ANGUILLA

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CHAPTER C65

COMPANIES ACT

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COMPANIES ACT

PART 1

INTERPRETATION

Definitions

1. In this Act—

"affairs" means, in relation to any company or other body corporate, the relationship among the company or body corporate, its affiliates and the shareholders, directors and officers thereof, but does not include any businesses carried on by the companies or other bodies corporate;

"Anguilla company" means a company incorporated or continued under this Act, a company incorporated or continued under the International Business Companies Act, or a company formed or continued under the Limited Liability Company Act;

"appointed stock exchange" means any stock exchange appointed by the Minister by notice in the *Gazette* to approve the offering of shares or debentures to the public;

"articles" means—

(a) the articles of incorporation, articles of amendment, articles of continuance, articles of consolidation, articles of merger, articles of dissolution and articles of revival; and

(b) any statute, letters patent, memorandum of association, certificate of incorporation, or other corporate instrument evidencing the existence of a body corporate continued as a company under this Act;

"associated", when used to indicate a relationship with any person, means—

(a) a company or body corporate of which that person beneficially owns or controls, directly or indirectly, shares or debentures convertible into shares, that carry more than 20% of the voting rights—

(i) under all circumstances,

(ii) by reason of occurrence of an event that has occurred and is continuing, or

(iii) by reason of a currently exercisable option or right to purchase those shares or those convertible debentures;

(b) a partner of that person acting on behalf of the partnership of which they are partners;

(c) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;

(d) a spouse of that person;

(e) a legitimate or an illegitimate child, a step-child or an adopted child of that person; or

(f) a relative of that person or of his spouse if that relative has the same residence as that person;

"auditor" includes a partnership of auditors;

"beneficial interest" or "beneficial ownership" includes ownership through a trustee, legal representative, agent or other intermediary;

"body corporate" includes a company or other body corporate wherever or however incorporated, other than a corporation sole;

"calendar quarter" means one of the following periods—

(a) 1st January to 31st March;

(b) 1st April to 30th June;

(c) 1st July to 30th September; or

(d) 1st October to 31st December;

"company" means a body corporate that is incorporated or continued under this Act;

"corporate instruments" includes any statute, letters patent, memorandum of association, articles of association, certificate of incorporation, certificate of continuance, by-laws, regulations or other instrument by which a body corporate is incorporated or continued or that governs or regulates the affairs of a body corporate;

"Court" means the High Court;

"debenture" includes debenture stock and any bond or other instrument evidencing an obligation or guarantee, whether secured or not;

"director", in relation to a body corporate, means a person occupying the position of a director of the corporate body by whatever title he is called;

"domestic company" means a company other than a non-domestic company;

"enactment" means an Act of the Legislature of Anguilla or a regulation made under an Act of the Legislature of Anguilla;

"foreign company" means a body that is incorporated or formed under the laws of a country other than Anguilla;

"former Act" means the Companies Act, Revised Laws 1961, Cap. 335;

"former-Act company" means a company incorporated or registered under the former Act or any Act replaced by that Act;

"incorporator", in relation to a company, means a person who signs the articles of incorporation of the company;

"Judge" means Judge of the Court;

"legal representative", in relation to a company, shareholder, debenture holder or other person, means a person who stands in place of and represents the company, shareholder, debenture holder or person, and without limiting the generality of the foregoing, includes, as the circumstances require, a trustee, executor, administrator, assignee, or receiver of the company, shareholder, debenture holder or person;

"member" means a person who, in respect of a company limited by guarantee or a company limited by shares and guarantee, has undertaken to contribute to the assets of the company in the event of its winding up in accordance with section 187;

"Minister" means the Minister responsible for finance;

"non-domestic company" means a company that does not maintain a physical presence, office or staff in Anguilla or that does not engage in any revenue generating activities in Anguilla;

"officer", in relation to a body corporate, means—

(a) the chairman, deputy chairman, president or vice-president of the board of directors;

(b) the managing director, general manager, comptroller, secretary or treasurer; or

(c) any other person who performs for the body corporate functions similar to those normally performed by the holder of any office specified in paragraph (a) or (b) and who is appointed by the board of directors to perform those functions;

"ordinary resolution" means a resolution passed by a majority of the votes cast by the shareholders who voted in respect of that resolution;

"person" includes a company, trust, partnership, limited liability company or other association;

"prescribed" means prescribed by regulation under section 268;

"public company" means a company any of whose issued shares or debentures are or were part of a distribution to the public;

"record" includes any register, book or other record that is required to be kept by a company;

"redeemable share" means a share issued by a company—

(a) that the company can purchase or redeem upon demand of the company; or

(b) that the company is required by its articles to purchase or redeem at a specified time or upon the demand of a shareholder;

"Registrar" refers to the Registrar of Companies under this Act;

"relevant licence" means—

(a) a licence issued under the Company Management Act; or

(b) a licence issued under the Trust Companies and Offshore Banking Act;

"security interest" means any interest in or charge upon any property of a company by way of mortgage, bond, lien, pledge or other means that is created or taken to secure the payment of an obligation of the company;

"send" includes deliver;

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

"share" includes stock;

"shareholder", in relation to a company, includes—

(a) a member of a company described in Divisions 1 or 2 of Part 4, except where inconsistent with a provision of that Division;

(b) the personal representative of a deceased shareholder;

(c) the trustee in bankruptcy of a bankrupt shareholder; and

(d) a person in whose favour a transfer of shares has been executed but whose name has not been entered in the register of members, or, if 2 or more transfers of those shares have been executed, the person in whose favour the most recent transfer has been made;

"special resolution" means a resolution of which at least 21 days notice is given that is—

(a) passed by a majority of not less than 75% of the votes cast by the shareholders who voted in respect of the resolution; or

(b) signed by all the shareholders entitled to vote on the resolution.

Meaning of "affiliated", "control", "holding" and "subsidiary"

2. (1) For the purposes of this Act—

(a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and

(b) if two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.

(2) For the purposes of this Act, a body corporate is controlled by a person if any shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are, except by way of security only, held, directly or indirectly, by or on behalf of that person.

(3) For the purposes of this Act—

(a) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and

(b) a body corporate is a subsidiary of another body corporate if it is controlled by that other body corporate.

Meaning of "distribution" to public

3. (1) For the purposes of this Act—

(a) a share or debenture of a body corporate is part of a distribution to the public, when, in respect of the share or debenture—

(i) there has been, under the laws of Anguilla or any other jurisdiction, a filing of a prospectus, statement in lieu of prospectus, registration statement, stock exchange take-over bid circular or similar instrument, or

(ii) the share or debenture is listed for trading on any stock exchange wherever situated; and

(b) a share or debenture of a body corporate is deemed to be part of a distribution to the public where the share or debenture has been issued and a filing referred to in sub-paragraph (a)(i) would be required if the share or debenture were being issued currently.

(2) For the purposes of this Act, the shares or debentures of a company that are issued upon a conversion of other shares or debentures of a company, or in exchange for other shares or debentures, are part of a distribution to the public if any of those others were part of a distribution to the public.

(3) For the purposes of this Act—

(a) a statement included in a prospectus or a statement in lieu of prospectus is deemed to be untrue if it is misleading in the form and context in which it is included; and

(b) a reference to an offer or offering of shares or debentures for subscription or purchase is deemed to include an offer of shares or debentures by way of barter or otherwise.

Meaning of "offer" to public

4. (1) A reference in this Act to offering shares or debentures to the public includes, unless the contrary intention appears, a reference to offering them to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner, and a reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, unless the contrary intention appears, be similarly interpreted.

(2) Subsection (1) does not require that any offer or invitation be treated as being made to the public if the offer or invitation can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

(3) A provision in the articles or by-laws of a company that prohibits invitations to the public to subscribe for shares or debentures does not prohibit the making of an invitation to the shareholders, debenture holders or employees of the company.

PART 2

INCORPORATION AND OPERATION OF COMPANIES

Division 1

Incorporation of Companies

Incorporators

5. (1) Subject to subsection (2), one or more persons may incorporate a company by signing and filing articles of incorporation with the Registrar.

(2) An individual who—

(a) is less than 18 years of age;

(b) is of unsound mind and has been so found by a Court or tribunal in Anguilla or elsewhere; or

(c) has the status of a bankrupt;

may not be an incorporator of a company under this Act.

Types of companies

6. Every company incorporated under this Act shall be—

(a) a company limited by shares;

(b) a company limited by guarantee; or

(c) a company limited by both shares and guarantee.

Formalities

7. (1) Articles of incorporation of a proposed company shall follow the prescribed form and shall set out—

(a) its proposed name;

(b) the address and mailing address, if any, of the first registered office of the company and the name, address and mailing address, if any, of its first registered agent;

(c) whether the company is limited by shares or guarantee or by both;

(d) whether the company is a non-profit company;

(e) the classes and any maximum number of shares that the company is authorised to issue and—

(i) if there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares, and

(ii) if a class of shares can be issued in series, the authority given to the directors to fix the number of shares in, or to determine the designation of, and the rights, privileges, restrictions and conditions attaching to, the shares of each series;

(f) if the right to transfer shares of the company is to be restricted, a statement that the right to transfer shares is restricted and the nature of those restrictions;

(g) the number of directors or, subject to section 70(a), the minimum and maximum number of directors and in respect of each person who has consented to be a first director of the company—

(i) in the case of an individual, his name, nationality, address and mailing address, if any, and

(ii) in the case of a corporation, its name, country of registration, address and mailing address, if any;

(h) any restrictions on the business that the company may carry on; and

(i) that—

(i) in the case of a company limited by shares and a company limited by shares and guarantee, the liability of each shareholder shall be limited to the amount paid up on the shares held by him, and

(ii) in the case of a company limited by guarantee and a company limited by shares and guarantee, the liability of each member shall be limited to such amount as he may undertake by the articles of incorporation to contribute to the assets of the company in the event that it is wound up.

(2) The articles may set out any provisions permitted by this Act or by law to be set out in the by-laws of the company.

(3) Where the right to transfer any shares is restricted, a notification to that effect shall be given on each share certificate issued in respect of those shares.

Required votes

8. (1) Subject to subsection (2), if the articles or any unanimous shareholder agreement requires a greater number of votes of directors or shareholders than that required by this Act to effect any action, the provisions of the articles or of the unanimous shareholder agreement prevail.

(2) The articles may not require a greater number of votes of shareholders to remove a director than the number specified in section 72.

Certificate of incorporation

9. If he is satisfied that the requirements of this Act in respect of incorporation have been complied with, the Registrar shall, upon receipt of articles of incorporation, issue a certificate of incorporation, and the certificate is conclusive proof of the incorporation of the company named in the certificate.

Effective date of incorporation

10. A company comes into existence on the date shown in its certificate of incorporation.

Corporate name

11. (1) The word “Limited”, “Corporation” or “Incorporated” or the abbreviation “Ltd.” or “Corp.” or “Inc.” shall be the last part of the name of every company, but a company may use and may be legally designated by the full or the abbreviated form.

(2) Notwithstanding subsection (1), in the case of a private company the words or abbreviations specified in one of the following paragraphs may be used in the name of the company in place of one of the words or abbreviations set out in subsection (1)—

(a) “Sendirian Berhad” or the abbreviation “Sdn Bhd”;

(b) “Société à Responsabilité Limitée” or the abbreviation “SARL”;

(c) “Sociedad Anonima” or the abbreviation “S.A.”;

(d) “Besloten Vennootschap” or the abbreviation “B.V.”;

(e) “Gesellschaft mit beschrankter Haftung” or the abbreviation “GmbH”;

(f) “Naamloze Vennootschap” or the abbreviation “NV”;

(g) one or more words, or an abbreviation thereof, approved by the Registrar that, in his opinion, denote the existence of a body corporate with limited liability in a jurisdiction other than Anguilla.

(3) Where the words or abbreviation set out in paragraph (2)(a), (b), (c), (d), (e) or (f) are used in the name of a company, they shall form the last part of the company’s name.

(4) Where one or more words, or an abbreviation thereof, approved by the Registrar under paragraph (2)(g) are used in the name of a company, the word, words or abbreviation shall be placed in the position within the name of the company that the Registrar directs.

(5) The Registrar may exempt a body corporate continued as a company under this Act from the requirements of subsection (1).

(6) A person who is not a company incorporated, formed, continued or registered under this Act, the International Business Companies Act or the Limited Liability Company Act may not carry on business under a name—

(a) that includes as its last part one of the words or phrases set out in subsection (1), or in paragraphs (2)(a) to (f); or

(b) that is likely to suggest that he is incorporated, formed, continued or registered under this Act, the International Business Companies Act or the Limited Liability Company Act.

(7) A person who contravenes subsection (6) commits an offence.

Prohibited, refused and reserved names

12. A company shall not be incorporated with or have a name—

(a) that is prohibited or refused under section 245 or 246; or

(b) that is reserved for another company or intended company under section 244.

Name change required

13. Where—

(a) by inadvertence or otherwise, a company is incorporated or continued under, or changes its name to, a name that—

(i) is reserved for another company or intended company under section 244, or

(ii) is prohibited under section 245;

(b) the Registrar is of the opinion that he should have refused—

(i) to accept the articles of incorporation or continuance, or

(ii) to register articles amending the name of a company,

under section 246; or

(c) a company is permitted to use a name on the undertaking of another person given under section 245(a) to cease carrying on business under a similar name and that person fails to comply with his undertaking;

the Registrar may direct the company to change its name within such period of time as he may stipulate.

Revoking and assigning names

14. (1) Where a company has been directed under section 13 to change its name and has not, within the time stipulated by the Registrar under section 13, changed its name to a name that complies with this Act—

(a) the Registrar may revoke the name of the company and assign to it a name, and

(b) until changed under this Division, the name of the company is thereafter the name so assigned.

(2) When a company has had its name revoked and a name assigned to it under subsection (1), the Registrar shall issue a certificate of amendment showing the new name of the company and shall forthwith give notice of the change in the *Gazette*.

(3) Upon the issue of a certificate of amendment under subsection (2), the articles of the company to which the certificate refers are amended accordingly on the date shown in the certificate.

(4) A company that, after the issue of a certificate of amendment under subsection (1), uses a name that has been revoked by the Registrar commits an offence.

Publication of name and registered office

15. (1) A company must ensure—

(a) that its name and the address of its registered office is clearly stated in every written communication issued by or on behalf of the company; and

(b) that its name is clearly stated in every document issued or signed by or on behalf of the company that evidences or creates a legal obligation of the company.

(2) If the name of a company is not stated or is incorrectly stated on a document referred to in paragraph (1)(b) and the company fails to discharge its legal obligation, every person who issued or signed the document is liable to the same extent as the company unless—

(a) the person in whose favour the obligation was incurred was aware at the time the document was issued or signed that the obligation was being incurred by the company; or

(b) the Court is of the opinion that it would not be just and equitable for the person who issued or signed the document to be liable.

(3) If a written communication or a document is issued or signed by or on behalf of a company in contravention of subsection (1), the company and every person who issued the written communication or who issued or signed the document commits an offence.

Pre-incorporation contracts

16. (1) Except as provided in this section, a person who enters into a written contract in the name of or on behalf of a company before it comes into existence is personally bound by the contract and is entitled to the benefits of the contract.

(2) Within a reasonable time after a company comes into existence, it may, by any action or conduct signifying the intention to be bound by it, adopt a written contract made in its name or on its behalf before it came into existence.

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

(a) the company is bound by the contract and is entitled to its benefits as if the company had been in existence at the date of contract and had been a party to it; and

(b) a person, who purported to act in the name of the company or on its behalf ceases, except as provided in subsection (4), to be bound by or entitled to the benefits of the contract.

(4) Whether or not a written contract made before the coming into existence of the company is adopted, a party to the contract may apply to the Court for an order fixing obligations under the contract as joint or joint and several, or apportioning liability between or among the company and a person who purported to act in the name of the company or on its behalf, and the Court may make any order it thinks fit.

(5) Notwithstanding anything in this section, if expressly so provided in the written contract, a person who purported to act for or on behalf of a company before it came into existence is not bound by the contract or entitled to the benefits of the contract.

Division 2

Corporate Capacity and Powers

Capacity and powers

17. (1) A company has the capacity, and, subject to any limitations in this Act or any other law, all the rights, powers and privileges of an individual.

