of the liquidators may be disposed of-

- (a)* where the company has been wound up by or subject to the supervision of the Court, in such manner as the Court directs; and
- (b)* where the company has been wound up voluntarily, in such manner as the company may by resolution direct.

**(2)** After the lapse of five years from the date of such dissolution, no responsibility shall rest on the company, the liquidators or any person to whom the custody of such books, accounts and documents has been committed, by reason that the same, or any of them, cannot be made available to any party or parties claiming to be interested therein.

### **Inspection of books**

**159.** Where an order has been made for winding up a company by the Court or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the company of its books and papers in the possession of the company as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories in conformity with the order of the Court but not further or otherwise.

### **Power of assignee to sue**

**160.** Any person to whom any thing in action belonging to the company is assigned in pursuance of this Law may bring or defend in his own name any action or suit relating to such thing in action.

### **Debts of all descriptions to be proved**

**161.** In the event of any company being wound up under this Law, all debts payable on a contingency and all claims against the company whether present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made so far as is possible of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

### **Preferential payments**

**162.(1)** Subject to subsection (3), in a winding up there shall be paid in priority to all other debts -

- (a)* all rates, taxes, assessments or impositions imposed or made under any law applicable to the Islands, and having become due and payable within twelve months next before the relevant date;
- (b)* all wages or salary of any clerk or servant not exceeding one hundred dollars in

respect of services rendered to the company during four months before the relevant date;

- (c) all wages of any workman or labourer not exceeding fifty dollars in respect of services rendered to the company during two months before the relevant date; and
- (d) money due to depositors who have deposits with a company which is being wound up, and which -
  - (i) is incorporated in the Islands; and
  - (ii) is the holder of an "A" licence issued under the Banks and Trust Companies Law (2003 Revision),

subject to the conditions, provisions and limits contained in the Second Schedule.

**(2)** The foregoing debts shall -

- (a) rank equally among themselves and be paid in full unless the assets are insufficient to meet them in which case they shall abate in equal proportions; and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

**(3)** Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

**(4)** Where any payment on account of wages or salary has been made to any clerk, servant, workman or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall, in a winding up, have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

**(5)** In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof.

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

**(6)** Where it appears that there are numerous claims for wages by workmen and others employed by the company, it shall be sufficient if one proof for all such claims is made either by a foreman or by some other person on behalf of all such creditors. There shall be annexed to such proof and form part thereof a schedule setting forth the names of the workmen and others and the amounts severally due to them. Any proof made in compliance with this subsection shall have the same effect as if separate proofs had been made by each of the said claimants.

**(7)** In this section -

“relevant date” means -

- (a) as respects a company ordered to be wound up compulsorily which has not previously commenced to be wound up voluntarily, the date of the winding up order; and
- (b) in any other case, the date of the commencement of the winding up.

### **General scheme of liquidation may be sanctioned**

**163.** The liquidators may, with the sanction of the Court where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of a special resolution of the company where the company is being wound up altogether voluntarily, pay any classes of creditors in full or make such compromise or other arrangements as the liquidators may think expedient with creditors or persons claiming to be creditors or persons having or alleging themselves to have any claim, whether present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable.

### **Power to compromise**

**164.** The liquidators may, with the sanction of the Court where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of a special resolution of the company where the company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding up of the company, upon the receipt of such sums payable at such times and generally upon such terms as may be agreed upon, with power for the liquidators to take securities for the discharge of such debts or liabilities and to give complete discharges in respect of all or any such calls, debts or liabilities.

### **Liquidators may accept shares, etc., as a consideration for sale of property of company**

**165.(1)** Subject to subsection (2), where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or portion of its business or property is proposed to be transferred or sold to another company, whether a company or body corporate established in the Islands or in any other jurisdiction, the liquidators of the first mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring on the liquidators either a general authority or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale, shares, policies or other like interests in such other company for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up.

**(2)** Notwithstanding subsection (1), if any member of a company being wound up who has not voted in favour of the special resolution referred to in that subsection, passed by the company of which he is a member at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do such one of the following things as the liquidators may elect, that is to say, either to abstain from carrying such resolution into effect or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter provided, such purchase money to be paid before the company is dissolved and to be raised by the liquidators in such manner as may be determined by special resolution.

**(3)** No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed before or concurrently with any resolution for winding up the company or for appointing liquidators, but if an order be made within a year for winding up the company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

### **Mode of determining price**

**166.** The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute the same, such dispute shall be settled by arbitration.

### **Certain attachments and execution to be void**

**167.** Where any company is being wound up by the Court or subject to the supervision of the Court, any attachment, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

### **Fraudulent preference**

**168.(1)** Any such conveyance, mortgage, delivery of goods, payment, execution or other act relating to property as would, if made or done by or against any individual trader, be deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any company, be deemed in the event of such company being wound up under this Law to have been made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly.

**(2)** For the purposes of this section the presentation of a petition for winding up a company in the case of a company being wound up by the Court or subject to the supervision of the Court, and a resolution for winding up the company shall, in the case of a voluntary winding up, be deemed to correspond to the act of bankruptcy in the case of an individual trader.

### **Power to assess damages against delinquent directors and officers**

**169.** Where, in the course of the winding up of any company under this Law it appears that any past or present director, manager, official or other liquidator or any officer of such company has misapplied or retained in his own hands, or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager or other officer and compel him to repay any moneys so misapplied or retained, or for which he has become liable or accountable, together with interest at such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

### **Penalty on falsification of books**

**170.** Whoever, being an officer or contributory of any company wound up under this Law destroys, mutilates, alters or falsifies any books, papers, writings or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or other document belonging to the company with intent to defraud or deceive any person, is guilty of a misdemeanour and liable on conviction to imprisonment for two years, with or without hard labour.

### **Prosecution of delinquent directors in the case of winding up by Court**

**171.** If it appears to the Court in the course of winding up a company by the Court or subject to the supervision of the Court, that any past or present director, manager, officer or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in such winding up or of its own motion, direct the official liquidator or the liquidators (as the case may be) to institute and conduct a prosecution or prosecutions for such offence and may order the costs and expenses to be paid out of the assets of the company.

### **Prosecution of delinquent directors, *et al.*, in case of voluntary winding up**

**172.** If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator may, with the previous sanction of the Court, prosecute such offender, and all expenses properly incurred by him in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

### **Penalty for perjury**

**173.** Whoever upon any examination upon oath or affirmation authorised under this Law, or in any affidavit, disposition or solemn affirmation in or about the winding up of any company, or otherwise in or about any matter arising under this Law, wilfully and corruptly gives false evidence, is guilty of an offence and liable to the penalties for wilful perjury.

### **Power of Court to Make Rules**

#### **Rules of court**

**174.** The Court may, as often as circumstances require, make such rules concerning the mode of proceeding to be had for winding up a company in the Court, as may from time to time seem necessary, but until such rules are made the general practice of the Court, including the practice in use at the commencement of this Law in winding up companies, shall, so far as the same is applicable and not inconsistent with this Law, apply to all proceedings for winding up a company.

## **PART VI - Removal Of Defunct Companies**

### **Company not operating may be struck off register**

**175.(1)** Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may strike the company off the register and the company shall thereupon be dissolved.

**(2)** A request on behalf of the company to strike the company off the register shall be accompanied by a fee of twenty dollars.

**Company being wound up may be struck off register for want of liquidator, etc.**

**176.** Where a company is being wound up, and the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, he may strike the company off the register and the company shall thereupon be dissolved.

**Registrar to publish fact of company being struck off register**

**177.** The Registrar shall immediately publish a Government Notice to the effect that the company in question has been struck off the register, the date on which it has been struck off and the reason therefor. Such notice shall be gazetted.

**Company, creditor or member may apply to court for company to be reinstated**

**178.** If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register in accordance with this Law, the Court on the application of such company, member or creditor made within two years or such longer period not exceeding ten years as the Governor in Cabinet may allow of the date on which the company was so struck off, may, if satisfied that the company was at the time of the striking off thereof, carrying on business or in operation, or otherwise, that it is just that the company be restored to the register, order the name of the company to be restored to the register, on payment by the company of a re-instatement fee equivalent to the original incorporation or registration fee and on such terms and conditions as to the Court may seem just, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may, by the same or any subsequent order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

**Liability of members of company to remain**

**179.** The striking off the register of any company under this Law shall not affect the liability, if any, of any director, manager, officer or member of the company, and such liability shall continue and may be enforced as if the company had not been dissolved.

**Registrar not liable for any act performed under this Part**

**180.** No liability shall attach for any act performed or thing done by the Registrar under this Part.

**Vesting of property**

**181.** Any property vested in or belonging to any company struck off the register under this Law shall thereupon vest in the Financial Secretary and shall be subject to disposition by the Governor in Cabinet, or to retention for the benefit of the Islands.

## **PART VII - Exempted Companies**

### **What companies may apply to be registered as exempted companies**

**182.** Any proposed company applying for registration under this Law, the objects of which are to be carried out mainly outside the Islands, may apply to be registered as an exempted company.

### **Registration of exempted companies**

**183.** On being satisfied that section 184 has been complied with, the Registrar shall register the company as an exempted company.

### **Declaration by proposed company**

**184.** A proposed exempted company applying for registration as an exempted company shall submit to the Registrar a declaration signed by a subscriber to the effect that the operation of the proposed exempted company will be conducted mainly outside the Islands.

### **Shares may be non-negotiable or negotiable**

**185.** The shares of an exempted company may be either non-negotiable, in which case they shall be transferred only on the books of the company, or they may be negotiable or in bearer form:

Provided that no share shall be issued as negotiable or in bearer form unless the same shall be fully paid and non-assessable.