(2) A company has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Anguilla to the extent that the laws of Anguilla and of that jurisdiction permit.

(3) It is not necessary for a by-law to be passed to confer any particular power on a company or its directors.

(4) This section does not authorise a company to carry on any business or activity in breach of—

(a) any enactment prohibiting or restricting the carrying on of the business or activity; or

(b) any provision requiring any permission or licence for the carrying on of the business or activity.

Restriction of powers

18. A company shall not—

(a) carry on any business or exercise any power that it is restricted by its articles from carrying on or exercising; or

(b) exercise any of its powers in a manner contrary to its articles.

Validity of acts

19. For the avoidance of doubt, it is declared that no act of a company, including any transfer of property to or by a company, is invalid by reason only that the act or transfer is contrary to its articles or by-laws.

Notice not presumed

20. No person is affected by, or presumed to have notice or knowledge of, the contents of a document concerning a company by reason that the document has been filed with the Registrar or is available for inspection at any office of the company.

No disclaimer allowed

21. A company or a guarantor of an obligation of the company may not assert against a person dealing with the company or with any person who has acquired rights from the company—

(a) that any of the articles or by-laws of the company or any unanimous shareholder agreement has not been complied with;

(b) a person named in the articles of incorporation as a person who has consented to be a first director of the company or a person named in the most recent notice filed with the Registrar under section 76 is not a director of the company;

(c) that the place named in the most recent notice filed with the Registrar under section 149 is not the registered office of the company;

(d) that a person held out by the company as a director, an officer or an agent of the company has not been duly appointed or had no authority to exercise the powers and perform the duties that are customary in the business of the company or usual for such a director, officer or agent;

(e) that a document issued by any director, officer or agent of the company with actual or usual authority to issue the document is not valid or not genuine; or

(f) that the financial assistance referred to in section 54 or the sale, lease, or exchange of property referred to in section 125 was not authorised;

except where that person has, or ought to have by virtue of his position with or relationship to the company, knowledge to the contrary.

Effect of articles and by-laws

22. (1) The articles and by-laws of a company have no effect to the extent that they contravene, or are inconsistent with this Act.

(2) Subject to this Act, the articles and by-laws of a company are binding as between—

(a) the company and each shareholder; and

(b) shareholders.

Contracts of company

23. (1) A contract made according to this section on behalf of a company—

(a) is in form effective in law and binds the company and the other party to the contract; and

(b) may be varied or discharged in the like manner that it is authorised by this section to be made.

(2) A contract that, if made between individuals, would, by law, be required to be in writing under seal may be made on behalf of a company in writing under seal.

(3) A contract that, if made between individuals, would, by law, be required to be in writing or to be evidenced in writing by the parties to be charged thereby may be made or evidenced in writing signed in the name or on behalf of the company.

(4) A contract that, if made between individuals, would, by law, be valid although made orally only and not reduced to writing may be made orally on behalf of the company.

Bills and notes

24. A bill of exchange or promissory note is presumed to have been made, accepted or endorsed, on behalf of a company, if made, accepted or endorsed in the name of the company or if expressed to be made, accepted or endorsed on behalf or on account of the company.

Power of attorney

25. (1) A company may, by writing under seal, empower any person, generally or in respect of any specified matter, as its attorney to execute deeds on its behalf in any place within or outside Anguilla.

(2) A deed signed by a person empowered as provided in subsection (1) binds the company and has the same effect as if it were under the company's seal.

Company seals

26. (1) A company may have a common seal with its name engraved on it in legible characters but, except when required by any enactment to use its common seal, the company may use its common seal or any other form of seal for the purpose of sealing any document.

(2) If authorised by its by-laws, a company may have for use in any country other than Anguilla or for use in any district or place not situated in Anguilla, an official seal, that shall be a facsimile of the common seal of the company with the addition on its face of the name of every country, district or place where it is to be used.

(3) Every document to which an official seal of the company is duly affixed binds the company as if it had been sealed with the common seal of the company.

(4) A company may, by an instrument in writing under its common seal, authorise any person appointed for that purpose to affix the company's official seal to any document to which the company is party in the country, district or place where its official seal can be used.

(5) Any person dealing with an agent appointed under subsection (4) in reliance on the instrument conferring the authority may assume that the authority of the agent continues during the period, if any, mentioned in the instrument, or, if no period is so mentioned, until that person has actual notice of the revocation or determination of the authority.

(6) A person who affixes an official seal of a company to a document shall, by writing under his hand, certify on the document the date on which, and the place at which, the official seal is affixed.

Company without shareholders

27. If at any time a company does not have at least one shareholder, any person doing business in the name of or on behalf of the company is personally liable for the payment of the debts of the company contracted during the time and the person may be sued for the debts without joinder in the proceedings of any other person.

Division 3

Share Capital

Nature of shares

28. (1) Shares in a company are personal estate, and a share is transferable in the manner provided by this Act.

(2) Shares in a company are to be without nominal or par value.

(3) Subject to subsection (4), each share in a company shall be distinguished by an appropriate designation.

(4) If at any time all the issued shares in a company, or all the issued shares in a company of a particular class, rank equally for all purposes, none of those shares need thereafter have a distinguishing designation so long as they rank equally for all purposes with all shares for the time being issued, or all the shares for the time being issued of the particular class, as the case may be.

(5) No company may issue bearer shares or bearer share certificates.

When only one class of shares

29. When a company has only one class of shares, each share confers on the holder rights equal in all respects to the rights conferred on the holder of each other share, including—

(a) the right to vote at any meeting of shareholders;

(b) the right to an equal share in dividends declared by the company; and

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

Share classes

30. The articles of a company may provide for more than one class of shares and, if they do so—

(a) the rights, privileges, restrictions and conditions attaching to the shares of each class shall be set out in the articles; and

(b) the rights set out in section 29 shall be attached to at least one class of shares, but all of those rights need not be attached to the same class of shares.

Share issue

31. Subject to the articles, the by-laws, any unanimous shareholder agreement, and section 36, shares may be issued at the times, and to the persons, and for the consideration, that the directors determine.

Consideration

32. (1) A share shall not be issued until it is fully paid—

(a) in money; or

(b) in property or past service that is the fair equivalent of the money that the company would have received if the share had been issued for money.

(2) In determining whether property or past service is the fair equivalent of a money consideration, the directors may take into account reasonable charges and expenses of organisation and reorganisation, and payments for property and past services reasonably expected to benefit the company.

(3) For the purposes of this section, "property" does not include a promissory note or a promise to pay.

Stated capital accounts

33. (1) A company shall maintain a separate stated capital account expressed in any of the established currencies for each class and series of shares that it issues.

(2) A company shall add to the appropriate stated capital account the full amount of the consideration that it receives for any shares that it issues.

(3) A company shall not reduce its stated capital or any stated capital account except in the manner provided by this Act.

(4) A company shall not, in respect of a share that it issues, add to a stated capital account an amount greater than the amount of the consideration that it receives for the share.

(5) When a company proposes to add an amount to a stated capital account that it maintains in respect of a class or series of shares, that addition to the stated capital account shall be approved by special resolution if—

(a) the amount to be added was not received by the company as consideration for the issue of shares; and

(b) the company has issued any outstanding shares of more than one class or series.

(6) Notwithstanding section 32 and subsection (2)—

(a) when, in exchange for property, a company issues shares—

(i) to a body corporate that was an affiliate of the company immediately before the exchange, or

(ii) to a person who controlled the company immediately before the exchange,

the company, subject to subsection (4), may add to the stated capital accounts that are maintained for the shares of the classes or series issued, the amount agreed, by the company and the body corporate or person, to be the consideration for the shares so exchanged;

(b) when a company issues shares in exchange for shares of a body corporate that was an affiliate of the company immediately before the exchange, the company may, subject to subsection (4), add to the stated capital accounts that are maintained for the shares of the classes or series issued an amount that is not less than the amount set out, in respect of the acquired shares of the body corporate, in the stated capital or equivalent accounts of the body corporate immediately before the exchange; or

(c) when a company issues shares in exchange for shares of a body corporate that becomes, because of the exchange, an affiliate of the company, the company may, subject to subsection (4), add to the stated capital accounts that are maintained for the classes or series issued an amount that is not less than the amount set out, in respect of the acquired shares of the body corporate, in the stated capital or equivalent accounts of the body corporate immediately before the exchange.

Open-ended mutual company

34. Section 33 and any other provision of this Act relating to stated capital do not apply to a company—

(a) that is a public company;

(b) that carries on only the business of investing the consideration it receives for the shares it issues; and

(c) all or substantially all of whose issued shares are redeemable upon the demand of shareholders.

Series shares

35. (1) The articles of a company may authorise —

(a) the issue of any class of shares in one or more series; and

(b) the directors to fix the number of shares in and to determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series, subject to the limitations set out in the articles.

(2) If any cumulative dividends or amounts payable on return of capital in respect of a series of shares are not paid in full, the shares of all series of the same class participate rateably in respect of accumulated dividends and return of capital.

(3) No rights, privileges, restrictions or conditions attached to a series of shares authorised under this section may confer upon the series a priority in respect of dividends or return of capital over any other series of shares of the same class that are then outstanding.

(4) Before the issue of shares of a series authorised under this section, the directors shall file with the Registrar articles of amendment in the prescribed form to designate a series of shares.

(5) If he is satisfied that the relevant requirements of this Act have been complied with, the Registrar shall, upon receipt from a company of articles of amendment designating a series of shares, issue a certificate of amendment to the company.

(6) The articles of a company are amended on the date shown in the certificate of amendment issued under subsection (5).

(7) A director who authorises, permits or acquiesces in the issue of shares of a series under this section before the filing with the Registrar of articles of amendment commits an offence.

Pre-emptive rights

36. (1) If the articles so provide, no shares of a class of shares may be issued unless the shares have first been offered to the shareholders of the company holding shares of that class.

(2) Shareholders holding shares of the class to be issued have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class at the price and on the terms that those shares are to be offered to others.

(3) Notwithstanding that the articles of a company provide the pre-emptive right referred to in subsections (1) and (2), the shareholders of the company have no pre-emptive right in respect of shares to be issued by the company—

(a) for consideration other than money; and

(b) pursuant to the exercise of conversion privileges, options or rights previously granted by the company.

Conversion privileges

37. (1) A company may grant conversion privileges, options or rights to acquire shares of the company, but shall set out those privileges, options or rights in any certificates or other instruments issued in respect of the certificates.

(2) Conversion privileges, options and rights to acquire shares of a company may be made transferable or non-transferable, and options and rights to acquire shares may be made separable or inseparable from any debentures or shares to which they are attached.

Reserve shares

38. Where a company—

(a) has granted privileges to convert any debentures or shares issued by the company into shares or into shares of another class or series of shares; or

(b) has issued or granted options or rights to acquire shares;

if the articles of the company limit the number of authorised shares, the company shall reserve and continue to reserve sufficient authorised shares to meet the exercise of those conversion privileges, options and rights.

Company holding own shares

39. (1) Subject to subsection (2), and except as provided in sections 40 to 42, a company shall not hold shares in itself or in its holding body corporate.

(2) A company shall cause a subsidiary body corporate of the company that holds shares of the company to sell or otherwise dispose of those shares within 5 years from the date—

(a) that the body corporate became a subsidiary of the company; or

(b) that the company was continued under this Act;

as the case may be.

(3) A company may in the capacity of a legal representative hold shares in itself or in its holding body corporate unless it, or the holding body corporate, or a subsidiary of either of them, has a beneficial interest in the shares.

(4) A company may hold shares in itself or in its holding body corporate by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

Acquisition of own shares

40. (1) Subject to subsection (2) and to its articles, a company may purchase or otherwise acquire shares issued by it.

(2) A company shall not make any payment to purchase or otherwise acquire shares issued by it if there are reasonable grounds for believing that—

(a) the company is unable, or would, after that payment, be unable to pay its liabilities as they become due; or

(b) the realisable value of the company's assets would, after that payment, be less than the aggregate of its liabilities and stated capital of all classes.

(3) A company that contravenes subsection (2) commits an offence.

Other acquisition of own shares

41. (1) Notwithstanding section 46(2), but subject to subsection (3) and to its articles, a company may purchase or otherwise acquire its own issued shares—

(a) to settle or compromise a debt or claim asserted by or against the company;

(b) to eliminate fractional shares; or

(c) to fulfil the terms of a non-assignable agreement under which the company has an option or is obligated to purchase shares owned by a director, an officer or an employee of the company.

(2) Notwithstanding section 40(2), a company may purchase or otherwise acquire its own shares or own issued shares to satisfy the claim of a shareholder who dissents under section 161.

(3) A company shall not make any payment to purchase or acquire under subsection (1) shares issued by it if there are reasonable grounds for believing that—

(a) the company is unable, or would, after the payment, be unable to pay its liabilities as they become due; or

(b) the realisable value of the company's assets would, after that payment, be less than the aggregate of its liabilities and the amount required for payment on a redemption or in a winding up of all shares the holders of which have the right to be paid before the holders of the shares to be purchased or acquired.

(4) A company that contravenes subsection (3) commits an offence.

Redeemable shares

42. (1) Notwithstanding section 40(2) or 41(3), but subject to subsection (2) and to its articles, a company may, at prices not exceeding the redemption price thereof stated in its articles or calculated according to a formula stated in its articles, purchase or redeem any redeemable shares issued by it.

(2) A company shall not make any payment to purchase or redeem any redeemable shares issued by it if there are reasonable grounds for believing that—

(a) the company is unable or would, after that payment, be unable to pay its liabilities as they become due; or

(b) the realisable value of the company's assets would, after that payment, be less than the aggregate of—

(i) its liabilities, and

(ii) the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or in a winding up, rateably with or before the holders of the shares to be purchased or redeemed.

(3) A company that contravenes subsection (2) commits an offence.

Donated shares

43. Subject to section 47, a company may accept from any shareholder a share of the company surrendered to it as a gift, but may not extinguish or reduce a liability in respect of any amount unpaid on the share except in accordance with section 45.

Voting shares held in itself

44. A company holding shares in itself or in its holding body corporate shall not vote or permit those shares to be voted unless the company—

(a) holds the shares in the capacity of a legal representative; and

(b) has complied with any provisions in regulations relating to proxies.

Stated capital reduction

45. (1) Subject to subsection (3), a company may by special resolution reduce its stated capital by—

(a) extinguishing or reducing a liability in respect of an amount unpaid on any share;

(b) returning any amount in respect of consideration that the company received for an issued share, whether or not the company purchases, redeems or otherwise acquires any share or fraction thereof that it issued; and

(c) declaring its stated capital to be reduced by an amount that is not represented by realisable assets.

(2) A special resolution under this section shall specify the stated capital account or accounts from which the reduction of stated capital effected by the special resolution will be deducted.

(3) A company shall not reduce its stated capital under paragraph (1)(a) or (b) if there are reasonable grounds for believing that—

(a) the company is unable, or would, after that reduction, be unable, to pay its liabilities as they become due; or

(b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.

(4) A company that reduces its stated capital under this section shall not later than 30 days after the date of the passing of the resolution, serve notice of the resolution on all persons who on the date of the passing of the resolution were creditors of the company.

(5) A creditor may apply to the Court for an order compelling a shareholder or other recipient—

(a) to pay to the company an amount equal to any liability of the shareholder that was extinguished or reduced contrary to this section; or

(b) to pay or deliver to the company any money or property that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of capital made contrary to this section.

(6) An action to enforce a liability imposed by this section may not be commenced after 2 years from the date of the act complained of.

(7) This section does not affect any liability that arises under section 85 or 86.

(8) A company that contravenes subsection (3) commits an offence.

Stated capital adjustment

46. (1) Upon a purchase, redemption or other acquisition by a company under section 40, 41, 42, 58 or 161, of shares or fractions of shares issued by it, the company must deduct from the stated capital account maintained for the class or series of shares purchased, redeemed or otherwise acquired, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series or fractions of shares purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

(2) A company shall adjust its stated capital accounts in accordance with any special resolution referred to in section 45(2).