### **Negotiable shares may be exchanged**

**186.** Negotiable or bearer shares may be exchanged for non-negotiable shares and vice versa.

### **Annual return**

**187.** In January of each year after the year of its registration each exempted company shall furnish to the Registrar a return which shall be in the form of a declaration that -

- (a)* since the previous return or since registration, as the case may be, there has been no alteration in the memorandum of association, other than an alteration in the name of the company effected in accordance with section 31 or an alteration already reported in accordance with section 10;
- (b)* the operations of the exempted company since the last return or since registration of the exempted company, as the case may be, have been mainly outside the Islands; and
- (c)* section 193 has been and is being complied with; and

- (d) all bearer shares are kept by a custodian.

#### **Annual fee**

**188.(1)** Every exempted company shall, in January of each year after the year of its registration, pay to the revenues of the Islands -

- (a) in the case of an exempted company with no registered capital, or a registered capital exceeding \$42,000, an annual fee of \$470;
- (b) in the case of an exempted company with a registered capital exceeding \$42,000 but not exceeding \$820,000, an annual fee of \$660;
- (c) in the case of an exempted company with a registered capital exceeding \$820,000 but not exceeding \$1,640,000, an annual fee of \$1,384; and
- (d) in the case of an exempted company with a registered capital exceeding \$1,640,000, an annual fee of \$1,968.

**(2)** Each such annual fee referred to in subsection (1) shall be tendered with the return required by section 187.

**(3)** An exempted company who defaults in submitting its annual return under section 187 or the fee specified in subsection (1) shall incur a penalty of -

- (a) 33.33% of the annual fee specified in subsection (1) if the return is submitted or the fee and penalty are paid between the 1<sup>st</sup> April and the 30<sup>th</sup> June;
- (b) 66.67% of the annual fee specified in subsection (1) if the return is submitted or the fee and penalty are paid between the 1<sup>st</sup> July and the 30<sup>th</sup> September; and
- (c) 100% of the annual fee specified in subsection (1) if the return is submitted or the fee and penalty are paid between the 1<sup>st</sup> October and the 31<sup>st</sup> December.

#### **Failure to comply with s.187 or 188**

**189.** Any exempted company which fails to comply with section 187 or 188 shall be deemed to be a defunct company and shall thereupon be dealt with as such under Part VI but without prejudice to its being registered again as though it were being registered for the first time.

#### **Registrar to give notice**

**190.** Before taking action under section 189, the Registrar shall give one month's notice to the defaulting company, if the default is made good before the expiry of such notice, sections 187 and 188 shall be deemed to have been complied with.

#### **False statement in declaration**

**191.** If any declaration under section 184 or 187 contains any wilful false statement or misrepresentation

the company shall, on proof thereof, be liable to be immediately dissolved and removed from the register and in such case any fee tendered under section 26 or 188 shall be forfeited to the Financial Secretary for credit to the general revenue.

#### **Penalty for false declaration**

**192.** Every director and officer of a company who knowingly makes or permits the making of any such declaration knowing it to be false shall be guilty of an offence and liable on summary conviction to a fine of one thousand dollars and to imprisonment for three months.

#### **Prohibited enterprises**

**193.** An exempted company shall not trade in the Islands with any person, firm or corporation except in furtherance of the business of the exempted company carried on outside the Islands:

Provided that nothing in this section shall be construed so as to prevent the exempted company effecting and concluding contracts in the Islands and exercising in the Islands all of its powers necessary for the carrying on of its business outside the Islands.

#### **Prohibited sale of securities**

**194.** An exempted company that is not listed on the Cayman Islands Stock Exchange is prohibited from making any invitation to the public in the Islands to subscribe for any of its securities.

#### **Penalty for carrying on business contrary to this Part**

**195.** If an exempted company carries on any business in the Islands in contravention of the provisions of this Part then, without prejudice to any other proceedings that may be taken in respect of the contravention, the exempted company and every director, provisional director and officer of the exempted company who is responsible for the contravention is guilty of an offence and liable on summary conviction to a fine of one hundred dollars for every day during which the contravention occurs or continues, and the exempted company shall be liable to be immediately dissolved and removed from the register.

#### **Electronic business by exempted companies**

**196.** Nothing in this Law shall prohibit an exempted company from offering, by electronic means, and subsequently supplying, real or personal property, services of information from a place of business in the Islands or through an internet service provider or other electronic service provider located in the Islands.

### **PART VIII - Exempted Limited Duration Companies**

**Exempted company may apply to be registered as an exempted limited duration company**

**197.(1)** An exempted company may, at any time, apply to the Registrar to be registered as an exempted limited duration company.

**(2)** An application may also be made under subsection (1) at the same time as an application is made -

- (a)* to register a proposed company as an exempted company;
- (b)* to re-register an ordinary non-resident company as an exempted company; or
- (c)* to register a company by way of continuation as an exempted company.

**(3)** An application under subsection (1) shall, in addition to any other fee that may be payable, be accompanied by an application fee of two hundred dollars.

### **Registration as an exempted limited duration company**

**198.(1)** The Registrar shall register as an exempted limited duration company an exempted company that has made application under section 197 if -

- (a)* the company has at least two subscribers or two members;
- (b)* where the company was not already registered as a company prior to the application -
  - (i)** the memorandum of association of the company limits the duration of the company to a period of thirty years or less; and
  - (ii)** the name of the company includes at its end “Limited Duration Company” or “LDC”; and
- (c)* where the company was already registered as a company prior to the application -
  - (i)** the Registrar has been supplied, where the duration of the company is not already limited to a period of thirty years or less with a certified copy of a special resolution of the company altering its memorandum of association to limit the duration of the company to a period of thirty years or less; and
  - (ii)** the Registrar has been supplied, in accordance with section 31, with a copy of a special resolution of the company changing its name to a name that includes at its end “Limited Duration Company” or “LDC”.

**(2)** On registering an exempted company as an exempted limited duration company the Registrar shall -

- (a)* in the case of a company referred to in paragraph (b) of subsection (1), certify in the certificate of incorporation issued in accordance with section 27(2) or the certificate of registration by way of continuation issued in accordance with section 221(1) that the company is registered as an exempted limited duration company; and
- (b)* in the case of a company referred to in paragraph (c) of subsection (1), certify in the certificate of incorporation issued in accordance with section 31(2) that the company is registered as an exempted limited duration company stating the date of such registration.

**(3)** A special resolution passed for the purpose of paragraph (c)(ii) of subsection (1) has no effect until the company is registered as an exempted limited duration company.

### **Contents of articles of association**

**199.(1)** The articles of association of an exempted limited duration company may provide that the transfer of any share or other interest of a member of the company requires the unanimous resolution of all the other members.

**(2)** The articles of association of an exempted limited duration company may provide that the management of the company is vested in the members of the company either equally per capita or in proportion to their share or other ownership interest in the company or in such other manner as may be specified in the articles of association.

**(3)** Where the articles of association of an exempted limited duration company contain the provision referred to in subsection (2), the members of the company are to be considered to be the directors of the company but with power, if so provided by the articles of association, to delegate the management to a board of directors.

### **Winding up of an exempted limited duration company**

**200.(1)** An exempted limited duration company is to be taken to have commenced voluntary winding up and dissolution -

- (a)* when the period fixed for the duration of the company expires;
- (b)* if the members of the company pass a special resolution that the company be wound up voluntarily;
- (c)* subject to any contrary provision in the memorandum or articles of association of the company, on the expiry of a period of ninety days or starting on -
  - (i)** the death, insanity, bankruptcy, dissolution, withdrawal, retirement or resignation of a member of the company;
  - (ii)** the redemption, repurchase or cancellation of all the shares of a member of the company; or
  - (iii)** the occurrence of any event which, under the memorandum or articles of association of the company, terminates the membership of a member of the company,

unless there remain at least two members of the company and the company is continued in existence by the unanimous written resolution of those members pursuant to amended articles of association of the company adopted during that period of ninety days; or

- (d)* where the memorandum or articles of association of the company provide that -
  - (i)** on the termination of any period; or
  - (ii)** the happening of any event,

the company shall be wound up and dissolved in accordance with this provision on the termination of that period or the happening of that event.

**(2)** Where the winding up and dissolution has commenced by virtue of paragraph (a), (c) or (d) of subsection (1), the person, if any, designated by resolution of the members passed prior to such commencement, failing whom the person, if any, designated by the articles of association, shall, upon such commencement and without further

action, become the liquidator, failing which the directors at the time of such commencement shall, upon such commencement and without further action, become the liquidators, failing which section 144 shall apply.

**(3)** Sections 132 and 133 and, where a person has, without further action, become the liquidator pursuant to subsection (2), paragraphs (b) and (c) of section 136 have no application to an exempted limited duration company.

### **Cancellation of registration**

**201.(1)** A company ceases to be an exempted limited duration company if -

- (a)* the Registrar issues a certificate under section 227 on deregistration of the company;
- (b)* the Registrar issues a certificate of incorporation in accordance with section 31(2) which records a change of name for the company that does not include at its end “Limited Duration Company” or “LDC”; or
- (c)* the company passes a special resolution in accordance with section 10 to alter its memorandum of association to provide for a period of duration of the company that exceeds or is capable of exceeding thirty years,

and in the case of paragraph (b) or (c), the company pays a de-registration fee of four hundred dollars.

**(2)** On a company ceasing to be an exempted limited duration company -

- (a)* the Registrar shall, where the company has ceased to be an exempted limited duration company by virtue of paragraphs (b) or (c) or subsection (1), issue to the company a certificate of incorporation altered to meet the circumstances of the case; and
- (b)* in all cases the certificate issued by virtue of section 198(2) ceases to have effect.

**(3)** A special resolution passed for the purpose of paragraph (c) of subsection (1) has no effect until a certificate of incorporation is issued by the Registrar under paragraph (a) of subsection (2).

### **Electronic business by exempted limited duration companies**

**202.** Nothing in this Law shall prohibit an exempted limited duration company from offering, by electronic means, and subsequently supplying, real or personal property, services or information from a place of business in the Islands or through an internet service provider or other electronic service provider located in the Islands.