(3) Upon a conversion of issued shares of a class into shares of another class, or upon a change under this Division of issued shares of a company into shares of another class or series, the company shall—

(a) deduct from the stated capital account maintained for the class or series of shares changed or converted, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series changed or converted, divided by the number of issued shares of that class or series immediately before the change or conversion; and

(b) add the result obtained under paragraph (a), and any additional consideration received by the company pursuant to the change, to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been changed or converted.

(4) For the purposes of subsection (3), when a company issues two classes of shares and there is attached to each of the classes a right to convert a share of the one class into a share of the other class, then, if a share of one class is converted into a share of the other class, the amount of stated capital attributable to a share in either class is the aggregate of the stated capital of both classes divided by the number of issued shares of both classes immediately before the conversion.

Cancellation of shares

47. Shares or fractions of shares issued by a company and purchased, redeemed or otherwise acquired by the company shall be cancelled, or, if the articles of the company limit the number of authorised shares, the shares or fractions may be restored to the status of authorised, but unissued, shares.

Presumption regarding own shares

48. For the purposes of sections 46 and 47, a company holding shares in itself as permitted by section 40 is deemed not to have purchased, redeemed or otherwise acquired those shares.

Changing share class

49. (1) Shares issued by a company and converted or changed under this Division into shares of another class or series of shares become issued shares of the class or series of shares into which the shares have been converted or changed.

(2) Where its articles limit the number of authorised shares of a class or series of shares of a company and issued shares of that class or series have become, under subsection (1), issued shares of another class or series, the number of unissued shares of the first-mentioned class or series shall, unless the articles of amendment otherwise provide, be increased by the number of shares that, pursuant to subsection (1), became shares of another class or series.

Effect of purchase contract

50. (1) A contract with a company providing for the purchase of shares of the company is specifically enforceable against the company except to the extent that the company cannot perform the contract without thereby being in breach of section 40 or 41.

(2) In any action brought on a contract referred to in subsection (1), the company has the burden of proving that performance of the contract is prevented by section 40 or 41.

(3) Until the company has fully performed a contract referred to in subsection (1), the other party retains the status of a claimant who is entitled—

(a) to be paid as soon as the company is lawfully able to do so; or

(b) to be ranked in a winding up subordinate to the rights of creditors but in priority to the shareholders.

Commission for share purchase

51. The directors of a company acting honestly and in good faith with a view to the best interests of the company may authorise the company to pay a commission to any person in consideration of his purchasing or agreeing to purchase shares of the company from the company or from any other person, or procuring or agreeing to procure purchasers for the shares.

Prohibited dividend

52. (1) A company shall not declare or pay a dividend if there are reasonable grounds for believing that—

(a) the company is unable, or would, after the payment, be unable, to pay its liabilities as they become due; or

(b) the realisable value of the company’s assets would thereby be less than the aggregate of its liabilities and stated capital of all classes.

(2) A company that contravenes subsection (1) commits an offence.

Payment of dividend

53. (1) Subject to subsection (2), a company may pay a dividend in money, in property, or by issuing fully paid shares of the company.

(2) A company shall not pay a dividend in money or in property out of unrealised profits.

(3) If shares of a company are issued in payment of a dividend, the value of the dividend stated as an amount in money shall be added to the stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend.

(4) A company that contravenes subsection (2) commits an offence.

Illicit financial assistance by company

54. (1) When circumstances prejudicial to the company exist, the company or any company with which it is affiliated shall not, except as permitted by section 55, directly or indirectly, give financial assistance by means of a loan guarantee or otherwise—

(a) to a shareholder, director, officer or employee of the company or affiliated company, or to an associate of any of those persons for any purpose; or

(b) to any person for the purpose of, or in connection with, a purchase of a share issued or to be issued by the company or a company with which it is affiliated.

(2) Circumstances prejudicial to the company exist in respect of financial assistance mentioned in subsection (1) when there are reasonable grounds for believing that—

(a) the company is unable or would, after giving the financial assistance, be unable to pay its liabilities as they become due; or

(b) the realisable value of the company's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee, would, after giving the financial assistance, be less than the aggregate of the company's liabilities and stated capital of all classes.

(3) If financial assistance is given in contravention of subsection (1)—

(a) the company and, if applicable, the affiliated company; and

(b) every person in receipt of the financial assistance who is aware that it was given in contravention of subsection (1);

commits an offence.

Permitted financial assistance

55. Notwithstanding section 54, a company may give financial assistance to any person by means of a loan, guarantee or otherwise—

(a) in the ordinary course of business, if the lending of money is part of the ordinary business of the company;

(b) on account of expenditures incurred or to be incurred on behalf of the company;

(c) to a holding body corporate if the company is a wholly-owned subsidiary of the holding body corporate;

(d) to a subsidiary body corporate of the company; or

(e) to employees of the company or any of its affiliates—

(i) to enable or assist them to purchase or erect living accommodation for their own occupation,

(ii) in accordance with a plan for the purchase of shares of the company or any of its affiliates to be held by a trustee, or

(iii) to enable or assist them to improve their education or skills, or to meet reasonable medical expenses.

Enforcement of illicit contracts

56. A contract made by a company contrary to section 54 may be enforced by the company or by a lender for value in good faith without notice of the contravention.

Immunity of shareholders

57. The shareholders of a company are not, as shareholders, liable for any liability, act or default of the company except under section 45(5) or 124(2).

Lien on shares

58. (1) Subject to this Act, the articles of a company may provide that the company has a lien on a share registered in the name of a shareholder or his legal representative for a debt of that shareholder to the company including an amount unpaid in respect of a share issued by a company on the date it was continued under this Act.

(2) A company may enforce a lien referred to in subsection (1) in accordance with its by-laws.

Division 4

Management of Companies

Duty of directors to manage company

59. (1) Subject to any unanimous shareholder agreement, the directors of a company shall—

(a) exercise the powers of the company directly or indirectly through the employees and agents of the company; and

(b) direct the management of the business and affairs of the company.

(2) The directors of a public company must take all reasonable steps to ensure that the secretary or each joint secretary of the company is a person who appears to the directors to have the requisite knowledge and experience to discharge the functions of a secretary of a public company.

(3) For the purposes of this section, a person—

(a) who, immediately before 1st January, 1995, held the office of secretary, assistant secretary or deputy secretary of a public company;

(b) who, for at least 3 of the 5 years immediately preceding his appointment as secretary, held the office of secretary to a public company;

(c) who is a member in good standing of a recognised accounting body approved by the Registrar;

(d) who is an attorney-at-law; or

(e) who by virtue of his holding or having held any other position or having been a member of any other accounting or similar body appears to be capable of discharging the functions of a secretary of a public company;

may be assumed by a director of a public company to have the requisite knowledge and experience to discharge the functions of a secretary to the public company, if the director does not know otherwise.

Number of directors

60. A company must have at least 1 director but a public company shall have no fewer than 3 directors, at least 2 of whom are not officers or employees of the company or any of its affiliates.

Restricted powers

61. If the powers of the directors of a company to manage the business and affairs of the company are in whole or in part restricted by the articles or by-laws of the company, the directors have all the rights, powers and duties of the directors to the extent that the articles or by-laws do not restrict those powers, but the directors are thereby relieved of their duties and liabilities to the extent that the articles or by-laws restrict their powers.

Power to make by-laws

62. At any time before the organisational meeting of directors held pursuant to section 64, the incorporators may make by-laws by signing them.

By-law powers

63. (1) Unless the articles, a by-law, or any unanimous shareholder agreement otherwise provides, the directors of a company may by resolution make, amend, or repeal any by-laws for the regulation of the business or affairs of the company.

(2) The directors of a company shall submit a by-law, or any amendment or repeal of a by-law made under subsection (1) to the shareholders of the company at the next meeting of shareholders after the making, amendment or repeal of the by-law, and the shareholders may, by ordinary resolution, confirm, amend or reject the by-law, amendment or repeal.

(3) A by-law, or any amendment or repeal of a by-law, is effective from the date of the resolution of the directors making, amending or repealing the by-law until—

(a) the by-law, amendment or repeal is confirmed, amended or rejected by the shareholders under subsection (2); or

(b) the by-law, amendment or repeal ceases to be effective under subsection (4);

and, if the by-law, amendment or repeal is confirmed or amended by the shareholders, it continues in effect in the form in which it was confirmed or amended.

(4) When a by-law, or an amendment or repeal of a by-law is not submitted to the shareholders as required by subsection (2), or is rejected by the shareholders, the by-law, amendment or repeal ceases to be effective, and no subsequent resolution of the directors to make, amend or repeal a by-law having substantially the same purpose or effect is effective until the resolution is confirmed, with or without amendment, by the shareholders.

(5) A shareholder who is entitled to vote at an annual meeting of shareholders may make a proposal to make, amend or repeal a by-law.

Organisational meeting

64. (1) After the issue of a certificate of incorporation of a company, a meeting of the directors of the company shall be held at which—

(a) the directors shall either issue at least one share or pass a resolution to dissolve the company under section 206; and

(b) the directors may—

(i) make by-laws, unless by-laws have been made by the incorporators under section 62;

(ii) adopt forms of share certificates and corporate records;

(iii) appoint officers;

(iv) appoint an auditor to hold office until the first annual meeting of shareholders;

(v) make banking arrangements; and

(vi) transact other business.

(2) An incorporator or a director may call a meeting of directors referred to in subsection (1) by giving by post not less than 7 clear days notice of the meeting to each director and stating in the notice the time and place of the meeting.

Individuals not qualified to act as directors

65. (1) An individual who is prohibited by section 5(2) from being an incorporator of a company may not be a director of a company.

(2) An individual who is disqualified under section 66 from being a director of a company, may not, during that period of disqualification, be a director of any company.

(3) An individual who contravenes subsection (2) commits an offence.

Director's disqualification order

66. (1) When, on the application of the Registrar, it appears to the Court that an individual is unfit to be concerned in the management of a company, the Court may order that, without the prior leave of the Court, he may not be a director of the company, or, in any way, directly or indirectly, be concerned with the management of the company for such period—

(a) beginning—

(i) with the date of the order, or

(ii) if the individual is undergoing, or is to undergo a term of imprisonment and the Court so directs, with the date on which he completes that term of imprisonment or is otherwise released from prison; and

(b) not exceeding 5 years;

as may be specified in the order.

(2) In determining whether or not to make an order under subsection (1), the Court shall have regard to all the circumstances that it considers relevant, including any previous convictions of the individual in Anguilla or elsewhere for an offence involving fraud or dishonesty or in connection with the promotion, incorporation or management of any body corporate.

(3) Before making an application under this section in relation to any individual, the Registrar shall give that individual not less than 10 days notice of the Registrar's intention to make the application.

(4) On the hearing of an application made by the Registrar under this section or an application for leave under this section to be concerned with the management of a company, the Registrar and any individual concerned with the application may appear and call attention to any matter that is relevant, and may give evidence and call witnesses.

(5) The Registrar shall register any order made under this section in a Register of Disqualified Directors to be maintained by him for that purpose.

No share qualification required

67. Unless the articles or by-laws of a company otherwise provide, a director of the company need not hold shares issued by the company.

Election of directors

68. (1) A person must not be appointed a director of a company unless he has consented to be a director.

(2) Each person named in the articles of incorporation as a person who has consented to be a first director of the company holds office as a director of the company from the issue of the certificate of incorporation of the company until the first meeting of the shareholders of the company.

(3) Subject to section 70(b), the shareholders of a company shall by ordinary resolution at the first meeting of the company and at each following annual meeting at which an election of directors is

required, elect directors to hold office for a term expiring not later than the close of the third annual meeting of the shareholders of the company following the election.

(4) It is not necessary that all the directors of a company elected at a meeting of shareholders hold office for the same term.

(5) A director who is not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of shareholders following his election.

(6) Notwithstanding subsections (2), (3) and (5), if directors are not elected at a meeting of shareholders, the incumbent directors continue in office until their successors are elected.

(7) If a meeting of shareholders fails, by reason of the disqualification, incapacity or death of any candidates, to elect the number or the minimum number of directors required by the articles of the company, the directors elected at that meeting may exercise all the powers of the directors as if the number of directors so elected constituted a quorum.

(8) The articles or by-laws of a company or any unanimous shareholder agreement may, for terms expiring not later than the close of the third annual meeting of the shareholders following the election, provide for the election or appointment of directors by the creditors or employees of the company or by any classes of these creditors or employees.

Alternate directors

69. (1) A meeting of the shareholders of a company may, by ordinary resolution, elect a person to act as a director in the alternative to a director of the company, or may authorise the directors to appoint such alternate directors as are necessary for the proper discharge of the affairs of the company.

(2) An alternate director shall have all the rights and powers of the director for whom he is elected or appointed in the alternative, except that he is not entitled to attend and vote at any meeting of the directors otherwise than in the absence of that other director.

Cumulative voting

70. Where the articles of a company provide for cumulative voting, the following rules apply—

(a) the articles shall require a fixed number, and not a minimum and maximum number of directors;

(b) each shareholder who is entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by him, multiplied by the number of directors to be elected, and he may cast all his votes in favour of one candidate, or distribute them among the candidates in any manner;

(c) a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting 2 or more persons to be elected by a single resolution;

(d) if a shareholder votes for more than one candidate without specifying the distribution of his votes among the candidates, he distributes his votes equally among the candidates for whom he votes;

(e) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes must be eliminated until the number of candidates remaining equals the number of positions to be filled;

(f) each director ceases to hold office at the close of the first annual meeting of shareholders following his election;

(g) a director may not be removed from office if the votes cast against his removal would be sufficient to elect him and those votes could be voted cumulatively at the election at which the same total number of votes were cast and the number of directors required by the articles were then being elected;

(h) the number of directors required by the articles may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected.

Termination of office

71. (1) A director of a company ceases to hold office when—

(a) he dies or resigns;

(b) he is removed in accordance with section 72; or

(c) he ceases to be qualified under section 65 or 66.

(2) The resignation of a director of a company becomes effective at the time his written resignation is sent to the company or at the time specified in the resignation, whichever is later.

Removal of directors

72. (1) Subject to section 70(g), the shareholders of a company may—

(a) by ordinary resolution at a special meeting, remove any director from office; or

(b) where a director was elected for a term exceeding 1 year and is not up for re-election at an annual meeting, remove that director by ordinary resolution at that meeting.

(2) Where the holders of any class or series of shares of a company have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series of shares.

(3) Subject to sections 70(b) to (e), a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed, or, if the vacancy is not so filled, it may be filled pursuant to section 74.

Right of director to notice

73. (1) A director of a company is entitled to receive notice of, and to attend and be heard at, every meeting of shareholders.

(2) A director—

(a) who resigns;

(b) who receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office; or

(c) who receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of his resignation or removal, or because his term of office has expired or is about to expire;

may submit to the company a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(3) The company shall forthwith file a copy of the statement referred to in subsection (2) with the Registrar and send a copy to every shareholder entitled to receive notice of any meeting referred to in subsection (1).

(4) No company or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (3).

Filling vacancy among directors

74. (1) Subject to subsections (3) and (4), a quorum of directors of a company may fill a vacancy among the directors of the company, except a vacancy resulting from an increase in the number or minimum number of directors, or from a failure to elect the number or minimum number of directors required by the articles of the company.

(2) If there is no quorum of directors, or if there has been a failure to elect the number or minimum number of directors required by the articles, the directors then in office shall forthwith call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting, or if there are no directors then in office, the meeting may be called by any shareholder.

(3) Where the holders of any class or series of shares of a company have an exclusive right to elect one or more directors and a vacancy occurs among those directors—

(a) then, subject to subsection (4), the remaining directors elected by that class or series may fill the vacancy except a vacancy resulting from an increase in the number or minimum number of directors for that class or series, or from a failure to elect the number or minimum number of directors for that class or series; or

(b) if there are no such remaining directors, any holder of shares of that class or series may call a meeting of the holders thereof for the purpose of filling the vacancy.

(4) The articles of a company may provide that a vacancy among the directors be filled only—

(a) by a vote of the shareholders; or

(b) by a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors, if the vacancy occurs among the directors elected by that class or series.

(5) A director appointed or elected to fill a vacancy holds office for the unexpired term of his predecessor.