## **PART IX - Companies Incorporated Outside The Islands Carrying On Business Within The Islands**

### **Definition of foreign companies**

**203.** This Part applies to all foreign companies, that is to say all bodies corporate incorporated outside the Islands which, after the 1<sup>st</sup> December, 1961, establish a place of business or commence carrying on business (which expressions in this Part include, without limiting their generality, the sale by or on behalf of a foreign company of its shares or debentures and offering, by electronic means, and subsequently supplying, real or personal property, services or information from a place of business in the Islands or through an internet service provider or other electronic service provider in the Islands) within the Islands, and all bodies corporate incorporated outside the

Islands which before 1st December, 1961 established a place of business or carried on business as aforesaid within the Islands at 1st December, 1961.

### **Documents, etc., to be delivered to Registrar by foreign companies**

**204.(1)** Every foreign company shall, within one month after becoming a foreign company as herein defined, deliver to the Registrar for registration -

- (a) a copy, certified and authenticated under public seal of the country, city or place under the laws of which the foreign company has been incorporated, of its charter, statutes or memorandum and articles of association, or other instrument constituting or defining its constitution of the foreign company, and, if the instrument is not written in English, a certified translation thereof;
- (b) a list of its directors, containing such particulars with respect to the directors as are by this Law required to be contained with respect to directors in the register of the directors of a company; and
- (c) the names and addresses of some one or more than one person resident in the Islands authorised to accept on its behalf service of process and any notices required to be served on it,

and shall pay to the Registrar a fee of eight hundred and fifty dollars.

**(2)** Every foreign company shall, in January of each year, pay to the revenues of the Islands an annual fee of eight hundred and fifty dollars.

**(3)** A foreign company who defaults in paying the annual fee specified in subsection (2) shall incur a penalty of -

- (a) 33.33% of the annual fee specified in subsection (2) if the fee and penalty are paid between the 1<sup>st</sup> April and the 30<sup>th</sup> June;
- (b) 66.67% of the annual fee specified in subsection (2) if the fee and penalty are paid between the 1<sup>st</sup> July and the 30<sup>th</sup> September; and
- (c) 100% of the annual fee specified in subsection (2) if the fee and penalty are paid between the 1<sup>st</sup> October and the 31<sup>st</sup> December.

### **Power of certain foreign companies to hold land**

**205.(1)** No body corporate incorporated outside the Islands shall have power to hold land in the Islands:

Provided that a foreign company which has delivered to the Registrar documents, particulars and fees specified in section 204 shall have such power.

**(2)** If a body corporate incorporated outside the Islands which is not a foreign company holds land in the Islands or if a foreign company ceases to carry on, or have a place of business in the Islands or ceases to be a foreign company or fails to comply with this Part, the Governor in Cabinet may, whenever it appears to him to be necessary in the public interest, order the body corporate or company to transfer any lands held by, vested in or belonging to it to a person capable of holding such lands and of being registered as proprietor thereof under the Registered Land Law (2004 Revision).

**(3)** If a body corporate or a company fails to comply with an order under subsection (2), the Registrar may apply to the Court for an order that the land shall vest in the Financial Secretary for the benefit of the Islands and be subject to the disposition of the Governor in Cabinet, and the Court may order accordingly.

**(4)** An order under subsection (2), and any order or proceedings required by the Court to be served in respect of an application under subsection (3) shall be served by personal service on a person, if any, whose name and address has been delivered by the company to the Registrar under paragraph (c) of section 204(1):

Provided that, in the event any such order or proceedings may not be served by such personal service, it or they may be served by -

- (a)* personal service on the attorney holding a power of attorney whereunder he is authorised to accept service of orders and proceedings of the Court;
- (b)* sending it by registered post to the body corporate or company at its usual or last known postal address in the Islands;
- (c)* leaving it at the least known place of business of the body corporate or company in the Islands;
- (d)* publication in three consecutive issues of the Gazette;
- (e)* publication in three consecutive issues of a newspaper published and circulating in the Islands; or
- (f)* displaying it in a prominent position on the lands and causing it to be kept so displayed for one month.

**(5)** In this section -

“holds land” bears the meaning ascribed to that expression in section 32(3).

### **Registration of foreign companies**

**206.(1)** Upon compliance with section 204, the Registrar shall issue a certificate under his hand and seal of office that the company is registered under this Law.

**(2)** A certificate of registration of a company issued under subsection (1) shall be conclusive evidence that compliance has been made with all requirements of this Law in respect of registration.

### **Return to be delivered to Registrar where documents, etc., altered**

**207.** If, in the case of any foreign company, an alteration is made in -

- (a)* its charter, statutes or memorandum and articles of association or any such instrument as aforesaid;
- (b)* its directors or the particulars contained in the list of the directors; or
- (c)* the names or addresses of the persons authorised to accept service on its behalf,

the foreign company shall, within twenty-one days after the date on which particulars of the alterations could, in

due course of post and if despatched with due diligence, have been received in the Islands from the place where the foreign company is incorporated, deliver to the Registrar for registration a return containing the particulars of the alterations.

### **Obligation to state name of company, whether limited, and country where incorporated**

**208.** Every foreign company shall -

- (a)* in every prospectus inviting subscriptions for its shares or debentures in the Islands state the country in which the foreign company is incorporated;
- (b)* conspicuously exhibit on every place where it carries on business in the Islands the name of the foreign company and the country in which the foreign company is incorporated;
- (c)* cause the name of the foreign company and of the country in which it is incorporated to be stated in legible characters on all bill heads, letter paper, notices, advertisements and other official publications; and
- (d)* if the liability of the members of the foreign company is limited, cause notice of that fact to be stated in every such prospectus as aforesaid and on all bill heads, letter paper, notices, advertisements and other official publications in the Islands, and to be affixed on every place where it carried on its business in the Islands.

### **Service on foreign company to which this Part applies**

**209.** Any process or notice required to be served on a foreign company shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under paragraph (c) of section 204 or paragraph (c) of section 207 and left at or sent by post to the address which has been so delivered:

Provided that -

- (a)* where any such foreign company makes default in delivering to the Registrar the name and address of a person resident in the Islands who is authorised to accept on behalf of the foreign company service of process or notices; or
- (b)* if, at any time, all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served,

a document may be served on the foreign company by leaving it at or sending it by post to any place of business established by the foreign company in the Islands.

### **Deeds, etc., of foreign companies executed outside the Islands**

**210.(1)** An instrument executed by a foreign company outside the Islands is, and is to be treated as, a deed or instrument under seal -

- (a)* if it is -
  - (i)** sealed; or

(ii) expressed to be, or is expressed to be executed as, or otherwise makes clear on its face it is intended to be, a deed; and

(b) if it is executed in conformity with any requirement imposed by -

(i) the laws of the jurisdiction in which the company was incorporated; and

(ii) its memorandum or articles of association (howsoever called).

(2) An instrument executed in accordance with subsection (1) meets any requirement of any law that the instrument is, and is to be treated as, a deed or instrument executed under seal.

(3) An instrument executed in accordance with paragraph (a) of subsection (1) and the fact that it was executed in accordance with a requirement referred to in paragraph (b) of subsection (1) may be proved by the affidavit or solemn declaration of a witness to the execution of the instrument sworn or made before a notary public or any other person qualified to administer oaths in any jurisdiction.

#### **Execution of deeds, etc.**

**211.(1)** A foreign company may, by deed or instrument under seal, empower a person either generally, or in respect of a specified matter, to be its attorney to execute in the Islands deeds or instruments under seal on its behalf.

(2) A deed or instrument under seal, signed in the Islands by an attorney on behalf of a foreign company, shall be binding on that company and shall have effect as if it were executed as such by the company.

#### **Removing company's name from register**

**212.** If any foreign company ceases to carry on or have a place of business in the Islands it shall forthwith give notice of the fact to the Registrar and, as from the date on which notice is so given, the obligation of the foreign company to deliver any document to the Registrar shall cease:

Provided that where the Registrar is satisfied by any other means that the foreign company has ceased to carry on or have a place of business in the Islands it shall be lawful for him to close the file of the foreign company and thereupon the obligation of the foreign company to deliver any document to the Registrar shall cease.

#### **Penalties for failing to comply with this Part**

**213.** Whenever any foreign company fails to comply with any of the foregoing provisions of this Part, it and every officer or agent of it, is guilty of an offence liable to a fine of one hundred dollars or, in the case of a continuing offence, a further fine of ten dollars for every day during which the default continues.

#### **Definitions in this Part**

**214.** In this Part -

“director” in relation to a foreign company, includes any person in accordance with whose directions or instructions the directors of the foreign company are accustomed to act; and

“place of business” includes a share transfer or share registration office.

#### **Power of Registrar to prohibit sale of securities**

**215.** The Registrar may, at any time and from time to time, prohibit the sale of any shares or debentures of any foreign company in the Islands or any invitation in the Islands to subscribe for any shares or debentures of a foreign company, and in the event of any violation by a foreign company of such prohibition the foreign company and each of its directors and officers is liable on summary conviction to a fine of one thousand dollars and, in default of payment by any director or officer, to imprisonment with or without hard labour for three months.

### **PART X - Application Of Law To Companies Formed Or Registered In The Islands**

#### **Application to existing companies**

**216.** In the application of this Law to existing companies, it shall apply in the same manner in the case of -

- (a)* a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Law as a company limited by shares;
- (b)* a company limited by guarantee, as if the company had been formed and registered under this Law as a company limited by guarantee; and
- (c)* a company other than a limited company, as if the company had been formed and registered under this Law as an unlimited company.

#### **Date of incorporation**

**217.** A reference, express or implied, to the date of incorporation of an existing company shall be, where appropriate, construed as a reference to the date on which the company was incorporated and recorded under the laws relating to companies then in force in the Islands.

#### **Articles of association remain**

**218.** The articles of association of an existing company shall, so far as the same are not contrary to any express provisions of this Law, remain in force until altered or rescinded.

### **PART XI - General**

#### **Fees in lieu of other provisions**

**219.(1)** Wherever this Law provides for or requires the filing of any document, notice or return with the Registrar or the issue of any certificate or the Register provides a copy of any document in respect of which no fee is

elsewhere specifically provided, the following fees shall be payable -

(a)	filing any resolution, notice, return or any other document	\$25
(b)	issuing any certificate	\$41
(c)	providing a copy of any document (per folio of 72 words)	\$41
(d)	general search fee	\$15.

**(2)** The Registrar may, in his discretion, extend the time within which any thing is required to be done by this Law, whether the time prescribed therefor has expired or not.

**(3)** Notwithstanding any provision of this Law which prescribes a specific *per diem* penalty in respect of a default of any obligation to make a filing or to maintain a record set out in this Law, it shall be lawful for the Registrar, in any case where the aggregate *per diem* penalty has exceeded the amount of five hundred dollars and he is satisfied that the failure is not due to wilful default, to at any time, accept payment of a penalty in the amount of five hundred dollars in lieu thereof.

**(4)** Without prejudice to the powers exercisable by the Registrar under this Law, all sums that he is entitled to recover by way of fees or penalties are recoverable either summarily as a civil debt, or as a simple contract debt, in any court of competent jurisdiction.

### **Express fees**

**220.(1)** The Registrar, on receipt of -

- (a) an application for registration under section 26, 197, 204 or 221;
- (b) an application for re-registration under section 230;
- (c) an application for the registration of a change of name under section 31; or
- (d) an application for any other certificate which the Registrar is authorised to provide under this law,

which is accompanied by an express fee of an amount specified in subsection (2), shall complete the transaction for which the application has been made by -

- (i) the end of the working day, where the application and all fees are received by 12 noon; or
- (ii) 12 noon on the following working day, where the application and all fees are received after 12 noon.

**(2)** The express fee referred to in subsection (1) is -

- (a) for an application referred to in paragraph (a) or (b) of subsection (1) \$400; and
- (b) for an application referred to in paragraph (c) or (d) of subsection (1) \$25.

## PART XII - Transfer By Way Of Continuation

### Application for continuation

**221.(1)** A body corporate incorporated, registered or existing with limited liability and a share capital under the laws of any jurisdiction outside the Islands (which body corporate is in this Part referred to as a “registrant”) may apply to the Registrar to be registered by way of continuation as an exempted company limited by shares under this Law.

**(2)** The Registrar shall register a registrant if -

- (a) the registrant is incorporated, registered or existing in a jurisdiction whose laws permit or do not prohibit the transfer of the registrant in the manner hereinafter provided in this Part (hereinafter in this section referred to as a “relevant jurisdiction”);
- (b) the registrant has paid to the Registrar a fee equal to the fee payable on the registration of an exempted company under section 26;
- (c) the registrant has delivered to the Registrar the documents listed in paragraphs (a) and (b) of section 204(1) (in this section referred to as “the charter documents”);
- (d) the name of the registrant is acceptable to the Registrar under section 30 or the registrant has undertaken to change the name to an acceptable name within sixty days of registration;
- (e) the registrant has filed with the Registrar notice of the address of its proposed registered office in the Islands;
- (f) the registrant has filed with the Registrar a declaration signed by a director of the registrant that the operations of the registrant will be conducted mainly outside the Islands;
- (g) no petition or other similar proceeding has been filed and remains outstanding or order made or resolution adopted to wind up or liquidate the registrant in any jurisdiction;
- (h) no receiver, trustee, administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the registrant, its affairs or its property or any part thereof;
- (i) no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the registrant are and continue to be suspended or restricted;
- (j) the registrant is able to pay its debts as they fall due;
- (k) the application for registration is *bonafide* and not intended to defraud existing creditors of the registrant;
- (l) the registrant shall have delivered to the Registrar an undertaking signed by a director of the registrant that notice of the transfer has been or will be given within twenty-one days to the secured creditors of the registrant;

- (m) any consent or approval to the transfer required by any contract or undertaking entered into or given by the registrant has been obtained, released or waived, as the case may be;
- (n) the transfer is permitted by and has been approved in accordance with the charter documents of the registrant;
- (o) the laws of the relevant jurisdiction with respect to transfer have been or will be complied with;
- (p) the registrant is constituted in a form or substantially a form which could have been incorporated as an exempted company limited by shares under this Law;
- (q) the registrant will, upon registration hereunder, cease to be incorporated, registered or exist under the laws of the relevant jurisdiction;
- (r) the registrant, if it is (or will when registered by way of continuation be) prohibited from carrying on its business in or from within the Islands unless licensed under any law, has applied for and obtained the requisite licence; and
- (s) the Registrar is not aware of any other reason why it would be against the public interest to register the registrant.

**(3)** Paragraphs (g), (h), (i), (j), (k), (m), (n), (o) and (q) of subsection (2) shall be satisfied by filing with the Registrar a voluntary declaration or affidavit of a director of the registrant to the effect that, having made due enquiry, he is of the opinion that the requirements of those paragraphs have been met, and which declaration or affidavit shall include a statement of the assets and liabilities of the registrant made up to the latest practicable date before making the declaration or affidavit.

**(4)** Whoever, being a director, makes a declaration or affidavit under subsection (3) without reasonable grounds therefor is guilty of an offence and liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for five years.

**(5)** Without prejudice to Part IX, a registrant may apply to be provisionally registered by way of continuation as an exempted company limited by shares under this Law.

**(6)** The Registrar shall provisionally register a registrant if -

- (a) the registrant complies with the requirements of paragraphs (a), (c), (e), (f), (g) (h), (i), (j) and (p) of subsection (2); and
- (b) the registrant has paid to the Registrar a fee of one thousand five hundred dollars.

**(7)** Paragraphs (g), (h), (i), (j), and (p) of subsection (2) shall be satisfied by filing with the Registrar a voluntary declaration or affidavit of a director of the registrant to the effect that, having made due enquiry, he is of the opinion that the requirements of those paragraphs have been met, and subsection (4) shall, *mutatis mutandis* apply with respect to such declaration or affidavit.

**(8)** The Registrar shall register a registrant which is provisionally registered under this Part upon the requirements of paragraphs (b), (d), (k), (l), (m), (n), (o), (q), (r) and (s) of subsection (2) being met, as to which subsection (3) shall, *mutatis mutandis*, apply where relevant.

**(9)** A registrant which is provisionally registered shall -

- (a) within sixty days after registration, deliver, to the Registrar details of any changes in the information required by paragraphs (c) and (e) of subsection (2);

- (b) file with the Registrar in January of each year following provisional registration, a voluntary declaration or affidavit in the form described in subsection (7); and
- (c) pay to the Registrar in January of each year following provisional registration, a fee of one thousand dollars.

**(10)** A registrant which is provisionally registered and which fails to comply with paragraphs (b) and (c) of subsection (9) by 30th June in such year shall cease to be provisionally registered but without prejudice to being provisionally registered anew hereunder upon complying with the requirements of this Part.

### **Registration under this Part**

**222.(1)** Upon registration of a registrant under this Part, the Registrar shall issue a certificate under his hand and seal of office that the registrant is registered by way of continuation as an exempted company and specifying the date of such registration, and section 27(3) shall apply, *mutatis mutandis*, to such certificate.

**(2)** The Registrar shall enter in the register of companies the date of registration of the registrant and, to the extent possible with respect to a registrant, particulars of the matters specified in paragraphs (a) to (h) of section 26(3).

**(3)** From the date of registration of the registrant it shall continue as a body corporate for all purposes as if incorporated and registered as an exempted company under and subject to this Law the provisions of which shall apply to the company and to persons and matters associated therewith as if such company were so incorporated and registered and such company shall have, but without limitation to the generality of the foregoing -

- (a) the capacity to perform all the functions of an exempted company;
- (b) the capacity to sue and to be sued;
- (c) perpetual succession; and
- (d) the power to acquire, hold and dispose of property,

and the members of the company shall have such liability to contribute to the assets of the company in the event of its being wound up under this Law as is provided therein:

Provided always that section 221 and this section shall not operate -

- (e) to create a new legal entity;
- (f) to prejudice or affect the identity or continuity of the registrant as previously constituted;
- (g) to affect the property of the registrant;
- (h) to affect any appointment made, resolution passed or any other act or thing done in relation to the registrant pursuant to a power conferred by any of the charter documents of the registrant or by the laws of the jurisdiction under which the registrant was previously incorporated, registered or existing;
- (i) except to the extent provided by or pursuant to this Part, to affect the rights, powers, authorities, functions and liabilities or obligations of the registrant or any other person; or
- (j) to render defective any legal proceedings by or against the

registrant and any legal proceedings that could have been continued or commenced by or against the registrant before its registration hereunder may, notwithstanding the registration, be continued or commenced by or against the registrant after registration.

- (4) Upon provisional registration of a registrant under this Part the Registrar shall issue a certificate under his hand and seal of office that the registrant is provisionally registered by way of continuation as an exempted company and specifying the date of such provisional registration.
- (5) The Registrar shall enter in a register maintained for the purpose the date of provisional registration and name of the registrant.
- (6) If a registrant which is provisionally registered under this Part is registered pursuant to section 221(2) it shall automatically cease to be provisionally registered and the Registrar shall cancel such provisional registration.
- (7) Subsection (3) shall not apply to a registrant which is provisionally registered unless and until it is registered under section 221(2) and nothing in this section shall be construed as enabling a registrant which is provisionally registered to carry on business within the Islands unless it complies with the requirements of Part IX.

#### **Amendment, etc., of charter documents**

**223.(1)** A registrant shall, within ninety days of registration by special resolution passed in accordance with this Law, make such amendments, alterations, modifications, variations, deletions and additions (in this section referred to as “changes”), if any, to its charter documents as are necessary to ensure that they comply with the requirements of this Law as they relate to an exempted company.

- (2) Within ninety days of registration, the registrant -
  - (a) may, instead of passing a special resolution making the changes required by subsection (1); or
  - (b) shall, whether or not it has passed such a special resolution making, or purporting to make, such changes, if the Registrar so directs,

apply to the Court for an order approving such changes and the Court, if satisfied that the changes (with such modifications, if any, as it considers appropriate) are necessary to ensure that the charter documents of the registrant comply with the requirements of this Law, may approve them accordingly and make such consequential orders as it thinks fit. Changes, when so approved, shall take effect as if they formed part of the charter documents.