Number of directors changed

75. The shareholders of a company may amend the articles of the company to increase, or, subject to section 70(h), to decrease, the number of directors or the minimum or maximum number of directors, but no decrease shortens the term of the incumbent director.

Notice of change of directors

76. (1) A company and a foreign company registered under Division 3 of Part 4 must, within 15 days after a change is made among its directors or in the particulars registered in respect of a director, file a notice of the change containing the information in a prescribed form.

(2) Any interested person, or the Registrar, may apply to the Court for an order to require a company to comply with subsection (1), and the Court may so order and make any further order it thinks fit.

(3) A company or a foreign company that contravenes subsection (1) commits an offence.

Directors' meetings

77. (1) Unless the articles or by-laws of a company otherwise provide, the directors of a company may meet at any place, and upon such notice as the articles or by-laws require.

(2) Subject to the articles or by-laws, a majority of the number of directors or minimum number of directors required by the articles constitutes a quorum at any meeting of directors, and notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

Waiver of notice of directors' meeting

78. (1) A director may in any manner waive a notice of meeting of directors.

(2) Attendance of a director at a meeting of directors is a waiver of notice of the meeting by the director except when he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Adjourned directors' meeting

79. Notice of an adjourned meeting of directors need not be given if the time and place of the adjourned meeting is announced at the original meeting.

Company with one director

80. Where a company has only one director—

(a) that director present in person or by proxy is a quorum at meetings of the director; and

(b) where the director takes any decision that has effect as a resolution of the directors, he shall, unless the decision is taken by way of a written resolution, provide the company with a written record of the resolution.

Telephone participation in meeting

81. (1) Subject to the articles or by-laws of a company, a director may, if all the directors of the company consent, participate in a meeting of directors of the company or of a committee of the directors by means of any telephone or other communication facility that permits all persons participating in the meeting to hear each other.

(2) A director who participates in a meeting of directors by means described in subsection (1), is, for the purposes of this Act, present at the meeting.

Delegation of directors' powers

82. (1) Directors of a company may appoint from their number a managing director or a committee of directors and delegate to the managing director or committee any of the powers of the directors.

(2) Notwithstanding subsection (1), no managing director and no committee of directors of a company may—

(a) submit to the shareholders any question or matter requiring the approval of the shareholders;

(b) fill a vacancy among the directors or in the office of auditor;

(c) issue shares except in the manner and on the terms authorised by the directors;

(d) declare dividends;

(e) purchase, redeem or otherwise acquire shares issued by the company;

(f) pay a commission referred to in section 51;

(g) approve any financial statements referred to in section 128; or

(h) adopt, amend or repeal by-laws.

Validity of acts

83. An act of a director or officer is valid notwithstanding any irregularity in his election or appointment or any defect in his qualification.

Resolution in lieu of meeting

84. (1) When a resolution in writing is signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors—

(a) the resolution is as valid as if it had been passed at a meeting of directors or a committee of directors; and

(b) the resolution satisfies all the requirements of this Act relating to meetings of directors or committees of directors.

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the proceedings of the directors or committee of directors.

Directors' liability for share issue

85. Directors of a company who vote for, or consent to a resolution authorising, the issue of a share under section 31 for a consideration other than money are jointly and severally liable to the company to make good any amount by which the consideration received is less than the fair equivalent of the money that the company would have received if the share had been issued for money on the date of the resolution.

Directors' liability for other acts

86. Directors of a company who vote for, or consent to, a resolution authorising—

(a) a purchase, redemption or other acquisition of shares contrary to sections 40, 41 and 42;

(b) a commission contrary to section 51;

(c) a payment of a dividend contrary to section 52 or 53; or

(d) financial assistance contrary to section 54;

are jointly and severally liable to restore to the company any amounts so distributed or paid and not otherwise recovered by the company.

Contribution by directors

87. A director who has satisfied a judgment founded on a liability under section 85 or 86 is entitled to contribution from the other directors who voted for or consented to the unlawful act upon which the judgment was founded.

Recovery by directors

88. (1) A director who is liable under section 86 may apply to the Court for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 40, 41, 42, 51, 52, 53 or 54.

(2) In connection with an application under subsection (1), the Court may, if it is satisfied that it is equitable to do so—

(a) order a shareholder or other recipient to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 40, 41, 42, 51, 52, 53, 54 or 99 to 103;

(b) order a company to return or issue shares to a person from whom the company has purchased, redeemed or otherwise acquired shares; or

(c) make any further order it thinks fit.

Director's defence to liability

89. A director of a company is not liable under section 85 if he did not know and could not reasonably have known that the share was issued for a consideration less than the fair equivalent of the money that the company would have received if the share had been issued for money.

Time limit on liability

90. An action to enforce a liability imposed under section 85 or 86 may not be commenced after 2 years from the date of the resolution authorising the action complained of.

Interests in contracts to be disclosed

91. (1) A director or officer of a company—

(a) who is a party to a material contract or proposed material contract with the company; or

(b) who is a director or an officer of any body, or has a material interest in any body, that is a party to a material contract or proposed material contract with the company;

shall disclose in writing to the company or request to have entered in the minutes of meetings of the directors the nature and extent of his interest.

(2) The disclosure required by subsection (1) shall be made, in the case of a director of a company—

(a) at the meeting at which a proposed contract is first considered;

(b) if the director was not then interested in a proposed contract, at the first meeting after he becomes so interested;

(c) if the director becomes interested after a contract is made, at the first meeting after he becomes so interested; or

(d) if a person who is interested in a contract later becomes a director of the company, at the first meeting after he becomes a director.

(3) The disclosure required by subsection (1) shall be made, in the case of an officer of a company who is not a director—

(a) forthwith after he becomes aware that the contract, or proposed contract is to be considered, or has been considered, at a meeting of directors of the company;

(b) if the officer becomes interested after a contract is made, forthwith after he becomes so interested; or

(c) if a person who is interested in a contract later becomes an officer of the company, forthwith after he becomes an officer.

(4) If a material contract or a proposed material contract is one that, in the ordinary course of the company's business, would not require approval by the directors or shareholders of the company, a director or officer of the company shall disclose in writing to the company, or request to have entered in the minutes of a meeting of directors, the nature and extent of his interest forthwith after the director or officer becomes aware of the contract or proposed contract.

(5) A director of a company who is referred to in subsection (1) may vote on any resolution to approve a contract that he has an interest in, if the contract—

(a) is an arrangement by way of security for money loaned to, or obligations undertaken by him, for the benefit of the company or an affiliate of the company;

(b) is a contract that relates primarily to his remuneration as a director, officer, employee or agent of the company or an affiliate of the company;

(c) is a contract for indemnity or insurance under sections 99 to 103;

(d) is a contract with an affiliate of the company; or

(e) is a contract other than one referred to in paragraphs (a) to (d);

but, in the case of a contract described in paragraph (e), no resolution is valid unless notice of the nature and extent of the director's interest in the contract is declared and disclosed in reasonable detail to the shareholders of the company and the resolution is approved by not less than two-thirds of the votes.

(6) A director who contravenes subsection (1) commits an offence.

Declaration of interest in contract

92. For the purposes of section 91, a general notice to the directors of a company by a director or an officer of the company declaring that he is a director or officer of, or has a material interest in, another body, and is to be regarded as interested in any contract with that body is a sufficient declaration of interest in relation to the contract.

Avoidance of nullity of contract

93. A material contract between a company and one or more of its directors or officers, or between a company and another body of which a director or officer of the company is a director or officer, or in which he has a material interest, is neither void nor voidable—

(a) by reason only of that relationship; or

(b) by reason only that a director with an interest in the contract is present at, or is counted to determine the presence of a quorum at, a meeting of directors or a committee of directors that authorised the contract;

if the director or officer disclosed his interest in accordance with section 91(2), (3) or (4) or section 92, as the case may be, and the contract was approved by the directors or the shareholders and was reasonable and fair to the company at the time it was approved.

Setting aside contract

94. When a director or officer of a company fails to disclose, in accordance with section 91 or 92, his interest in a material contract made by the company, the Court may, upon the application of the company or a shareholder of the company, set aside the contract on such terms as the Court thinks fit.

Designation of officers, etc.

95. Subject to this Act and to the articles or by-laws of a company or any unanimous shareholder agreement—

(a) the directors of the company may designate the officers of the company, appoint as officers persons of full capacity, specify their duties and delegate to them powers to manage the business and affairs of the company, except powers to do anything referred to in section 82(2);

(b) a director may be appointed to any office of the company; and

(c) 2 or more offices of the company may be held by the same person.

Borrowing powers

96. (1) Unless the articles or by-laws of the company or any unanimous shareholder agreement relating to the company otherwise provide, the directors of the company may, without authorisation of the shareholders—

(a) borrow money upon the credit of the company;

(b) issue, re-issue, sell or pledge debentures of the company;

(c) subject to section 54, give a guarantee on behalf of the company to secure performance of an obligation of any person; and

(d) mortgage, charge, pledge, or otherwise create to secure any obligation of the company or any other person a security interest in all or any property of the company that is owned or subsequently acquired by the company.

(2) Notwithstanding section 82(2) and section 95(a), unless the articles or by-laws of, or any unanimous shareholder agreement relating to, a company otherwise provide, the directors of the company may by resolution delegate the powers mentioned in subsection (1) to a director, a committee of directors or any officer of the company.

Duty of care of directors and officers

97. (1) Every director and officer of a company in exercising his powers and discharging his duties shall—

(a) act honestly and in good faith with a view to the best interests of the company; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) In determining what are the best interests of a company, a director shall have regard to the interest of the company's employees in general as well as the interests of its shareholders.

(3) The duty imposed by subsection (2) on the directors of a company is owed by them to the company alone and the duty is enforceable in the same way as any other fiduciary duty owed to a company by its directors.

(4) No information about the business or affairs of a company shall be disclosed by a director or officer of the company except—

(a) for the purposes of the exercise or performance of his functions as a director or officer;

(b) for the purposes of any legal proceedings;

(c) pursuant to the requirements of any enactment; or

(d) when authorised by the company.

(5) Every director and officer of a company shall comply with this Act and the regulations, the articles and by-laws of the company, and any unanimous shareholder agreement relating to the company.

(6) Subject to section 124(2), no provision in a contract, the articles of a company, its by-laws or any resolution relieves a director or officer of the company from the duty to act in accordance with this Act or the regulations or relieves him from liability for a breach of this Act or the regulations.

Dissenting to resolutions

98. (1) A director who is present at a meeting of the directors or of a committee of directors consents to any resolution passed or action taken at that meeting, unless—

(a) he requests that his dissent be, or his dissent is, entered in the minutes of the meeting;

(b) he sends his written dissent to the secretary of the meeting before the meeting is adjourned; or

(c) he sends his dissent by registered post or delivers it to the registered office of the company immediately after the meeting is adjourned.

(2) A director who votes for, or consents to, a resolution may not dissent under subsection (1).

(3) A director who was not present at a meeting at which a resolution was passed or action taken is presumed to have consented thereto unless, within 7 days after he becomes aware of the resolution, he—

(a) causes his dissent to be placed with the minutes of the meeting; or

(b) sends his dissent by registered post or delivers it to the registered office of the company.

(4) A director is not liable under section 85, 86 or 97 if he relies in good faith upon—

(a) financial statements of the company represented to him by an officer of the company; or

(b) a report of an attorney-at-law, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him.

Indemnifying directors and others

99. (1) Except in respect of an action by or on behalf of a company or body corporate to obtain a judgment in its favour, a company may indemnify—

(a) a director or officer of the company;

(b) a former director or officer of the company; or

(c) a person who acts or acted at the company's request as a director or officer of a body corporate of which the company is or was a shareholder or creditor;

and his legal representatives, against all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment) reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of that company or body corporate.

(2) Subsection (1) does not apply unless the director or officer to be so indemnified—

(a) acted honestly and in good faith with a view to the best interests of the company; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his conduct was lawful.

Indemnity for derivative action

100. A company may with the approval of the Court indemnify a person referred to in section 99 in respect of an action—

(a) by or on behalf of the company to obtain a judgment in its favour; and

(b) to which he is made a party by reason of being or having been a director or an officer of the company;

against all costs, charges and expenses reasonably incurred by him in connection with the action, if he fulfils the conditions set out in section 99(2).

Right to indemnity

101. Notwithstanding anything in section 99 or 100, a person described in section 99 is entitled to indemnity from the company in respect of all costs, charges and expenses reasonably incurred by him in connection with the defence of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of the company or body corporate, if the person seeking indemnity—

(a) was substantially successful on the merits in his defence of the action or proceeding;

(b) qualified in accordance with the standards set out in section 99 or 100; and

(c) is fairly and reasonably entitled to indemnity.

Insurance of directors, etc.

102. A company may purchase and maintain insurance for the benefit of any person referred to in section 99 against any liability incurred by him under section 97(1)(b) in his capacity as a director or officer of the company.

Court approval of indemnity

103. (1) A company or person referred to in section 99 may apply to the Court for an order approving an indemnity under section 100 or 101, and the Court may so order and make any further order it thinks fit.

(2) An applicant under subsection (1) shall give the Registrar notice of the application and the Registrar may appear and be heard at the hearing of the application.

(3) Upon an application under subsection (1), the Court may order notice to be given to any interested person, and that person may appear and be heard at the hearing of the application.

Remuneration

104. Subject to its articles or by-laws or any unanimous shareholder agreement, the directors of a company may fix the remuneration of the directors, officers and employees of the company.

Division 5

Shareholders of Companies

Place of meetings

105. (1) The articles or by-laws of a company may specify one or more places, within or outside Anguilla, where meetings of shareholders of the company may be held.

(2) Each meeting of shareholders must be held at one of the places specified in the articles or by-laws or, in the absence of such a provision, at the place within Anguilla that the directors determine.

(3) Notwithstanding subsection (2), a meeting of shareholders may be held at a place outside Anguilla that is not specified in the articles or by-laws if all the shareholders entitled to vote at that meeting so agree, and a shareholder who attends the meeting agrees to it being so held unless he attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

Shareholders' meetings

106. (1) Subject to subsections (2) and (3), the directors of a company—

(a) shall in each year call an annual meeting of shareholders; and

(b) may at any time call a special meeting of shareholders.

(2) An annual meeting of shareholders of a company need not be called in its first year of existence if the directors of a company call an annual meeting of shareholders to be held not later than 18 months after the company comes into existence.

(3) Not more than 15 months shall elapse between the date of one annual meeting of shareholders and the next.

Record date of shareholders

107. (1) For the purpose of—

(a) determining the shareholders of the company who are—

(i) entitled to receive payment of a dividend, or

(ii) entitled to participate in a winding-up distribution; or

(b) determining the shareholders of the company for any purpose except the right to receive notice of, or to vote at, a meeting;

the directors may fix in advance a date as the record date for the determination of shareholders, but that record date shall not precede by more than 30 days the particular action to be taken.

(2) For the purpose of determining shareholders who are entitled to receive notice of a meeting of shareholders of the company, the directors of the company may fix in advance a date as the record date for the determination of shareholders, but the record date shall not precede by more than 30 days or by less than 7 days the date on which the meeting is to be held.

Statutory record date

108. If no record date is fixed—

(a) the record date for determining the shareholders who are entitled to receive a notice of a meeting of the shareholders is—

(i) the close of business on the date immediately preceding the day on which the notice is given, or

(ii) if no notice is given, the day on which the meeting is held; and

(b) the record date for the determination of shareholders for any purpose other than the purpose specified in paragraph (a) is the close of business on the day on which the directors pass the resolution relating to that purpose.

Notice of record date

109. If a record date is fixed under section 107, notice of it shall, in the case of a public company, be given by advertisement in a newspaper distributed in Anguilla not less than 7 days before the date so fixed.

Notice of shareholders' meeting

110. (1) Notice of the time and place of a meeting of shareholders shall be sent not less than 7 days nor more than 30 days before the meeting—

(a) to each shareholder entitled to vote at the meeting;

(b) to each director; and

(c) to the auditor of the company.

(2) A notice of a meeting of shareholders of a company is not required to be sent to shareholders of the company who were not registered on the records of the company or its transfer agent on the record date determined under section 107 or 108, as the case may be, but failure to receive notice does not deprive a shareholder of the right to vote at the meeting.

(3) If a meeting of shareholders is adjourned for less than 30 days, it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting other than by announcement at the earliest meeting that is adjourned.

(4) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of 30 days or more, notice of the adjourned meeting shall be given as for an original meeting.

Special business

111. (1) All business transacted at a special meeting of shareholders, and all business transacted at an annual meeting of shareholders, is special business, except—

(a) the consideration of the financial statements;

(b) the directors' report, if any;

(c) the auditor's report, if any;

(d) the sanction of dividends;

(e) the election of directors; and

(f) the re-appointment of the incumbent auditor.

(2) Notice of a meeting of shareholders at which special business is to be transacted shall state—

(a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgement on it; and

(b) the text of any special resolution to be submitted to the meeting.

Shareholders' meetings

112. (1) A shareholder and any other person who is entitled to attend a meeting of shareholders may in any manner waive notice of the meeting, and the attendance of any person at a meeting of shareholders is a waiver of notice of the meeting by that person unless he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

(2) Subject to the by-laws of a company, a shareholder may, if all the shareholders of the company consent, participate in a meeting of shareholders of the company by means of a telephone or other communication facility that permits all persons participating in the meeting to hear each other.

List of shareholders

113. (1) A company shall—

(a) not later than 10 days after the record date is fixed under section 107(2), if a record date is so fixed; or

(b) if no record date is fixed—

(i) at the close of business on the date immediately preceding the day on which the notice is given, or

(ii) if no notice is given, as of the day on which the meeting is held;

prepare a list of its shareholders who are entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each shareholder.

(2) When a company fixes a record date under section 107(2), a person named in the list prepared under paragraph (1)(a) is, subject to subsection (3), entitled at the meeting to which the list relates to vote the shares shown opposite his name.

(3) Where a person has transferred the ownership of any of his shares in a company after the record date fixed by the company, if the transferee of those shares—

(a) produces properly endorsed share certificates to the company or otherwise establishes to the company that he owns the shares; and

(b) demands, not later than 10 days before the meeting of the shareholders of the company, that his name be included in the list of shareholders before the meeting;

the transferee may vote his shares at the meeting.

(4) When a company does not fix a record date under section 107(2), a person named in a list of shareholders prepared under paragraph (1)(b) may, at the meeting to which the list relates, vote the share shown opposite his name.

Examination of list

114. A shareholder of a company may examine the list of its shareholders—

(a) during usual business hours at the registered office of the company or at the place where its register of shareholders is maintained; and

(b) at the meeting of shareholders for which the list was prepared.

Quorum at meetings

115. (1) Unless the by-laws otherwise provide, a quorum of shareholders is present at a meeting of shareholders if the holders of a majority of the shares entitled to vote at the meeting are present in person or represented by proxy.

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(3) If a quorum is not present within 30 minutes of the time appointed for a meeting of shareholders, the meeting stands adjourned to the same day 2 weeks thereafter, at the same time and place and, if at the adjourned meeting, a quorum is not present within 20 minutes of the appointed time, the shareholders present constitute a quorum.

(4) When a company has only one shareholder, or has only one shareholder of any class or series of shares, that shareholder present in person or by proxy is a quorum at meetings of the shareholder.

Right to vote share

116. Unless the articles of the company otherwise provide, on a show of hands a shareholder or proxy holder has one vote, and upon a poll a shareholder or proxy holder has one vote for every share held.

Representation of other body

117. (1) When a body corporate or association is a shareholder of a company, the company shall recognise any individual authorised by a resolution of the directors or governing body of the body corporate or association to represent it at meetings of shareholders of the company.

(2) An individual who is authorised as described in subsection (1) may exercise, on behalf of the body corporate or association that he represents, all the powers it could exercise if it were an individual shareholder.

Joint shareholders

118. Unless the by-laws otherwise provide, if 2 or more persons hold shares jointly, one of those holders present at a meeting of shareholders may, in the absence of the other, vote the shares but, if 2 or more of those persons who are present in person or by proxy vote, they shall vote as one on the share jointly held by them.

Voting method at meeting

119. (1) Unless the by-laws otherwise provide, voting at a meeting of shareholders shall be by a show of hands except when a ballot is demanded by a shareholder or proxy holder entitled to vote at the meeting.

(2) A shareholder or proxy holder may demand a ballot before or after any vote by show of hands.

Resolution in writing

120. (1) Except where a written statement is submitted by a director under section 73 or an auditor under section 144—

(a) a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it has been passed at a meeting of the shareholders; and

(b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at the meeting, satisfies all the requirements of this Act relating to meetings of shareholders.

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the meetings of shareholders, but failure to keep the copy in that manner does not render void any action taken by the company.

Requisitioned shareholders' meetings

121. (1) The holders of not less than 5% of the issued shares of a company that carry the right to vote at a meeting sought to be held by them may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

(2) The requisition referred to in subsection (1), which may consist of several documents of like form, each signed by one or more shareholders of the company, shall state the business to be transacted at the meeting and shall be sent to each director and to the registered office of the company.

(3) Upon receiving a requisition referred to in subsection (1), the directors shall call a meeting of shareholders to transact the business stated in the requisition, unless—

(a) a record date has been fixed under section 107(2) and notice of it has been given under section 109; or

(b) the directors have called a meeting of shareholders and have given notice of it under section 110.

(4) If, after receiving a requisition referred to in subsection (1), the directors do not call a meeting of shareholders within 21 days after receiving the requisition, any shareholder who signed the requisition may call the meeting.

Controverted elections and appointments

122. (1) A company or a shareholder or director of the company may apply to the Court to determine any controversy with respect to an election or appointment of a director or auditor of the company.

(2) Upon an application made under this section, the Court may make any order it thinks fit including—

(a) an order restraining a director or auditor whose election or appointment is challenged from acting, pending determination of the dispute;

(b) an order declaring the result of the disputed election or appointment;

(c) an order requiring a new election or appointment, and including in the order directions for the management of the business and affairs of the company until a new election is held, or appointment made; and

(d) an order determining the voting rights of shareholders and of persons claiming to own shares.

Pooling agreements

123. A written agreement between 2 or more shareholders of a company may provide that in exercising voting rights the shares held by them will be voted as provided in the agreement.

Unanimous shareholder agreements

124. (1) An otherwise lawful written agreement among all the shareholders of a company, or among all the shareholders and a person who is not a shareholder, that restricts, in whole or in part, the powers of the directors of the company to manage the business and affairs of the company is valid.

(2) A shareholder who is a party to any unanimous shareholder agreement has all the rights, powers and duties, and incurs all the liabilities of a director of the company to which the agreement relates, to the extent that the agreement restricts the discretion or powers of the directors to manage the business and affairs of the company, and the directors are thereby relieved of their duties and liabilities to the same extent.

(3) If a person who is the beneficial owner of all the issued shares of a company makes a written declaration that restricts in whole or in part the powers of the directors to manage the business and affairs of the company, the declaration constitutes a unanimous shareholder agreement.

(4) Where any unanimous shareholder agreement is executed or terminated, written notice of that fact, together with the date of the execution or termination of it, shall be filed with the Registrar within 15 days after the execution or termination.

Shareholder approval of extraordinary transactions

125. (1) A sale, lease or exchange of all, or substantially all, the property of a company other than in the ordinary course of business of the company requires the approval of the shareholders in accordance with this section.

(2) A notice complying with section 110 of a meeting of shareholders shall be sent in accordance with that section to each shareholder and shall—

(a) include or be accompanied by a copy or summary of the agreement of sale, lease or exchange; and

(b) state that a dissenting shareholder is entitled to be paid the fair value of his shares;

but failure to make the statement referred to in paragraph (b) does not invalidate a sale, lease or exchange referred to in subsection (1).

(3) At the meeting referred to in subsection (2), the shareholders may authorise the sale, lease or exchange of the property, and may fix, or authorise the directors to fix, any of the terms and conditions of the sale, lease or exchange.

(4) Each share of the company carries the right to vote in respect of a sale, lease or exchange referred to in subsection (1), whether or not it otherwise carries the right to vote.

(5) The shareholders of a class or series of shares of the company are entitled to vote separately as a class or series in respect of a sale, lease or exchange in a manner different from the shares of another class or series.

(6) A sale, lease or exchange referred to in subsection (1) is adopted when the shareholders of each class or series of shares who are entitled to vote on it have, by special resolution, approved of the sale, lease or exchange.

(7) The directors of a company, if authorised by the shareholders approving a proposed sale, lease or exchange, may, subject to the rights of third parties, abandon the sale, lease or exchange without any further approval of the shareholders.

(8) A company that contravenes subsection (2) commits an offence.

Division 6

Financial Disclosure

Company to keep accounting records

126. (1) A company must keep accounting records that—

(a) are sufficient to record and explain the transactions of the company; and

(b) will, at any time, enable the financial position of the company to be determined with reasonable accuracy.

(2) The accounting records kept by a public company must be sufficient to enable financial statements to be prepared and audited in accordance with this Division.

(3) Without limiting subsection (1) or (2), the accounting records must contain—

(a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) details of all sales and purchases of goods by the company; and

(c) a record of the assets and liabilities of the company.

(4) A company that contravenes subsection (1) commits an offence.

Accounting records kept outside Anguilla

127. (1) If the accounting records of a company are kept outside Anguilla, the company must ensure that it keeps at its registered office—

(a) accounts and returns adequate to enable the directors of the company to ascertain the financial position of the company with reasonable accuracy on a quarterly basis; and

(b) a written record of the place or places outside Anguilla where its accounting records are kept.

(2) A company that contravenes subsection (1) commits an offence.

Annual financial statements, etc.

128. (1) Subject to section 129, the directors of a public company shall place before the shareholders at their first annual meeting—

(a) financial statements relating to the period that began on the date the company came into existence and ended not more than 6 months before the meeting;

(b) the report of the auditor; and

(c) any further information respecting the financial position of the company and the results of its operations required by the articles of the company, its by-laws, or any unanimous shareholder agreement.

(2) Subject to subsections (3) and (4) and to section 129, the directors of a public company shall place before the shareholders at the second and every subsequent annual meeting of the shareholders of the company—

(a) comparative financial statements relating separately to—

(i) the period that began immediately after the end of the last completed financial year and ended not more than 6 months before the annual meeting of shareholders, and

(ii) the immediately preceding financial year;

(b) the report of the auditor; and

(c) any further information respecting the financial position of the company and the results of its operations required by the articles of the company, its by-laws, or any unanimous shareholder agreement.

(3) The financial statements required by subparagraph 2(a)(ii) may be omitted if the reason for the omission is set out in the financial statements, or in a note to the financial statements that are placed before the shareholders at an annual meeting.

(4) The Registrar may in any particular case adjust the period relating to which comparable financial statements are to be placed before the shareholders at any annual meeting.

(5) A director who contravenes subsection (1) commits an offence.

Exemption for information

129. Upon the application of a company referred to in section 128 for authorisation to omit any prescribed item of information from its financial statements or to dispense with the publication of any particular financial statement, the Registrar may, if he reasonably believes that disclosure of the information therein contained would be detrimental to the company, permit its omission on such reasonable conditions as he thinks fit.

Consolidated financial statements

130. (1) A company shall keep at its registered office a copy of the financial statements of each of its subsidiary bodies corporate the accounts of which are consolidated in the financial statements of the company.

(2) Shareholders of a company and their agents and legal representatives may, upon request therefor, examine the statements referred to in subsection (1) during the usual business hours of the company, and may make extracts from those statements free of charge.

(3) A company may, within 15 days of a request to examine statements under subsection (2), apply to the Court for an order barring the right of any person to examine those statements, and the Court may, if it is satisfied that the examination would be detrimental to the company or a subsidiary body corporate, bar that right and make any further order the Court thinks fit.

(4) A company shall give the Registrar and the person asking to examine statements under subsection (2) notice of any application under subsection (3), and the Registrar and that person may appear and be heard at the hearing of the application.

(5) A company that contravenes subsection (1) commits an offence.

Directors' approval of financial statements

131. (1) The directors of a public company shall approve the financial statements referred to in section 128, and the approval shall be evidenced by the signature of 1 or more directors.

(2) A public company shall not issue, publish or circulate copies of the financial statements referred to in section 128 unless the financial statements are—

(a) approved and signed in accordance with subsection (1); and

(b) accompanied by a report of the auditor of the company.

(3) A company that contravenes subsection (2) commits an offence.

Copies of document to be sent to shareholders

132. (1) Not less than 21 days before each annual meeting of the shareholders of a public company or before the signing of a resolution under section 120(1)(b) in lieu of its annual meeting, the company shall send a copy of the documents referred to in section 128 to each shareholder, except a shareholder who has informed the company in writing that he does not want a copy of those documents.

(2) A company that contravenes subsection (1) commits an offence.

Registrar's copies

133. (1) A public company shall file a copy of the documents referred to in section 128 with the Registrar, not less than 21 days before each annual meeting of the shareholders or forthwith after the signing of a resolution under section 120(1)(b) in lieu of the annual meeting, and in any event not later than 15 months after the last date when the last preceding annual meeting should have been held or a resolution in lieu of the meeting should have been signed.

(2) Upon the application of a company, the Registrar may exempt the company from the application of subsection (1) in circumstances that he specifies.

(3) If a company referred to in subsection (1)—

(a) sends interim financial statements or related documents to its shareholders; or

(b) is required to file interim financial statements or related documents with, or to send them to, a public authority or a stock exchange;

the company shall forthwith file copies thereof with the Registrar.

(4) A subsidiary company is not required to comply with this section if—

(a) the financial statements of its holding company are in consolidated or combined form and include the accounts of the subsidiary; and

(b) the consolidated or combined financial statements of the holding company are included in the documents filed with the Registrar by the holding company in compliance with this section.

(5) A company that contravenes subsection (1) or (3) commits an offence.

Eligibility for appointment as auditor

134. (1) A person is eligible for appointment as auditor of a company only if he—

(a) is a practising member of a recognised supervisory body; and

(b) is eligible for the appointment under the rules of that body.

(2) An individual or a firm may be appointed as auditor of a company.

(3) In this section "recognised supervisory body" means a recognised accounting body approved by the Registrar.

Ineligibility for appointment as auditor

135. (1) A person is ineligible for appointment as auditor of a company if he is—

(a) an officer or employee of the company;

(b) a partner or employee of a person who is an officer or employee of the company; or

(c) an employee of a partnership of which a person who is an officer or employee of the company is a partner;

or if he is ineligible by virtue of paragraph (a) or (b) for appointment as auditor of any associated undertaking of the company.

(2) A person is also ineligible for appointment as auditor of a company if there exists between him and any associate of his and the company or any associated undertaking a prescribed connection.

(3) In this section, “associated undertaking”, in relation to a company, means—

(a) a parent undertaking or subsidiary undertaking of the company; or

(b) a subsidiary undertaking of any parent undertaking of the company.

Effect of ineligibility

136. (1) No person shall act as auditor of a company if he is ineligible for appointment to the office.

(2) If during his term of office an auditor of a company becomes ineligible for appointment to the office, he shall thereupon vacate office and shall forthwith give notice in writing to the company concerned that he has vacated it by reason of ineligibility.

(3) A person who contravenes subsection (1) or (2) commits an offence.

Appointment of auditor

137. (1) The shareholders of a public company shall, by ordinary resolution at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

(2) An auditor appointed under section 64(1)(b)(iv) is eligible for appointment under subsection (1).

(3) Notwithstanding subsection (1), if an auditor is not appointed at a meeting of shareholders, the incumbent auditor continues in office until his successor is appointed.

(4) The remuneration of an auditor may be fixed by ordinary resolution of the shareholders, or if not so fixed, it may be fixed by the directors.

(5) If the shareholders of a public company do not appoint an auditor as required under subsection (1), the company commits an offence.

When auditor ceases to hold office

138. (1) An auditor of a company ceases to hold office when—

(a) he dies or resigns; or

(b) he is removed pursuant to section 139.

(2) A resignation of an auditor becomes effective at the time a written resignation is sent to the company, or at the times specified in the resignation, whichever is the later date.

Removal of auditor

139. (1) The shareholders of a company may by ordinary resolution at a special meeting remove an auditor other than an auditor appointed by the Court order under section 141.