- (3) A copy of the special resolution passed under subsection (1) or of the order of the Court made under subsection (2) shall be filed with and registered by the Registrar whose certificate of registration thereof shall be conclusive evidence that the charter documents comply with the requirements of this Law.
- (4) After registration of the registrant and until such time as the charter documents of the registrant are changed to comply with the requirements of this Law or to the extent they cannot be changed so to comply, this Law shall prevail.
- (5) The provisions of the charter documents of a registrant which would, if the company had been incorporated under this Law, have been required by this Law to be included in its memorandum of association shall be deemed to be the registered memorandum of association of the company and the provisions of the charter documents that do not by virtue of the foregoing constitute the registered memorandum of association shall be deemed to be the registered articles of association of the company, and the company and its members shall be bound thereby accordingly.

### **Effect of registration under this Part on companies registered under Part IX**

**224.** Where a registrant is also registered as a foreign company under Part IX it shall, upon registration under Part XII, automatically cease to be registered under Part IX and the Registrar shall cancel such registration.

### **Notice of registration, etc., to be given in Gazette**

**225.** The Registrar shall forthwith give notice in the Gazette of the registration of a registrant under this Part, the jurisdiction under whose laws the registrant was previously incorporated, registered or existing and the previous name of the registrant if different from the current name.

### **Deregistration of exempted companies including companies registered under this Part**

**226.(1)** An exempted company incorporated and registered with limited liability and a share capital under this Law, including a company registered by way of continuation under this Part, which proposes to be registered by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Islands (hereinafter called an “applicant”) may apply to the Registrar to be de-registered in the Islands.

**(2)** The Registrar shall so de-register an applicant if -

- (a)* the applicant proposes to be registered by way of continuation in a jurisdiction which permits or does not prohibit the transfer of the applicant in the manner provided in this Part (hereinafter in this section referred to as “a relevant jurisdiction”);
- (b)* the applicant has paid to the Registrar a fee equal to three times the annual fee that would have been payable pursuant to section 188 in the January immediately preceding the application for deregistration by an exempt company having the same registered capital as the applicant on the date of that application;
- (c)* the applicant has filed with the Registrar notice of any proposed change in its name and of its proposed registered office or agent for service of process in the relevant jurisdiction;
- (d)* no petition or other similar proceeding has been filed and remains outstanding or order made or resolution adopted to wind up or liquidate the applicant in any jurisdiction;
- (e)* no receiver, trustee or administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the applicant, its affairs or its property or any part thereof;
- (f)* no scheme, order, compromise or other similar arrangement has been entered into or made whereby the rights of creditors of the applicant are and continue to be suspended or restricted;
- (g)* the applicant is able to pay its debts as they fall due;
- (h)* the application for de-registration is *bona fide* and not intended to defraud creditors of the applicant;
- (i)* the applicant has delivered to the Registrar an undertaking signed by a director that notice of the transfer has been or will be given within twenty-one days to the secured creditors of the applicant;

- (j) any consent or approval to the transfer required by any contract or undertaking entered into or given by the applicant has been obtained, released or waived, as the case may be;
- (k) the transfer is permitted by and has been approved in accordance with the memorandum and articles of association of the applicant;
- (l) the laws of the relevant jurisdiction with respect to transfer have been or will be complied with;
- (m) the applicant, if licensed under the Banks and Trust Companies Law, (2003 Revision), or the Insurance Law, (2004 Revision), or, if so previously licensed and in respect of which such licence shall have been suspended or revoked and not reinstated, has obtained consent of the Governor to the transfer;
- (n) the applicant will upon registration under the laws of the relevant jurisdiction continue as a body corporate limited by shares; and
- (o) the Registrar is not aware of any other reason why it would be against the public interest to de-register the applicant.

**(3)** Paragraphs (d), (e), (f), (g), (h), (j), (k), (l) and (n) of subsection (2) shall be satisfied by filing with the Registrar a voluntary declaration or affidavit of a director of the applicant to the effect that, having made due enquiry, he is of the opinion that the requirements of those paragraphs have been met and which declaration or affidavit shall include a statement of the assets and liabilities of the applicant made up to the latest practicable date before the making of the declaration or affidavit.

**(4)** Whoever, being a director, makes a declaration or affidavit under subsection (3) without reasonable grounds therefor is guilty of an offence and liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for five years.

#### **Certification of deregistration, etc.**

**227.(1)** Upon de-registration of an applicant under this Part, the Registrar shall issue a certificate under his hand and seal of office that the applicant has been de-registered as an exempted company and specifying the date of such de-registration.

**(2)** The Registrar shall enter in the register of companies the date of de-registration of the applicant.

**(3)** From the commencement of the date of de-registration the applicant shall cease to be a company for all purposes under this Law and shall continue as a company under the laws of the relevant jurisdiction:

Provided always that this shall not operate -

- (a) to create a new legal entity;
- (b) to prejudice or affect the identity or continuity of the applicant as previously constituted;
- (c) to affect the property of the applicant;
- (d) to affect any appointment made, resolution passed or any other act or thing done in relation to the applicant pursuant to a power conferred by the memorandum and articles of association of the applicant or by the laws of the Islands;
- (e) except to the extent provided by or pursuant to this Part to affect the rights, powers,

authorities, functions and liabilities or obligations of the applicant or any other person; or

- (f) to render defective any legal proceedings by or against the applicant, and any legal proceedings that could have been continued or commenced by or against the applicant before its de-registration hereunder may, notwithstanding the de-registration, be continued or commenced by or against the applicant after de-registration.

#### **Application of Part IX to deregistered companies**

**228.** Part IX shall, where relevant, apply to any company which is deregistered under this Part.

#### **Notice of deregistration, etc., to be given in the Gazette**

**229.** The Registrar shall forthwith give notice in the Gazette of the deregistration of an applicant under this Part, the jurisdiction under the laws of which the applicant has been registered by way of continuation and name of the applicant, if changed.

### **PART XIII - Reregistration As A Means Of An Ordinary Non-resident Company Becoming Exempted**

#### **Ordinary non-resident company may be re-registered as exempted company**

**230.(1)** Subject to this section and section 231, an ordinary non-resident company may be reregistered as an exempted company if -

- (a) the company passes a special resolution that it should be so re-registered; and  
(b) an application for re-registration is delivered to the Registrar together with the necessary documents.

**(2)** Such special resolution shall -

- (a) make such alterations in the company's memorandum of association as are necessary to bring it in substance and in form into conformity with the requirements of this Law with respect to the memorandum of association of an exempted company; and  
(b) make such alterations in the company's articles of association as are requisite in the circumstances.

**(3)** Such application shall be signed by a director of the company, and accompanied by -

- (a) a copy of the memorandum and articles as altered by the special resolution; and  
(b) a declaration by a director of the company that the operation of the company will be conducted mainly outside the Islands.

**(4)** A special resolution that an ordinary non-resident company be re-registered as an exempted company may change the company's name to any name by which an exempted company could be registered.

**(5)** The application shall be accompanied by a re-registration fee equal to the fee payable on the registration of an exempted company under section 26.

**Effect of reregistration of ordinary non-resident company as an exempted company**

**231.(1)** If, on an application under section 230, the Registrar is satisfied that an ordinary non-resident company may be re-registered under that section as an exempted company, he shall -

- (a)* retain the application and other documents delivered to him under the section; and
- (b)* issue to the company a certificate of re-registration stating that the company has been re-registered as an exempted company.

**(2)** Upon the issue to a company of a certificate of re-registration under this section -

- (a)* the company, by virtue of the issue of that certificate, becomes an exempted company; and
- (b)* any alterations in the memorandum and articles set out in the special resolution take effect accordingly:

Provided that the foregoing shall not operate -

- (i)** to create a new legal entity;
- (ii)** to prejudice or affect the identity or continuity of the company;
- (iii)** to affect the property of the company;
- (iv)** to affect any appointment made, resolution passed or any other act or thing done in relation to the company pursuant to a power conferred by the memorandum and the articles of association of the company or by the laws of the Islands;
- (v)** to affect the rights, powers, authorities, functions and liabilities or obligations of the company or any other person; or
- (vi)** to render defective any legal proceedings by or against the company, and legal proceedings that could have been continued or commenced by or against the company before its re-registration hereunder may, notwithstanding the re-registration, be continued or commenced by or against the company after re-registration.

**(3)** The certificate of re-registration is conclusive evidence -

- (a)* that the requirements of this Law in respect of registration and of matters precedent and incidental thereto have been complied with; and
- (b)* that the company is an exempted company.

**PART XIV - Segregated Portfolio Companies**

### **Definitions in this Part**

**232.** In this Part -

“segregated portfolio company” means an exempted company which is registered under section 233(1);

“segregated portfolio shares” means shares issued under the provisions of section 236(1);

“segregated portfolio share capital” means the proceeds of the issue of segregated portfolio shares;

“segregated portfolio share dividend” means a dividend paid under section 236(3);

“receivership order” means an order made under section 243(1); and

“receiver” means the person specified in a receivership order for the purposes specified in section 243(3)

“regulatory laws” means any of or more of the –

- (a)* Banks and Trust Companies Law (2003 Revision);
- (b)* Building Societies Law (2001 Revision);
- (c)* Companies Management Law (2003 Revision);
- (d)* Cooperative Societies Law (2001 Revision);
- (e)* Insurance Law (2004 Revision);
- (f)* Money Services Law (2003 Revision);
- (g)* Mutual Funds Law (2003 Revision);
- (h)* Securities Investment Business Law (2004 Revision),

and any other laws that may be prescribed by the Governor by regulations made under section 40 of the Monetary Authority Law (2004 Revision).

### **Applications for registration**

**233.(1)** Subject to subsection (2) and section 234, any exempted company may apply to the Registrar to be registered as an exempted segregated portfolio company.