(2) A vacancy created by the removal of an auditor may be filled at any meeting at which the auditor is removed or, if the vacancy is not so filled, it may be filled under section 140.

Filling auditor vacancy

140. (1) Subject to subsection (3), the directors shall forthwith fill a vacancy in the office of auditor.

(2) If there is not a quorum of directors, the directors then in office shall, within 21 days after a vacancy in the office of auditor occurs, call a special meeting of shareholders to fill the vacancy, and if they fail to call a meeting, or if there are no directors, the meeting may be called by any shareholder.

(3) The articles of a company may provide that a vacancy in the office of auditor be filled only by vote of the shareholders.

(4) An auditor appointed to fill a vacancy holds office for the unexpired term of his predecessor.

Court appointed auditor

141. If a company does not have an auditor, the Court may, on the application of a shareholder or the Registrar, appoint and fix the remuneration of an auditor, and the auditor holds office until an auditor is appointed by the shareholders.

Auditor's right to notice

142. The auditor of a company is entitled to receive notice of every meeting of the shareholders of the company, and at the expense of the company to attend and be heard at the meeting on matters relating to his duties as auditor.

Required attendance of auditor

143. (1) If a shareholder of a company, whether or not he is entitled to vote at the meeting, or a director of a company gives written notice to the auditor or former auditor of the company, not less than 10 days before a meeting of the shareholders of the company, to attend the meeting, the auditor or former auditor shall attend the meeting at the expense of the company and answer questions relating to his duties as auditor or former auditor of the company.

(2) A shareholder or director who sends a notice referred to in subsection (1) shall, concurrently, send a copy of the notice to the company.

(3) An auditor or former auditor who contravenes subsection (1) commits an offence.

Right of auditor to comment

144. (1) An auditor who—

(a) resigns;

(b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office; or

(c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed to fill the office of auditor, whether because of the

resignation or removal of the incumbent auditor or because his term of office has expired or is about to expire;

may submit to the company a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(2) When it receives a statement referred to in subsection (1), the company shall forthwith send a copy of the statement to every shareholder entitled to receive notice of any meeting referred to in section 142 and file a copy with the Registrar.

(3) A company that contravenes subsection (2) commits an offence.

Examination by auditor

145. (1) An auditor of a company shall make the examination that is in his opinion necessary to enable him to report on the financial statements required by this Act to be placed before the shareholders, except a financial statement or a part of a financial statement that relates to the immediately preceding financial year referred to in section 128(2)(a)(ii).

(2) Notwithstanding section 146, an auditor of a company may reasonably rely upon the report of an auditor of a body corporate or an unincorporated business, the accounts of which are included in whole or in part in the financial statements of the company.

(3) For the purpose of subsection (2), reasonableness is a question of fact.

(4) Subsection (2) applies whether or not the financial statements of the holding company reported upon by the auditor are in consolidated form.

Duty to furnish information to auditor

146. (1) Upon the demand of an auditor of a company, the present or former directors, officers, employees or agents of the company shall furnish to the auditor—

(a) such information and explanations; and

(b) such access to records, documents, books, accounts and vouchers of the company or any of its subsidiaries;

as are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 145 and that the directors, officers, employees or agents are reasonably able to furnish.

(2) Upon the demand of an auditor of a company, the directors of the company shall—

(a) obtain from the present or former directors, officers, employees or agents of any subsidiary of the company the information and explanations that the directors, officers, employees and agents are reasonably able to furnish, and that are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 145; and

(b) furnish the information and explanations so obtained to the auditor.

Error in statements detected

147. (1) A director or an officer of a company shall forthwith notify the auditor of any error or misstatement of which he becomes aware in a financial statement that the auditor or a former auditor of the company has reported upon.

(2) When the auditor or a former auditor of a company is notified or becomes aware of an error or misstatement in a financial statement upon which he has reported to the company and in his opinion the error or misstatement is material, he shall inform each director of the company accordingly.

(3) When under subsection (2) the auditor or a former auditor of a company informs the directors of an error or misstatement in a financial statement of the company, the directors shall—

(a) prepare and issue revised financial statements; or

(b) otherwise inform the shareholders of the error or misstatement;

and, if the company is one that is required to comply with section 133, inform the Registrar of the error or misstatement in the same manner as the directors inform the shareholders of the error or misstatement.

(4) A director or officer who contravenes subsection (1) commits an offence.

Privilege of auditor

148. An auditor is not liable to any person in an action for defamation based on any act done or not done, or any statement made by him in good faith, in connection with any matter he is authorised or required to do under this Act.

Division 7

Corporate Records

Registered office

149. (1) A company shall at all times have a registered office in Anguilla.

(2) On the registration of a company, its registered office is as specified in its articles.

(3) A company may change the location of its registered office by filing a notice in prescribed form with the Registrar.

(4) The change of registered office takes effect upon the notice being registered by the Registrar.

(5) The registered office of a non-domestic company must be provided by a person who holds a relevant licence.

(6) If the person providing the registered office for a non-domestic company ceases to hold a relevant licence, the company shall, within 14 days of becoming aware that the person concerned has

ceased to hold a relevant licence, change the location of its registered office so that it is provided by a person who holds such a licence.

(7) A company that contravenes subsection (6) commits an offence.

(8) Subject to subsection (9), a person who, not being the holder of a relevant licence, provides the registered office of a non-domestic company commits an offence.

(9) If a person providing the registered office of a non-domestic company ceases to hold a relevant licence, he does not commit an offence under subsection (8) if, upon ceasing to hold the licence, he forthwith notifies the company that he no longer holds a relevant licence and that the company must change its registered offence in accordance with subsection (6).

Registered agent

150. (1) A company and a foreign company registered under Division 3 of Part 4 shall at all times have a registered agent in Anguilla.

(2) The first registered agent—

(a) of a company is the registered agent specified in its articles; and

(b) of a foreign company registered under Division 3 of Part 4 is the registered agent specified in the notice filed under section 188(2)(c).

(3) A company and a foreign company registered under Division 3 of Part 4 may change its registered agent by filing a notice in prescribed form with the Registrar.

(4) The change of registered agent takes effect upon the notice being registered by the Registrar.

(5) The registered agent of a non-domestic company must be a person who holds a relevant licence.

(6) If the registered agent of a non-domestic company ceases to hold a relevant licence, the company shall, within 14 days of becoming aware that the person concerned has ceased to hold a relevant licence, change its registered agent to a person who holds such a licence.

(7) A company that contravenes subsection (6) commits an offence.

(8) Subject to subsection (9), a person who, not being the holder of a relevant licence, acts as the registered agent of a non-domestic company commits an offence.

(9) If a person who acts as the registered agent of a non-domestic company ceases to hold a relevant licence, he does not commit an offence under subsection (8) if, upon ceasing to hold the licence, he forthwith notifies the company that he no longer holds a relevant licence and that the company must change its registered agent in accordance with subsection (6).

Registered agent ceasing to act for company

151. (1) If the registered agent of a company desires to cease to act as its registered agent, he must give not less than 30 days written notice of his intention to do so in accordance with subsection (2).

(2) A notice given under subsection (1) must be sent—

(a) to a director of the company at the address of the director last known to the registered agent; or

(b) if the company does not have a director, to the person from whom he last received instructions concerning the company.

(3) The registered agent shall, within 7 days of sending a notice in accordance with subsection (2), file a copy of the notice with the Registrar.

(4) If, at the time of expiry of the notice given under subsection (1), the company has not filed a notice of change of registered agent under section 150(3), the Registrar shall publish a notice in the *Gazette* that, unless the company files notice of a change of registered agent within 30 days of the date of the publication of the notice in the *Gazette*, it will be struck off the Register of Companies and dissolved.

(5) If a company fails to file a notice of change of registered agent within 30 days of publication of a notice in the *Gazette* under subsection (4), the Registrar must strike the company off the Register of Companies whereupon it is dissolved, and the Registrar must publish a notice of the striking off and dissolution of a company under this section in the *Gazette*.

(6) The striking of a company off the Register of Companies is effective from the date of the notice published in the *Gazette* under subsection (5).

(7) A registered agent who contravenes subsection (3) commits an offence.

Records of company

152. (1) A company shall prepare and maintain records containing—

(a) the articles and the by-laws, and all amendments to them, and a copy of any unanimous shareholder agreement and amendments to it;

(b) minutes of meetings and resolutions of shareholders;

(c) copies of all notices required by sections 76, 149 and 150; and

(d) registers of shareholders and of directors.

(2) A company that issues debentures shall prepare and maintain a register of debenture holdings showing—

(a) the name and the latest known address of each debenture holder;

(b) the principal of the debentures held by each holder;

(c) the amount or the highest amount of any premium payable on redemption of the debentures;

(d) the issue price of the debentures and the amount paid up on the issue price;

(e) the date on which the name of each person was entered on the register as a debenture holder; and

(f) the date on which each person ceased to be a debenture holder.

(3) A company that grants conversion privileges, options or rights to acquire shares of the company shall maintain a register showing the name and latest known address of each person to whom the privileges, options or rights have been granted and any other particulars in respect thereof as may be prescribed.

(4) A company may appoint an agent to prepare and maintain the registers required by this section to be prepared and maintained by the company.

(5) Subject to subsection (6)—

(a) the records required to be prepared and maintained under subsection (1) must be kept at the registered office of the company; and

(b) the records required to be prepared and maintained under subsections (2) and (3) must be kept at the registered office of the company or at such other place in Anguilla as the directors may, by resolution, determine.

(6) A public company whose shares are listed on an appointed stock exchange may keep its register of shareholders outside Anguilla at a place in the country in which the appointed stock exchange is located.

(7) A public company that keeps its register of shareholders outside Anguilla under subsection (6) shall—

(a) ensure that a copy of its register of shareholders as at the end of the last day of each calendar quarter is sent to its registered office within 14 days of the end of the quarter; and

(b) keep at its registered office—

(i) each copy of its register of shareholders sent to the registered office under paragraph (a), and

(ii) a written record of the address of the place outside Anguilla at which its register of shareholders is kept.

(8) A company that contravenes subsection (1), (2), (3), (5) or (7) commits an offence.

Trust notices

153. (1) Except as provided in this section, notice of a trust express, implied or constructive, shall not be—

(a) entered by a company in any of the registers maintained by it under section 152; or

(b) received by the Registrar.

(2) No liabilities are affected by anything done under subsection (3), (4) or (5) and the company concerned is not affected with notice of any trust by reason of anything so done.

(3) A personal representative of the estate of a deceased individual who was registered in a register of a company as a member or debenture holder may become registered as the holder of that share or debenture as personal representative of that estate.

(4) A personal representative of the estate of a deceased individual who was beneficially entitled to a share or debenture of the company that is registered in a register of the company may, with the consent of the company and of the registered member or debenture holder, become the registered member or debenture holder as the personal representative of the estate.

(5) When a personal representative of an estate of a deceased individual is registered under subsection (3) as a holder of a share or debenture of a company, the personal representative is, in respect of that share or debenture, subject to the same liabilities, and no more, that he would be subject to, had the share or debenture remained registered in the name of the deceased individual.

Records of minutes and resolutions

154. (1) In addition to the records described in section 152, a company shall prepare and maintain records and records containing minutes of meetings and resolutions of the directors and any committees of the directors.

(2) The records required under subsection (1) shall be kept at the registered office of the company or at some other place in Anguilla.

(3) A company that contravenes subsection (1) or (2) commits an offence.

Form of records

155. All records required by this Act to be prepared and maintained by a company—

(a) may be in a bound or loose-leaf form or in a photographic film form; or

(b) may be entered or recorded—

(i) by any system of mechanical or electronic data processing, or

(ii) by any other information storage device;

that is capable of reproducing any required information in intelligible written form within a reasonable time.

Duty to care for records

156. (1) A company and its agents shall take reasonable precautions—

(a) to prevent loss or destruction of;

(b) to prevent falsification of entries in; and

(c) to facilitate detection and correction of inaccuracies in;

the records required by this Act to be prepared and maintained in respect of the company.

(2) A person who contravenes subsection (1) commits an offence.

Access to records

157. (1) The directors and shareholders of a company, and their agents and legal representatives, may during the usual business hours of the company, examine the records of the company required by section 152 to be kept within Anguilla and may take extracts from them free of charge.

(2) A director or a shareholder of a company is entitled to be provided with a copy of the register of shareholders of the company at any given date upon—

(a) delivering a request to the company in writing; and

(b) making payment of such fee as the directors may determine to be reasonably necessary to defray the costs incurred by the company in complying with the request.

(3) The company must provide a copy of the register of shareholders to the director or shareholder who has requested it under subsection (2) within 5 working days of the date that it received the request.

(4) A shareholder of a company is, upon request, entitled—

(a) to one copy of the articles and by-laws of the company and any unanimous shareholder agreement, and to one copy of any amendment to those documents, without charge; and

(b) to additional copies of the articles and by-laws of the company and of any unanimous shareholder agreement, and to any amendment to those documents, upon the payment of such fee as the directors may determine to be reasonably necessary to defray the costs of preparing and furnishing them.

(5) If a request—

(a) to examine the company's records or to take an extract therefrom under subsection (1);

(b) for a copy of the register of shareholders under subsection (2); or

(c) for a copy of the articles and by-laws, and any amendments to them under subsection (4);

is refused or, in the case of a request under subsection (2), the register of shareholders is not provided within the time specified in subsection (3), any interested person, or the Registrar, may on notice to the company apply to the Court for an order to require the company to comply with subsection (1), (2), (3) or (4), as the case may be, and the Court may so order and make any further order it thinks fit.

(6) A person who contravenes this section commits an offence.

Annual returns

158. (1) Subject to subsection (2), a company shall, not later than the last day of the calendar quarter in which the anniversary of its incorporation, continuance or first registration falls, file with the Registrar an annual return made up to the first day of the same quarter.

(2) The annual return of a public company whose shares are listed on an appointed stock exchange may, at the option of the company, be made up to the record date of the company immediately prior to the date upon which the return would otherwise have had to have been made under subsection (1).

(3) The annual return shall—

(a) contain the prescribed information and be in prescribed form; and

(b) be certified as correct by a director or officer of the company or by its registered agent.

(4) A company that contravenes subsection (1) commits an offence.

Division 8

Fundamental Company Changes

Proposed compromise with creditors

159. (1) Where a compromise or arrangement is proposed between a company and its creditors of any class, or between the company and its shareholders of any class, the Court may, on the application of the company or of any creditor or shareholder of the company or, in the case of a winding up, of the liquidator, order a meeting of the creditors or class of creditors, or of the shareholders of the company or class of shareholders, as the case may be.

(2) If a majority representing 75% in value of the creditors or class of creditors, or shareholders or class of shareholders as the case may be, present and voting in person or by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement shall, if approved by the Court, be binding on all creditors or members of the class of creditors, or on all shareholders or shareholders in the class of shareholders, as the case may be, and on the company or in the event of a winding up, on the liquidator.

(3) An order made under subsection (2) has no effect until a copy has been filed with the Registrar, and a copy of the order shall be annexed to copies of the articles of the company issued after the making of the order.

(4) In this section, "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.

Reorganisation and amalgamation

160. (1) Where an application is made to the Court under section 159 for the approval of a compromise or arrangement proposed between a company and any of the persons specified in that section,

and the Court is satisfied that the compromise or arrangement is proposed for the purpose of, or in connection with, a scheme for the reorganisation of any company or the amalgamation of any 2 or more companies, and that under the scheme the undertaking or any part thereof 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, by the order approving the compromise or arrangement or by any subsequent order, make provision for any of the following matters—

(a) the transfer to the transferee company of the undertaking in whole or in part 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 that 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 provision to be made for any person who, within the time and in the manner that the Court directs, dissents from the compromise or arrangement;

(f) such incidental or consequential matters as are necessary to ensure that the reorganisation or amalgamation is 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, be transferred to and become the liabilities of, the transferee company, and the property shall, if the order so directs, be freed from any charge that by virtue of the compromise or arrangement is 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 filed with the Registrar within 7 days of the making of the order.