**(2)** Nothing in this Part shall derogate from the Authority’s powers to determine, where relevant, whether a segregated portfolio company is suitable to be licensed under the regulatory laws.

**(3)** An application may also be made under subsection (1) at the same time as application is made -

- (a)* to re-register an ordinary non-resident company as an exempted company;
- (b)* to register a company by way of continuation as an exempted company; or
- (c)* to register as an exempted limited duration company.

**(4)** An application under subsection (1) shall, in addition to any other fee that may then be payable, be accompanied by a fee of five hundred dollars.

**(5)** A segregated portfolio company shall, on paying the annual fee payable under section 188, pay an additional annual fee of two thousand dollars together with an additional annual fee of three hundred dollars in respect of each segregated portfolio up to a maximum of one thousand five hundred dollars, both of which shall be tendered in accordance with section 188(2).

**(6)** At the same time as it tenders the fees in accordance with subsection (5) a segregated portfolio company shall furnish to the Registrar a notice containing the names of each segregated portfolio it has created.

**(7)** A segregated portfolio company who fails to furnish the notice in accordance with subsection (6) shall incur a penalty of ten dollars for every day after 31<sup>st</sup> March of each year during which the notice is not filed.

### **Conversions of existing companies**

**234.(1)** Where an exempted company has been registered prior to an application under section 233(1) the company shall –

- (a)* file with the Registrar a declaration made by at least two directors setting out an accurate statement -
  - (i)** of the assets and liabilities of the company as at a date within three months prior to the date of the declaration;
  - (ii)** of any transaction or event which, as at the date of the declaration, has occurred or is expected to occur between the date of the statement of assets and liabilities prepared pursuant to subparagraph (i) and the date of registration of the company as a segregated portfolio company which, if it had occurred before the date of the declaration, would have caused material changes to the assets and liabilities disclosed in the declaration;
  - (iii)** that the segregated portfolio company intends to operate, and the assets and liabilities which the company proposes to transfer to each of those segregated portfolios;
  - (iv)** that, on registration as a segregated portfolio company, the company and each segregated portfolio will be solvent;
  - (v)** that each creditor of the company has consented in writing to the transfer of assets and liabilities into segregated portfolios or alternatively that adequate notice has been given in accordance with subsection (3) to all creditors of the company and that ninety-five percent by value of the creditors have consented to that transfer of assets and liabilities into segregated portfolios;
- (b)* pass a special resolution authorising the transfer of assets and liabilities into segregated portfolios and attach a copy of such resolution to the declaration in subparagraph (a); and
- (c)* where the company is licensed by the Authority under the regulatory laws, obtain the written consent of the Authority and attach a copy of such consent to the declaration referred to in paragraph (a).

**(3)** For the purposes of subsection (1)(a)(v), adequate notice is given if notice in writing is sent to each creditor

having a claim against the company exceeding one thousand dollars.

**(4)** A director who makes a declaration under subsection (1)(a) without reasonable grounds or who knowingly makes a false declaration is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for one year.

**(5)** For the avoidance of doubt, the provisions of the Fraudulent Dispositions Law (1996 Revision) shall not apply to an initial transfer of assets and liabilities into segregated portfolios pursuant to an application under section 233(1).

### **Designation**

**235.** A segregated portfolio company shall include in its name the letters “SPC” or the words “Segregated Portfolio Company”.

### **Segregated portfolios**

**236.(1)** A segregated portfolio company may create one or more segregated portfolios in order to segregate the assets and liabilities of the company held within or on behalf of a portfolio from the assets and liabilities of the company held within or on behalf of any other segregated portfolio of the company or the assets and liabilities of the company which are not held within or on behalf of any segregated portfolio of the company.

**(2)** A segregated portfolio company shall be a single legal entity and any segregated portfolio of or within a segregated portfolio company shall not constitute a legal entity separate from the company.

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

### **Shares and dividends**

**237.(1)** A segregated portfolio company may create and issue shares in one or more classes or series (including different classes or series relating to the same segregated portfolio), the proceeds of the issue of which shall be included in the segregated portfolio assets of and accounted for in the segregated portfolio in respect of which the segregated portfolio shares are issued.

**(2)** The proceeds of the issue of shares, other than segregated portfolio shares, shall be included in the segregated portfolio company’s general assets.

**(3)** A segregated portfolio company may pay a dividend or other distribution in respect of segregated portfolio shares of any class or series and whether or not a dividend is declared on any other class or series of segregated portfolio shares or any other shares.

**(4)** Segregated portfolio dividends shall be paid on segregated portfolio shares by reference only to the accounts of and to and out of the segregated portfolio assets and liabilities of the segregated portfolio in respect of which the segregated portfolio shares were issued and otherwise in accordance with the rights of such shares.

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

**238.(1)** Any act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement

which is to be binding on or to enure to the benefit of a segregated portfolio or portfolios shall be executed by or on behalf of the directors and on behalf of such segregated portfolio or portfolios which shall be identified or specified, and where in writing it shall be indicated that such execution is in the name of, or by, or for the account of, such segregated portfolio or portfolios.

**(2)** If a segregated portfolio company is in breach of subsection (1), the directors shall (notwithstanding any provisions to the contrary in the company's articles or in any contract with such company or otherwise) incur personal liability for the liabilities of the company and the segregated portfolio under the act, matter, deed, agreement, contract, instrument or arrangement that was executed.

**(3)** Notwithstanding subsection (2), the Court may relieve a director of all or part of his personal liability thereunder if he satisfies the Court that he ought fairly to be so relieved because -

- (a)* he was not aware of the circumstances giving rise to his liability and, in being not so aware, he was not fraudulent, reckless or negligent, and did not act in bad faith; or
- (b)* he expressly objected, and exercised such rights as he had as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability.

**(4)** Any indemnity given by a segregated portfolio company in favour of a director in respect of a liability incurred by such director on behalf of a segregated portfolio shall only be enforceable against the assets of the segregated portfolio in respect of which such liability arose.

#### **Assets**

**239.(1)** The assets of segregated portfolio company shall be either segregated portfolio assets or general assets.

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

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

**(4)** The assets of a segregated portfolio comprise -

- (a)* assets representing the share capital and reserves attributable to the segregated portfolio; and
- (b)* all other assets attributable to or held within the segregated portfolio.

**(5)** For the purposes of subsection (4) -

“reserves” includes profits, retained earnings, capital reserves and share premiums.

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

- (a)* to segregate, and keep segregated, portfolio assets separate and separately identifiable from general assets;
- (b)* to segregate, and keep segregated, portfolio assets of each segregated portfolio separate and separately identifiable from segregated portfolio assets of any other segregated portfolio; and

- (c) to ensure that assets and liabilities are not transferred between segregated portfolios otherwise than at full value.

### **Segregation of assets**

**240.** Segregated portfolio assets -

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

### **Segregation of liabilities**

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

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

**(2)** Where a liability of a segregated portfolio company to a person arises otherwise than from a matter in respect of a particular segregated portfolio or portfolios, such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the company's general assets.

### **General liabilities and assets**

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

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

### **Winding-up of company**

**243.(1)** Notwithstanding any statutory provision or rule of law to the contrary, in the winding-up of a segregated portfolio company, the liquidator -

- (a)* shall deal with the company's assets only in accordance with the procedures set out in section 239(6); and
- (b)* in discharge of the claims of creditors of the segregated portfolio company, shall apply the company's assets to those entitled to have recourse thereto under this Part.

**(2)** Sections 112 and 136 shall be modified so that they shall apply in relation to protected segregated portfolio companies in accordance with this Part and, in the event of any conflict between this Part and those of sections 112 and 136, this Part shall prevail.

### **Receivership orders**

**244.(1)** Subject to subsections (2) and (5), if in relation to a segregated portfolio company, the Court is satisfied -

- (a)* that the segregated portfolio assets attributable to a particular segregated portfolio of the company (when account is taken of the company's general assets, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company's general assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that segregated portfolio; and
- (b)* that the making of an order under this section would achieve the purposes set out in subsection (3),

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

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

**(3)** A receivership order shall direct that the business and segregated portfolio assets of or attributable to a segregated portfolio shall be managed by a receiver specified in the order for the purposes of -

- (a)* the orderly closing down of the business of or attributable to the segregated portfolio; and
- (b)* the distribution of the segregated portfolio assets attributable to the segregated portfolio to those entitled to have recourse thereto.

**(4)** A receivership order -

- (a)* may not be made if the segregated portfolio company is in winding up; and
- (b)* shall cease to be of effect upon commencement of the winding up of the segregated portfolio company, but without prejudice to prior acts of the receiver or his agents.

**(5)** No resolution for the voluntary winding up of a segregated portfolio company of which any segregated portfolio is subject to a receivership order shall be effective without leave of the Court.

### **Applications for receivership orders**

**245.(1)** An application for a receivership order in respect of a segregated portfolio of a segregated portfolio company may be made by -

- (a)* the company;
- (b)* the directors of the company;
- (c)* any creditor of the company in respect of that segregated portfolio;
- (d)* any holder of segregated portfolio shares in respect of that segregated portfolio; or
- (e)* in respect of a company licensed under the regulatory Laws, the Cayman Islands Monetary Authority where the segregated portfolio company is regulated by the Authority.

**(2)** The Court, on hearing an application -

- (a)* for a receivership order; or
- (b)* for leave, pursuant to section 243(5), for a resolution for voluntary winding up,

may make an interim order or adjourn the hearing, conditionally or unconditionally.

**(3)** Notice of an application to the Court for a receivership order in respect of a segregated portfolio of a segregated portfolio company shall be served upon -

- (a)* the company;
- (b)* in respect of a company licensed under the regulatory Laws, the Cayman Islands Monetary Authority; and
- (c)* such other person, if any, as the Court may direct,

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

### **Administration of receivership orders**

**246.(1)** The receiver of a segregated portfolio -

- (a)* may do all such things as may be necessary for the purposes set out in section 244(3); and
- (b)* shall have all the functions and powers of the directors in respect of the business and segregated portfolio assets of or attributable to the segregated portfolio.

**(2)** The receiver may, at any time, apply to the Court -

- (a)* for directions as to the extent or exercise of any function or power;
- (b)* for the receivership order to be discharged or varied; or
- (c)* for an order as to any matter acting in the course of his receivership.

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

**(4)** Any person dealing with the receiver in good faith is not concerned to enquire whether the receiver is acting within his powers.

**(5)** When an application has been made for, and during the period of operation of, a receivership order, no suit, action or other proceedings shall be instituted against the segregated portfolio company in relation to the segregated portfolio in respect of which the receivership order was made except by leave of the Court, which may be conditional or unconditional.

**(6)** During the period of operation of a receivership order -

*(a)* the functions and powers of the directors shall cease in respect of the business of or attributable to, and the segregated portfolio assets of or attributable to, the segregated portfolio in respect of which the order was made; and

*(b)* the receiver of the segregated portfolio shall be entitled to be present at all meetings of the segregated portfolio company and to vote at such meetings, as if he were a director of the segregated portfolio company, in respect of the general assets of the company, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company's general assets.

#### **Discharge of receivership orders**

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

**(2)** The Court, on hearing an application for the discharge or variation of a receivership order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

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

#### **Remuneration of receiver**

**248.** The remuneration of a receiver and any expenses properly incurred by him shall be payable, in priority to all other claims, from the segregated portfolio assets attributable to the segregated portfolio in respect of which the receiver was appointed but not from any other assets of the segregated portfolio company.

### **PART XV - Custody, Etc. Of Bearer Shares**

#### **Transfer of bearer shares**

**249.(1)** A company incorporated under this Law shall not issue bearer shares to any person other than a custodian.

**(2)** Except where bearer shares in a company are being redeemed by the company or the shareholder holding bearer shares in the company is seeking to convert those shares into registered shares, that shareholder shall not transfer those shares to any person other than a custodian or otherwise dispose of or deal in those shares unless the shareholder is disposing of those shares to, or dealing in those shares with, a custodian.

**(3)** In subsection (2) the reference to bearer shares being transferred, disposed of, or dealt with means the transfer or disposal of, or dealing with, the legal interest in the shares.

**(4)** Where bearer shares are held by an authorised custodian, a person holding the beneficial interest in those bearer shares shall not agree to transfer or otherwise dispose of or deal in the interest in those shares without the approval of the custodian; and where that person transfers the beneficial interest in those bearer shares without such approval that transfer shall be ineffective until the custodian has granted its approval.

**(5)** Where bearer shares are held by a recognised custodian, they shall be held by or on its behalf in accordance with the rules and procedures of the recognised custodian, but a recognised custodian may deliver a bearer share to any of its members, participants or account holders in circumstances contemplated by customary market practices recognised by financial institutions in jurisdictions specified in the Third Schedule of the Money Laundering Regulations (2003 Revision).

**(6)** Where bearer shares have been delivered to a person other than a custodian in accordance with subsection (6), that person shall, within sixty days, deliver the shares to a custodian; and if the bearer shares are not deposited with a custodian within sixty days then the shares shall be null and void for all purposes under the Law.

**(7)** Notwithstanding subsection (6), the holder of a bearer shares which has been deemed null and void in accordance with subsection (6) may, within three years of the share becoming null and void, petition the Court for the share to be restored; and the Court may make such order as it considers reasonable in the circumstances.

**(8)** Where the Court has ordered that a bearer share be restored in accordance with subsection (7), the rights under the share shall only be fully restored when the share has been deposited with a custodian.

**(9)** Subject to subsection (5), bearer shares shall be transferred by the custodian only into the custody of another custodian unless the shares are to be redeemed by the company or converted into registered shares.

**(10)** Where a company deals with bearer shares contrary to subsection (9), then the company and every director and officer of the company who is responsible for the contravention is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars.

**(11)** An authorised custodian who transfers a bearer share into the custody of any person contrary to subsection (9) is guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars.

**(12)** A shareholder who knowingly transfers ownership of a bearer share contrary to subsection (2) is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars.

### **Custody of bearer shares**

**250.(1)** A company incorporated under this Law shall ensure that its bearer shares are deposited with a custodian within twelve months of the 26<sup>th</sup> April, 2001.

**(2)** A company may apply in writing to the Registrar for an extension of the period specified under subsection (1), and such application shall be accompanied by -

*(a)* a statement of the reasons for the extension;

- (b) the prescribed fee; and
- (c) such other information as the Registrar considers necessary,

and the Registrar may extend the period by a further period of up to twelve months.

**(3)** If the bearer shares of a company are not deposited with a custodian within the period specified under subsection (1) or any extension of that period granted under subsection (2), then the shares shall be null and void for all purposes under the Law.

**(4)** Notwithstanding subsection (3), the holder of a bearer share which has been deemed null and void in accordance with subsection (3) may, within three years of the share becoming null and void, petition the Court for the share to be restored; and the Court may make such order as it considers reasonable in the circumstances.

**(5)** Where the Court has ordered that a bearer share be restored in accordance with subsection (4), the rights under the share shall only be fully restored when the share has been deposited with a custodian.

**(6)** Where an authorised custodian (“the former custodian”) for any reason refuses or is unable to provide services in accordance with this Law or the Companies Management Law (2003 Revision), it shall give the beneficial owners of the bearer shares, the company which has issued the bearer shares and the Authority not less than sixty days notice of its intention to terminate its services, and the custodian shall provide the beneficial owners with a list consisting of not less than five names of persons who may provide the services of custodian.

**(7)** Where a beneficial of bearer shares refuses or fails within sixty days of receiving a notice under subsection (4) to direct a former custodian to deposit the bearer shares into the custody of a new custodian, the former custodian may provide the company with the name and address of the beneficial owner and instruct the company to register the bearer shares in the name of that beneficial owner, or in the case of a minor, the name of the guardian of the beneficial owner, and the former custodian shall inform the Authority of its direction to the company under this section.

**(8)** The company shall, within thirty days of receiving the instruction under subsection (5), register the shares and notify the custodian and the owner of the shares that it has done so.

**(9)** Where a company contravenes this section, the company and every director and officer of the company who is responsible for the contravention is guilty of an offence and liable on summary conviction to a fine of one thousand dollars for every day during which the contravention occurs or continues, and the company is liable to be immediately dissolved and removed from the register.

### **Recognised custodians**

**251.** The Authority shall, from time to time, publish a list of names of recognised custodians in the Gazette and may amend the list by the alteration of any name, the removal of any name or the insertion of any additional name.

## **FIRST SCHEDULE**

**(Section 22(1))**

### **TABLE A**

#### **Regulations for Management of a Company Limited by Shares**

##### **Preliminary**

**1.(1)** In these regulations -

“the Law” means the Companies Law (2004 Revision).

**(2)** Where any provision of the Law is referred to, the reference is to that provision as modified by any law for the time being in force.

**(3)** Unless the context otherwise requires, expressions defined in the Law or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

##### **Shares**

**2.** Subject to the provisions, if any, in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital or otherwise as the company may, from time to time, by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company is liable, to be redeemed.

**3.** If, at any time, the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of seventy-five per cent of the issued shares of that class or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall, *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

**4.** Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate of the company specifying the share or shares held by him and the amount paid up thereon:

Provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

**5.** If a share certificate is defaced, lost or destroyed it may be renewed on payment of such fee, if any, not exceeding twenty cents and on such terms, if any, as to evidence and indemnity, as the directors think fit.

##### **Lien**

**6.** The company shall have a lien on every share (not being a fully paid share) for all moneys (whether

presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may, at any time, declare any share to be wholly or in part exempt from this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

**7.** The company may sell, in such manner as the directors think fit, any shares in which the company has a lien, but no sale shall be made unless some amount in respect of which the lien exists is presently payable nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the persons entitled thereto by reason of his death or bankruptcy.

**8.** For giving effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

**9.** The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale.

### **Calls on Shares**

**10.** The directors may, from time to time, make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed twenty-five per cent of the nominal amount of the share, or be payable earlier than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

**11.** The joint holders of a share shall be jointly and severally liable to pay calls in respect thereof.

**12.** If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of six per centum per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

**13.** The provisions of these regulations as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

**14.** The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

**15.** The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent) as may be agreed upon between the member paying the sum in advance and the directors.

### **Transfer and Transmission of Shares**

**16.** The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

**17.** Shares shall be transferred in the following form, or in any usual or common form approved by the directors -

I, A.B., of \_\_\_\_\_ in consideration of the sum of \$ \_\_\_\_\_ paid to me by C.D., of \_\_\_\_\_  
(hereinafter called "the said transferee") do hereby transfer to the said transferee the share (or shares) numbered in the undertaking called the \_\_\_\_\_ Company Limited, to hold unto the said transferee, subject to the several conditions on which I hold the same: and I, the said transferee, do hereby agree to take the said share (or shares) subject to the conditions aforesaid. As witnessed our hands the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness to the signatures of, etc.

**18.** The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless -

- (a) a fee not exceeding fifty cents is paid to the company in respect thereof; and
- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer:

Provided that if the directors refuse to register a transfer of any shares, they shall, within two months after the date on which the transfer was lodged with the company, sent to the transferee notice of the refusal.

**19.** The legal personal representative of a deceased sole holder of a share shall be the only person recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors, survivor or the legal personal representatives of the deceased survivor, shall be the only person recognised by the company as having any title to the share.

**20.** Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

**21.** A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

### **Forfeiture of Shares**

**22.** If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

**23.** The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the

notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

**24.** If the requirements of such notice are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

**25.** A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

**26.** A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which at the date of forfeiture were payable by him to the company in respect of the shares, but his liability shall cease if and when the company receives payment in full of the nominal amount of the shares.