Shares of dissenting shareholders

161. (1) Where a scheme or contract involving the transfer of shares or any class thereof in a company (in this section referred to as the "transferor company") to another company, whether or not a company within the meaning of this Act (in this section referred to as the "transferee company") is, within 4 months after the making of the offer by the transferee company, approved by the holders of not less than 90% in value of the shares affected, the transferee company may at any time within 2 months after the expiration of the 4 month period give notice in accordance with subsection (2) to any dissenting shareholder.

(2) The notice referred to in subsection (1) must specify that the transferee company desires to acquire the shares of the dissenting shareholder and the transferee company shall be entitled to acquire the shares subject to the terms specified in the scheme unless, on an application made by the dissenting shareholder within 1 month from the date on which the notice is given, the Court orders otherwise.

(3) Where a notice is 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 1 month from the date on which the notice is given or if an application to the Court by the dissenting shareholder is pending, after the 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 that that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of the shares.

(4) Any amounts received by the transferor company under this section shall be paid into a separate bank account, and the amounts and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the amounts or other consideration were respectively received.

(5) 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.

Fundamental amendment to articles

162. (1) The articles of a company may, by special resolution, be amended—

(a) to change its name;

(b) to add, change or remove any restrictions upon the business that the company can carry on;

(c) to change any maximum number of shares that the company is authorised to issue;

(d) to create new classes of shares;

(e) to change the designation of all or any of its shares, and add change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends in respect of all or any of its shares, whether issued or unissued;

(f) to change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series, or into the same or a different number of shares or other classes or series;

(g) to divide a class of shares, whether issued or unissued, into a series of shares and fix the number of shares in each series, and the rights, privileges, restrictions and conditions attached thereto;

(h) to authorise the directors to divide any class of unissued shares into series of shares and fix the number of shares in each series, and the rights, privileges, restrictions and conditions attached thereto;

(i) to authorise the directors to change the rights, privileges, restrictions and conditions attached to the unissued shares of any series;

(j) to revoke, diminish or enlarge any authority conferred under paragraph (h) or (i);

(k) to increase or decrease the number of directors or the minimum or maximum number of directors subject to sections 70 and 75;

(l) to add, change or remove restrictions on the transfer of shares; or

(m) to add, change or remove any other provision that is permitted or required by this Act to be set out in the articles.

(2) The directors of a company may, if authorised by the shareholders in the special resolution effecting an amendment under this section, revoke the resolution before it is acted upon, without further approval of the shareholders.

(3) A provision in the articles of a company that restricts in whole or in part the powers of the directors to manage the business or affairs of the company may not be amended except with the consent of all the shareholders.

Filing of articles and certificate

163. (1) Subject to any revocation under section 162(2), after an amendment has been adopted under that section, articles of amendment in prescribed form shall be filed with the Registrar.

(2) If an amendment effects or requires a reduction in stated capital, sections 45(3) and (4) apply.

(3) If he is satisfied that the requirements of this Act in respect of an amendment to a company's articles have been complied with, the Registrar shall, on receipt of articles of amendment from a company issue a certificate of amendment.

(4) An amendment to the articles of a company becomes effective on the date shown in the certificate issued by the Registrar in respect of that company and the articles of the company are amended accordingly.

(5) No amendment to the articles affects—

(a) an existing cause of action or claim or liability to prosecution in favour of or against the company or its directors or officers; or

(b) any civil, criminal or administrative action or proceeding to which a company or any of its directors or officers is a party.

Division 9

Merger and Consolidation

Interpretation

164. (1) In this Division—

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

"consolidation" means the amalgamation of 2 or more constituent companies into a new company;

"constituent company" means an existing company that is participating in a merger or consolidation with 1 or more other existing companies;

"merger" means the amalgamation of 2 or more constituent companies into 1 of the constituent companies;

"parent company" means a company that owns at least 90% of the outstanding shares of each class and series of shares in another company;

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

"surviving company" means the constituent company into which 1 or more other constituent companies are merged.

(2) For greater certainty, a consolidated company is to be treated for the purposes of this and any other Act as a company incorporated under this Act.

Merger and consolidation with Anguilla company

165. (1) Two or more companies may merge or consolidate in accordance with this Division.

(2) If, before a merger, the company that will be the surviving company—

(a) is a company limited by shares, the surviving company must be a company limited by shares;

(b) is a company limited by guarantee, the surviving company must be a company limited by guarantee; or

(c) is a company limited by both shares and guarantee, the surviving company must be a company limited by both shares and guarantee.

Plan of merger or consolidation

166. (1) The directors of each constituent company that proposes to participate in a merger or consolidation must, by resolution, approve a written plan of merger or consolidation containing—

(a) the name of each constituent company and the name of the surviving company or the consolidated company;

(b) in the case of—

(i) a merger, whether the company which will be the surviving company is a company limited by shares, a company limited by guarantee or a company limited by both shares and guarantee, or

(ii) a consolidation, whether the consolidated company will be a company limited by shares, a company limited by guarantee or a company limited by both shares and guarantee;

(c) in respect of each constituent company limited by shares or limited by shares and guarantee—

(i) the designation and number of outstanding shares of each class and series of shares, specifying each such class and series entitled to vote on the merger or consolidation, and

(ii) a specification of each such class and series, if any, entitled to vote as a class or series;

(d) where the surviving company or the consolidated company will be a company limited by shares or a company limited by both shares and guarantee, the matters required to be set out in the articles of incorporation of a company under sections 7(1)(e) and (f);

(e) where the surviving or the consolidated company will be a company limited by guarantee or by both shares and guarantee, the matters required to be set out in the articles of incorporation of a company under section 7(1)(i);

(f) the terms and conditions of the proposed merger or consolidation including, if appropriate, the manner and basis of converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other property, or a combination thereof;

(g) in respect of a merger, a statement of any amendment to the articles or by-laws of the surviving company, to be brought about by the merger; and

(h) in respect of a consolidation, all other matters required to be included in the articles of incorporation or by-laws of a company registered under this Act.

(2) The plan of merger or consolidation may specify the date on which the amalgamation is intended to become effective.

(3) Some or all shares of the same class or series of shares in each constituent company may be converted into a particular or mixed kind of property and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property.

Approval of plan of merger or consolidation

167. (1) Each constituent company must give at least 21 days notice to each of its shareholders of a resolution to approve a merger or consolidation, whether or not the shareholder is entitled to vote on or consent to the resolution, and the notice must be accompanied by—

(a) a copy of the plan of merger or consolidation;

(b) a copy of the resolution of the directors approving the plan of merger or consolidation; and

(c) such further information and explanation as may be necessary for a reasonable shareholder to understand the nature, and implications for the company and its shareholders, of the proposed merger or consolidation.

(2) The plan of merger or consolidation must be approved—

(a) by a special resolution of the shareholders of each constituent company incorporated under this Act; and

(b) by a resolution of the shareholders of every other constituent company;

and, in respect of each constituent company, the outstanding shares of a class or series of shares are entitled to vote on the merger or consolidation as a class or series if the articles or by-laws so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the articles or by-laws, would entitle the class or series to vote on the proposed amendment as a class or series.

(3) After approval of the plan of merger or consolidation by the shareholders of each constituent company in accordance with subsection (2), articles of merger or consolidation setting out the information in prescribed form must be executed by each company.

Merger with subsidiaries

168. (1) A parent company may merge with 1 or more of its subsidiary companies in accordance with this section, if—

(a) each of the subsidiary constituent companies is incorporated or continued under this Act; and

(b) the parent company will be the surviving company.

(2) The directors of the parent company and each subsidiary constituent company must approve a written plan of merger containing—

(a) the name of each constituent company and the name of the surviving company;

(b) in respect of each constituent company—

(i) the designation and number of outstanding shares of each class and series of shares, and

(ii) the number of shares of each class and series of shares in each subsidiary company owned by the parent company; and

(c) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other property, or a combination thereof.

(3) The plan of merger or consolidation may specify the date on which the amalgamation is intended to become effective.

(4) Some or all shares of the same class or series of shares in each company to be merged may be converted into property of a particular or mixed kind and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property, but, if the parent

company is not the surviving company, shares of each class and series of shares in the parent company may only be converted into similar shares of the surviving company.

(5) A copy of the plan of merger or an outline of it must be given to every shareholder of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that shareholder.

(6) Articles of merger or consolidation setting out the information and in prescribed form must be executed by each company.

Registration of articles of merger or consolidation

169. (1) Subject to subsection (2), if he is satisfied that the provisions of this Act in respect of merger or consolidation have been complied with, the Registrar shall, upon receipt of articles of merger or consolidation executed by each constituent company in a merger or consolidation, register the articles and issue a certificate of merger or consolidation, as appropriate, stating that the merger or consolidation is effective from the date of the certificate.

(2) If the plan of merger or consolidation specifies a date upon which the merger or consolidation is to become effective, and that date is later than the date of registration of articles of merger or consolidation by the Registrar, the certificate must be expressed to take effect on the date specified in the plan.

(3) A certification of merger or consolidation issued by the Registrar is *prima facie* evidence of compliance with the requirements of this Act in respect of the merger or consolidation.

Effect of merger or consolidation

170. (1) A merger or consolidation is effective on the date shown in the certificate of merger or consolidation.

(2) As soon as a merger or consolidation becomes effective—

(a) the surviving company or the consolidated company in so far as is consistent with its articles and by-laws, as amended or established by the articles of merger or consolidation, has all rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;

(b) in the case of a merger, the articles and by-laws of the surviving company are deemed to be amended to the extent, if any, that changes in its articles and by-laws are contained in the articles of merger;

(c) in the case of a consolidation, the statements contained in the articles of consolidation that are required or authorised to be contained in the articles and by-laws of a company incorporated under this Act, are the articles and by-laws of the consolidated company;

(d) property of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and

(e) the surviving company or the consolidated company is liable for all claims, debts, liabilities and obligations of each of the constituent companies.

(3) Where a merger or consolidation occurs—

(a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing against a constituent company or against any shareholder, director, officer or agent thereof, is released or impaired by the merger or consolidation; and

(b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any shareholder, director, officer or agent thereof, are abated or discontinued by the merger or consolidation, but—

(i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the shareholder, director, officer or agent thereof, as the case may be, or

(ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.

(4) The Registrar shall strike off the Register—

(a) a constituent company that is not the surviving company in a merger; or

(b) a constituent company that participates in a consolidation.

Merger or consolidation with foreign company

171. (1) One or more companies may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside Anguilla in accordance with subsections (2) to (4), including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of the jurisdictions in which the companies incorporated outside Anguilla are incorporated.

(2) The following apply in respect of a merger or consolidation under this section—

(a) a company shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of such companies and companies incorporated under the laws of a jurisdiction outside Anguilla shall comply with the laws of that jurisdiction; and

(b) if the surviving company or the consolidated company is to be incorporated or continued under the laws of a jurisdiction outside Anguilla, it must file with the Registrar—

(i) an agreement that a service of process may be effected on it in Anguilla in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company or in respect of proceedings for the enforcement of the rights of a dissenting shareholder of a constituent company against the surviving company or the consolidated company,

(ii) an irrevocable appointment of the Registrar as its agent to accept service of process in proceedings referred to in subparagraph (i),

(iii) an agreement that it will promptly pay to the dissenting shareholders of a constituent company the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting shareholders, and

(iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated or, if no certificate of merger is issued by the appropriate authority of the foreign jurisdiction, such evidence of the merger or consolidation as the Registrar considers acceptable.

(3) The effect under this section of a merger or consolidation is the same as in the case of a merger or consolidation under section 165 if the surviving company or the consolidated company is incorporated under this Act, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Anguilla, the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 165 except in so far as the laws of the other jurisdiction otherwise provide.

(4) If the surviving company or the consolidated company is incorporated under this Act, the merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such later date, not exceeding 30 days, as is stated in the articles of merger or consolidation but, if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Anguilla, the merger or consolidation is effective as provided by the laws of that other jurisdiction.

PART 3

PROTECTION OF CREDITORS AND INVESTORS

Division 1

Registration of Charges

Registration of charges

172. (1) A company shall maintain a register of all mortgages, debentures and charges specifically affecting property of the company and shall enter in the register in respect of each mortgage, debenture or charge a short description of the property mortgaged or charged, the amount of charge created and the name of the mortgagee, debenture holder or person entitled to the charge.

(2) The register of mortgages, debentures and charges required by subsection (1) shall be open to inspection by any creditor or shareholder of the company at all reasonable times.

(3) A company that contravenes subsection (1) commits an offence.

Division 2

Trust Deeds and Debentures

Trust deed required

173. (1) A public company shall, before issuing any of its debentures, execute a trust deed in respect of the debentures and procure its execution by a trustee.

(2) No trust deed may cover more than one class of debentures, whether or not the trust deed is required by this section to be executed.

(3) Where a trust deed is required by this section to be executed in respect of any debentures issued by a public company but a trust deed has not been executed, the Court may, on the application of a holder of any debenture issued by the company—

(a) order the company to execute a trust deed in respect of those debentures;

(b) direct that a person nominated by the Court be appointed a trustee of the trust deed; and

(c) give such consequential directions as the Court thinks fit regarding the contents of the trust deed and its execution by the trustee.

Kinds of debentures

174. (1) Debentures belong to different classes if different rights attach to them in respect of—

(a) the rate of interest or the dates for payment of interest;

(b) the dates when, or the instalments by which, the principal of the debentures will be repaid, unless the difference is solely that the class of debentures will be repaid during a stated period of time and particular debentures will be repaid at different dates during that period according to selections made by the company or by drawings, ballot or otherwise;

(c) any right to subscribe for or convert the debentures into other shares or other debentures of the company or any other body corporate; or

(d) the powers of the debenture holders to realise any security interest.

(2) Debentures belong to different classes if they do not rank equally for payment when—

(a) a security interest is realised; or

(b) the company is wound-up.

(3) For the purpose of subsection (2), a debenture does not rank equally for payment, if the security interest or the proceeds thereof, or any assets available to satisfy the debentures, is or are not to be applied in satisfying the debentures strictly in proportion to the amount of principal, premiums and arrears of interest to which the holders of them are respectively entitled.

Cover of trust deed

175. A debenture is covered by a trust deed if the debenture holder is entitled to participate in any money payable by the company under the trust deed, or is entitled by the trust deed to the benefit of any security interest, whether alone or together with other persons.

Exception to sections 173 to 175

176. Sections 173 to 175 do not apply to debentures issued before 1st January, 1995, or to debentures forming part of a class of debentures some of which were issued before that date.

Contents of trust deed

177. (1) Every trust deed, whether required by section 173 or not, shall state—

(a) the maximum sum that the company can raise by issuing debentures of each specific issue;

(b) the maximum discount that can be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures can be made redeemable;

(c) the nature of any assets over which a security interest is created by the trust deed in favour of the trustee for the benefit of the debenture holders equally, and, except where the interest is a floating charge or a general floating charge, the identity of the assets subject to it;

(d) the nature of any assets over which a security interest has been, or will be, created in favour of any person other than the trustee for the benefit of the debenture holders equally, and, except where the interest is a floating charge or a general floating charge, the identity of the assets subject to it;

(e) whether the company has created or will have to create any security interest for the benefit of some, but not all, of the holders of debentures issued under the trust deed;

(f) any prohibition or restriction on the power of the company to issue debentures or to create any security interest on any of its assets ranking in priority to, or equally with, the debentures issued under the trust deed;

(g) whether the company will have power to acquire debentures issued under the trust deed before the date for their redemption and to re-issue the debentures;

(h) the dates on which interest on the debentures issued under the trust deed will be paid and the manner in which payment will be made;

(i) the dates on which the principal of the debentures issued under the trust deed will be repaid, and, unless the whole principal is to be repaid to all the debenture holders at the same time, the manner in which redemption will be effected, whether by the payment of equal instalments of principal in respect of each debenture or by the selection of debentures for redemption by the company, or by drawing, ballot or otherwise;

(j) in the case of convertible debentures, the dates and terms on which the debentures can be converted into shares and the amounts that will be credited as paid upon those

shares, and the dates and terms on which the debenture holders can exercise any right to subscribe for shares in right of the debentures held by them;

(k) the circumstances in which the debenture holders will be entitled to realise any security interest vested in the trustee or any other person for their benefit, other than the circumstances in which they are entitled to do so by this Act;

(l) the power of the company and the trustees to call meetings of the debenture holders, and the rights of debenture holders to require the company or the trustee to call meetings of the debenture holders;

(m) whether the rights of debenture holders can be altered or abrogated, and, if so, the conditions that are to be fulfilled, and the procedures that are to be followed, to effect an alteration or an abrogation; and

(n) the amount or rate of remuneration to be paid to the trustee and the period for which it will be paid, and whether it will be paid in priority to the principal, interest and costs in respect of debentures issued under the trust deed.