**27.** A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

**28.** The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a share becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

**29.** The company may, by ordinary resolution, convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

**30.** The holders of stock may transfer the same, or any part thereof, in the same manner and subject to the same regulations as and subject to which the shares from which the stock arose might prior to conversion have been transferred, or as near thereto as circumstances admit; but the directors may, from time to time, fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

**31.** The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing shares, have conferred that privilege or advantage.

**32.** Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder".

### **Alteration of Capital**

**33.** The company may, from time to time by ordinary resolution, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

**34.** Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing

shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

**35.** The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

**36.** The company may by ordinary resolution -

- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (b) sub-divide its existing shares, or any of them, into shares of smaller amounts than is fixed by the memorandum of association, subject nevertheless to section 13 of the Law; and
- (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

**37.** The company may, by special resolution, reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorised and consent required by law.

### **General Meetings**

**38.** A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be resolved by the company in general meeting, or in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

**39.** Such general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

**40.** The directors may, whenever they think fit, convene an extraordinary general meeting. If, at any time, there are not in the Island sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

### **Notice of General Meetings**

**41.** Subject to section 60 of the Law relating to special resolutions, at least seven days' notice (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter provided, or in such other manner, if any, as may be prescribed by the company in general meetings, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

**42.** The accidental omission to give notice of a meeting to, or the non-receipt of a notice of a meeting by any member shall not invalidate the proceedings at any meeting.

### **Proceedings at General Meetings**

**43.** All business shall be deemed special that is transacted at any extraordinary meeting, and also all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, election of directors and other officers in the place of those retiring by rotation, and fixing of the remuneration of the auditors.

**44.** No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

**45.** If, within half an hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

**46.** The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

**47.** If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose one of their number to be chairman.

**48.** The chairman may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

**49.** At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote or by one member or two members together holding not less than fifteen per cent of the paid up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, carried unanimously, carried by a particular majority or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

**50.** If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

**51.** In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the poll is demanded shall be entitled to a second or casting vote.

**52.** A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith; a poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

### **Votes of Members**

**53.** On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

**54.** In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

**55.** A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other person in the nature of a committee appointed by that court, and any such committee or other person, may, on a poll, vote by proxy.

**56.** No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

**57.** On a poll votes may be given either personally or by proxy.

**58.** The instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

**59.** The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

**60.** An instrument appointing a proxy may be in the following form or any other form approved by the directors -

Company Limited

I, \_\_\_\_\_, of \_\_\_\_\_ being a member of the  
Company Limited hereby appoint \_\_\_\_\_ of  
\_\_\_\_\_ as my proxy, to vote for me and on my behalf at the (ordinary or extraordinary, as the  
case may be) general meeting of the company to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and at  
any adjournment thereof.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**61.** The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

**Corporations Acting by Representatives at Meetings**

**62.** Any corporation which is a member of the company may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

## **Directors**

- 63.** The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.
- 64.** The remuneration of the directors shall, from time to time, be determined by the company in general meeting.
- 65.** The qualification of a director shall be the holding of at least one share in the company.

## **Powers and Duties of Directors**

- 66.** The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company and may exercise all such powers of the company as are not, by the Law or these articles, required to be exercised by the company in general meeting, subject nevertheless, to any regulation of these articles, to the Law and to such regulations, being not inconsistent with the aforesaid regulations or Law, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.
- 67.** The directors may, from time to time, appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary, or commission or participation in profits, or partly in one way and partly in another) as they may think fit and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation or retirement of directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolves that his tenure of the office of managing director or manager be determined.
- 68.** The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not, at any time, exceed the issued share capital of the company without the sanction of the company in general meeting.
- 69.** The directors shall cause minutes to be made in books provided for the purpose -
- (a) of all appointments of officers made by the directors;
  - (b) of the names of the directors present at each meeting of the directors and of any committee of the directors; and
  - (c) of all resolutions and proceedings at all meetings of the company, and of the directors and of committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

## **The Seal**

- 70.** Any seal of the company shall not be affixed to any instrument except by the authority of a resolution of a board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which any seal of the company is so affixed in their presence.

### **Disqualification of Directors**

- 71.** The office of director shall be vacated, if the director -
- (a)* without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager;
  - (b)* becomes bankrupt;
  - (c)* is found to be or becomes of unsound mind;
  - (d)* resigns his office by notice in writing to the company; or
  - (e)* is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company:

Provided however, that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contract with or done any work for the company if he has declared the nature of his interest at the first meeting of the directors of the company held after he became interested in the contract, but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

### **Rotation of Directors**

- 72.** At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.
- 73.** The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- 74.** A retiring director shall be eligible for re-election.
- 75.** The company at the general meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill such vacated office.
- 76.** The company may, from time to time in general meeting, increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.
- 77.** Any casual vacancy occurring in the board of directors may be filled by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.
- 78.** The directors shall have power, at any time and from time to time, to appoint a person as an additional director, who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.
- 79.** The company may, by special resolution, remove a director before the expiration of his period in office, and may, by an ordinary resolution, appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

### **Proceedings of Directors**

**80.** The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time, summon a meeting of the directors.

**81.** The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceeds three, be three, and when the number of directors does not exceed three, be two.

**82.** The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

**83.** The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

**84.** The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

**85.** A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

**86.** A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present and, in case of an equality of votes, the chairman shall have a second or casting vote.

**87.** All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

### **Dividends and Reserve**

**88.** The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by directors.

**89.** The directors may, from time to time, pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

**90.** No dividends shall be paid otherwise than out of profits.

**91.** Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as

paid on the share.

**92.** The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies or for equalising dividends or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may, from time to time think fit.

**93.** If several persons are registered as joint holders of any share, any of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

**94.** Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto or in the case of joint holders to any one of such joint holders at his registered address or to such person and such address as the member or person entitled or such joint holders, as the case may be, may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders, as the case may be, may direct.

**95.** No dividend shall bear interest against the company.

#### **Accounts**

**96.** The directors shall cause proper books of account to be kept with respect to -

(a) all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure takes place; and

(b) all sales and purchases of goods by the company and the assets and liabilities of the company.

**97.** The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

**98.** The directors shall, from time to time, determine whether and to what extent, at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account, book or document of the company except as conferred by law or authorised by the directors or by the company in general meeting.

**99.** At the ordinary general meeting in every year the directors shall cause to be prepared and shall lay before the company a profit and loss account and a balance sheet for the period since the preceding account or, (in the case of the first ordinary general meeting) since the commencement of business by the company, made up to a date not more than six months before such meeting.

**100.** A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditor's report shall, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company.

#### **Audit**

**101.** The accounts relating to the company's affairs shall be audited in such manner as may be determined

from time to time by the company in general meeting or, failing any such determination, by the directors.

### **Notices**

**102.(1)** A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in the Islands) to the address, if any, in the Islands supplied by him to the company for the giving of notices to him.

**(2)** Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of twenty-four hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

**103.** If a member has no registered address in the Islands and has not supplied to the company an address in the Islands for the giving of notices to him, a notice addressed to him and advertised in a daily newspaper circulating in the Islands shall be deemed to be duly given on him at noon on the day following the day on which the newspaper is circulated and the advertisement appeared therein.

**104.** A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

**105.** A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid envelope addressed to them by name, or by the title of representatives of the deceased or trustee of the bankrupt or by any like description, at the address, if any, within the Islands, supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied), by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

**106.** Notice of every general meeting shall be given in some manner hereinbefore authorised to -

- (a)* every member except those members who (having no registered address in the Islands) have not supplied to the company an address in the Islands for the giving of notices to them; and
- (b)* every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting.

No other person shall be entitled to receive notices of general meetings.

### **SECOND SCHEDULE**

#### **Conditions, Provisions and Limits Subject to which Bank Depositors are Preferential Creditors in a Winding Up.**

##### **Eligibility for Precedence**

**1.** The following shall not be eligible for the precedence in priority granted by section 162 \_

- (a)* the amount of a deposit, the ownership of which becomes held, or comes to be treated as held (except in the case of the death of the owner of the deposit), by a

person after the presentation of the petition for the winding up of the bank or the commencement of the voluntary winding up of the bank; and

- (b) a deposit in the name of\_
- (i) a person licensed under section 6(1) of the Banks and Trust Companies Law (2003 Revision);
  - (ii) a person authorised, licensed or recognised as a bank or deposit holder in a country or territory outside the Islands;
  - (iii) a person who, in the opinion of the Court, has any responsibility for, or may have profited, or may profit, directly or indirectly, from the winding up;
  - (iv) a person who was, at the date of presentation of the petition for the winding up of the bank or the commencement of the voluntary winding up of the bank, a director, controller or manager of the bank or who, in the opinion of the court exercised such functions;
  - (v) a person who is the legal or beneficial owner of five per cent or more of the shares of all classes issued by the bank; or
  - (vi) a company or corporation, whether or not incorporated in the Islands, which is, at the date of the presentation of the petition for the winding up of the bank or the commencement of the voluntary winding up of the bank, a parent, subsidiary or fellow subsidiary of the bank, or which is in common ownership with the bank.

### **Deposit limit**

**2.(1)** The precedence in priority granted by section 162 shall be limited to the first twenty thousand dollars of each eligible deposit, and if the deposit is in a currency other than Cayman Islands dollars, it shall be converted into Cayman Islands dollars for the purpose of calculating the amount eligible for precedence in priority by reference to the rate determined for the purpose by the Cayman Islands Monetary Authority.

**(2)** In determining the amount of each eligible deposit to receive precedence in priority\_

- (a) separate deposits in the same legal or beneficial ownership shall be aggregated and treated as one deposit;
- (b) the ownership of a deposit in joint names shall be deemed to be divided equally between the joint depositors;
- (c) the ownership of a deposit in the name of a partnership shall be deemed to be divided equally among the partners;
- (d) a deposit which is a client account, and which is designated as such, shall be treated as a separate deposit, made by the client of the depositor, of amounts corresponding to the amount to which such client is entitled; and
- (e) the amount of each eligible deposit shall be reduced by the amount of any liability of the depositor to the bank in respect of which a right of set\_off existed at the date of the presentation of the petition for the winding up of the bank, or the commencement of the voluntary winding up of the bank.