(2) If debentures are issued without a covering trust deed being executed, the statements required by subsection (1) shall be included in each debenture or in a note forming part of the same document, or endorsed thereon, and in applying that subsection references therein to the trust deed are to be construed as references to all or any of the debentures of the same class.

(3) Subsection (2) does not apply if—

(a) the debenture is the only debenture of the class to which it belongs that has been or that can be issued; and

(b) the rights of the debenture holder cannot be altered or abrogated without his consent.

(4) This section does not apply to a trust deed executed or to debentures issued before 1st January, 1995.

Division 3

Prospectuses

Interpretation

178. (1) In this Division—

"company" includes any association of persons seeking to be registered as a company;

"competent regulatory authority" means any authority appointed by the Minister by notice in the *Gazette* to approve the offering of shares or debentures to the public;

"expert" includes an engineer, valuer, accountant and any other professional whose profession gives authority to a statement made by him;

"promoter" means a promoter who was a party to the preparation of the prospectus but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company;

"share" includes debentures, units or sub-units of a unit trust or a warrant conferring an option to acquire shares.

(2) An offer or invitation is not to be treated as made to the public if it is an offer to existing holders of shares in the company of the same class as the shares comprised in the offer without any right of renunciation.

Publication of prospectus

179. (1) Subject to the provisions of any other enactment, a company must not offer shares to the public unless prior to the offer—

(a) it publishes in writing a prospectus that complies with sections 181 and 182 signed by or on behalf of each director of the company; and

(b) files a copy of the prospectus with the Registrar.

(2) A company that contravenes subsection (1) commits an offence.

Certificate of attorney

180. The Registrar shall not accept for filing a copy of a prospectus unless it is accompanied by a certificate signed by an attorney-at-law certifying that it contains the particulars required by section 181(1) or that an appointed stock exchange or competent regulatory authority has approved it as a basis for offering shares to the public.

Contents of prospectus

181. (1) A prospectus shall contain the following information—

(a) the names, descriptions and addresses of the promoters, officers or proposed officers;

(b) the business or proposed business of the company;

(c) the minimum subscription that, in the opinion of the promoters, directors or provisional directors must be issued as provided in section 182;

(d) any rights or restrictions on the shares that are being offered;

(e) all commissions payable on the sale of the shares referred to in the prospectus and the net amount receivable by the company in respect of the sale;

(f) the name and address of any person who owns 5% or more of the shares of the company;

(g) any shareholding in the company of an officer of the company;

(h) a report by the auditor of the company; and

(i) the date and time of the opening and closing subscription lists.

(2) Subsection (1) does not apply where an appointed stock exchange or competent regulatory authority has approved a prospectus as the basis for offering shares to the public.

Minimum subscription

182. A prospectus must contain the following particulars—

(a) the minimum subscription that must be raised by the issue of shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters—

(i) the purchase price of any assets purchased or to be purchased that is to be defrayed in whole or in part out of the proceeds of the issue,

(ii) any preliminary expenses payable by the company and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company, and

(iii) the repayment of any money borrowed by the company in respect of any of the matters specified in subparagraph (ii);

(b) the amounts to be provided in respect of the matters otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

Continuous offering of shares

183. (1) Where any company continuously over a period offers shares to the public—

(a) every 12 months from the date of the last issue it shall issue a new prospectus that complies with the provisions of section 181; and

(b) whenever any of the particulars in a prospectus issued by such a company ceases in a material respect to be accurate it shall give reasonable public notice of the change of the particulars.

(2) A company that contravenes subsection (1) commits an offence.

Civil liability for misstatements

184. (1) Where a prospectus invites persons to subscribe for shares in a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares on the faith of the prospectus or for the loss or damage they may have sustained by reason of any untrue statement included in it—

(a) every person who is an officer of the company at the time of the issue of the prospectus;

(b) every person who has authorised himself to be named and is named in the prospectus as an officer or as having agreed to become an officer immediately or after an interval of time;

(c) every person being a promoter of the company; and

(d) every person who has authorised the issue to the public of the prospectus.

(2) No person is liable under subsection (1) if he proves—

(a) that, having consented to become an officer of the company, he withdrew his consent before the issue of the prospectus and that it was issued without his authority or consent;

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent;

(c) that, after the issue of the prospectus and before allotment under it, he on becoming aware of any untrue statement in it, withdrew his consent to it and gave reasonable public notice of the withdrawal and of the reason for it; or

(d) that—

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable grounds to believe, and did up to the time of the allotment of shares believe, that the statement was true,

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement or was a correct and fair copy of or extract from the report or valuation, and he had reasonable grounds to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and had not withdrawn or altered it, and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(3) Where the prospectus contains—

(a) the name of a person as an officer of the company or as having agreed to become an officer of the company, and he has not consented to become an officer, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue of it; or

(b) a statement by an expert or what purports to be a copy of or extract from a report or valuation of any expert that the expert has withdrawn or altered;

the officer of the company, and any other person who authorised the issue of it shall be liable to indemnify the person named or whose consent was required, as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion in it of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect of it.

(4) For the purposes of subsection (3), a person is deemed not to have authorised the issue of a prospectus by reason only of the inclusion in it of a statement purporting to be made by him as an expert.

Liability of experts

185. A person referred to as an expert in a prospectus is not liable under section 184 if any untrue statement was not made by him or that as regards any untrue statement made by him, he was competent to make the statement and had reasonable grounds to believe and did believe up to the date of the issue of the prospectus that it was true or, on becoming aware that the statement was untrue before the issue of the prospectus, he had given reasonable public notice of his disassociation from the prospectus and the reasons therefor.

PART 4

OTHER TYPES OF COMPANIES, FOREIGN COMPANIES AND CORPORATE MOBILITY

Division 1

Companies Not for Profit

Companies not for profit

186. (1) Where the Registrar is satisfied that a company to be incorporated qualifies as a non-profit company under subsection (2), he may register the company as a non-profit company.

(2) In order to qualify as a non-profit company, the company must restrict its undertaking to one that is of a patriotic, religious, philanthropic, charitable, educational, scientific, sporting, or athletic nature or the like or the promotion of some other useful object.

(3) The Registrar may attach any other conditions that he thinks fit to impose, and the conditions are binding on the company and shall be endorsed on the articles of incorporation.

(4) The provisions of this Act apply *mutatis mutandis* to non-profit companies.

Division 2

Companies Limited by Guarantee and Hybrid Companies

Other companies permitted

187. (1) Subject to subsections (2) and (3), a company—

(a) limited by guarantee; or

(b) limited by both shares and guarantee;

may be incorporated.

(2) Each member of a company referred to in subsection (1) must undertake to contribute to the assets of the company in the event of its winding up while he is a member or within the period after he ceases to be a member that is specified in the by-laws.

(3) The member is also liable after he ceases to be a member for liabilities of the company incurred before he ceased to be a member and the costs, charges and expenses of winding up and for the adjusting of the rights and contributions amongst themselves in an amount to be specified.

(4) Except as provided by this section, a member of a company limited by guarantee or limited by shares and guarantee is not, as a member, liable for any act or default of the company.

(5) This Act applies *mutatis mutandis* to a company referred to in this Division.

Division 3

Foreign Companies

Registration of foreign company

188. (1) A foreign company must not carry on business in Anguilla unless it is registered under this Division.

(2) An application by a foreign company for registration under this Division shall be made to the Registrar in prescribed form and shall be accompanied by—

(a) a copy, certified under the public seal of the country, city, place or registrar under the laws of which the foreign company has been incorporated, of its charter, statutes or articles of association or other instrument constituting or defining its constitution and if the instrument is not written in the English language a certified translation of it;

(b) a list of its directors containing the particulars with respect to the directors that are required by this Act to be contained with respect to directors in the register of the directors of a company; and

(c) a notice specifying the name and address of its registered agent in Anguilla.

(3) A foreign company that contravenes subsection (1) commits an offence.

Certificate of registration

189. (1) If he is satisfied that the requirements of this Division in respect of registration as a foreign company have been complied with, the Registrar shall, upon receipt of an application under section 188(2), register the body corporate as a foreign company and issue a certificate of registration.

(2) A certificate of registration of a foreign company issued under this section is conclusive evidence that the foreign company has complied with all the requirements of this Act.

Alteration of constituting instrument

190. (1) If in the case of a foreign company registered under this Division any alteration is made in its charter, statutes, memorandum and articles of association or other constituting instrument, the foreign company must, within 21 days of the date upon which the alteration is made, file with the Registrar a return in the prescribed form.

(2) A foreign company that contravenes subsection (1) commits an offence.

Annual return

191. (1) A foreign company registered under this Division shall, on or before the last day of the calendar quarter in which the anniversary of its registration falls, file with the Registrar an annual return made up to the first day of the same quarter.

(2) The annual return shall—

(a) contain the prescribed information and be in prescribed form; and

(b) be certified as correct by a director or officer of the foreign company or by its registered agent.

(3) A foreign company that contravenes subsection (1) commits an offence.

Requirements of prospectus

192. (1) A foreign company that carries on business in Anguilla shall state the country in which the foreign company is incorporated in every prospectus inviting subscriptions for its shares or debentures in Anguilla.

(2) A foreign company that carries on business in Anguilla shall—

(i) conspicuously exhibit on every place where it carries on business in Anguilla the name of the foreign company and the country in which it is incorporated,

(ii) cause the name of the foreign company and of the country in which it is incorporated to be stated in legible characters on all its bill heads, letter paper, notices, advertisements and other official publications, and

(iii) if the liability of the members of the foreign company is limited, cause notice of that fact to be stated in legible characters in every prospectus and on all its bill heads, letter paper, notices, advertisements and other official publications in Anguilla, and to be affixed on every place where it or its agents carries on its business in Anguilla.

(3) A foreign company that contravenes subsection (1) or (2) commits an offence.

Removal from Register

193. (1) If a foreign company registered under this Division ceases to carry on business in Anguilla, it shall forthwith file a notice with the Registrar and the Registrar shall remove the name of the company from the Register of Foreign Companies, whereupon the obligations of the company to file any documents with the Registrar ceases.

(2) Where the Registrar is satisfied by any other means that a foreign company registered under this Division has ceased to carry on business in Anguilla, he may remove the name of the company from the Register of Foreign Companies whereupon the obligations of the company to file any document with the Registrar shall cease.

Division 4

Private Companies

Private companies

194. (1) A company, other than a public company, that by its articles—

(a) restricts the right to transfer its shares;

(b) limits the number of its shareholders (exclusive of persons who are employees or former employees of the company) to 11; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company;

may, in its articles, elect to be registered as a private company.

(2) The Registrar shall register as a private company any company that is qualified to make and has made an election under subsection (1).

(3) A private company may, by special resolution passed in accordance with section 162, amend its articles to cease to be a private company.

(4) Where a company that is registered as a private company—

(a) becomes a public company; or

(b) files articles of amendment—

(i) whereby it ceases to be a private company, or

(ii) that result in the company ceasing to be qualified to be a private company;

the Registrar shall revoke the registration of the company as a private company.

Exemptions

195. A company registered as a private company is exempt from sections 91 to 94, 110, 130, 141 to 147, 154 and 178 to 185.

Division 5

Corporate Mobility

Continuance under this Act

196. (1) An application to the Registrar for a certificate of continuance under this Act may be made by—

(a) an Anguilla company, other than a company incorporated or continued under this Act; and

(b) a company incorporated in a jurisdiction other than Anguilla, if not expressly prohibited from making such an application by the laws of that other jurisdiction.

(2) An application under subsection (1) must be made by filing with the Registrar articles of continuance in prescribed form.

(3) Articles of continuance may, without so stating in the articles, effect any amendment to the corporate instruments of the body corporate that applies for continuance under this section, if the amendment—

(a) is authorised in accordance with the law applicable to the body corporate before continuance under this Act; and

(b) is an amendment that a company incorporated under this Act is entitled to make to its articles.

Certificate of continuance

197. (1) Upon receipt of articles of continuance, the Registrar may issue a certificate of continuance.

(2) On the date shown in the certificate of continuance—

(a) the body corporate becomes a company to which this Act applies as if the company had been incorporated under this Act;

(b) the articles of continuance become the articles of incorporation of the continued company; and

(c) except for the purpose of section 64, the certificate of continuance is the certificate of incorporation of the continued company.

Preservation of company

198. (1) When a body corporate is continued as a company under this Act—

(a) the property of the body corporate continues to be the property of the company;

(b) the company continues to be liable for the obligations of the body corporate;

(c) an existing cause of action, claim or liability to prosecute is unaffected;

(d) a civil, criminal or administrative action or proceeding pending by or against the body corporate may be continued by or against the company; and

(e) a conviction against, or ruling, order or judgment in favour of or against, the body corporate may be enforced by or against the company.

(2) When the Registrar determines, on the application for continuance of a body corporate, that it is not practicable to change a reference to the nominal or par value of shares of a class or series that the body corporate was authorised to issue before it was continued as a company under this Act, the Registrar may, notwithstanding section 28(1) to (4), permit the company to continue to refer in its articles to those shares, whether issued or non-issued as shares having a nominal or par value.

(3) A company shall set out in its articles the maximum number of shares of a class or series referred to in subsection (2), and it may not amend its articles to increase that maximum number of shares or to change the nominal or par value of the shares.

Shares of continued company

199. (1) A share of a body corporate issued before the company was continued under this Act is presumed to have been issued in compliance with this Act and with the provisions of the articles of continuance, irrespective of whether the share is fully paid and irrespective of any designation, rights, privileges, restrictions or conditions attached to the share, or set out on, or referred to in, the certificate representing the share, and continuance under this Act does not deprive a shareholder of any right or privilege that he claims under an issued share of the company, nor does it relieve him of any liability in respect of an issued share of the company.

(2) For the purposes of this section, "share" includes an instrument issued pursuant to section 37(1).

Continuance in foreign jurisdiction

200. (1) A company proposing to continue under the laws of a jurisdiction other than Anguilla shall file a certificate of departure with the Registrar in prescribed form.

(2) The certificate of departure must specify—

(a) the names and addresses of the company's creditors, the total amount of the indebtedness and the names and addresses of all persons who have notified the company of a claim in excess of $1,000 and the total amount of the claims;

(b) that the intended continuance in a foreign jurisdiction is unlikely to be detrimental to the rights or property interests of any creditor of or claimant against the company;

(c) that the company at the time of the application is not in breach of any duty or obligation imposed upon it by this Act;

(d) that the continuance in the foreign jurisdiction is made in good faith and will not serve to hinder, delay or defraud existing shareholders or other interested parties;

(e) that the company consents to being served with process in Anguilla in any proceeding arising out of actions occurring prior to its departure, and that it appoints the Minister as agent of the company to accept service of process; and

(f) its address for service in the foreign jurisdiction.

Certificate of discontinuance

201. (1) A company that—

(a) has filed a certificate of departure under section 200; and

(b) has been continued under the law of a foreign jurisdiction;

may apply to the Registrar for a certificate of discontinuance.

(2) An application under subsection (1) shall be in the form required by the Registrar and shall be accompanied by evidence acceptable to the Registrar that the company has been continued under the laws of a foreign jurisdiction.

(3) If he is satisfied that—

(a) all fees payable under this Act have been paid;

(b) all returns and notices required to be filed under this Act have been filed; and

(c) the requirements of this section and section 200 have been complied with;

the Registrar shall issue a certificate of discontinuance to the company in prescribed form and strike it off the Register.

(4) The Registrar shall publish a notice of the discontinuance and striking off in the *Gazette*.

(5) From the date of the certificate of discontinuance, the company ceases to be a company domiciled in Anguilla.

Company may continue as an international business company

202. (1) A company may continue as an international business company in accordance with the provisions of the International Business Companies Act.

(2) Upon the continuance of a company under the International Business Companies Act, the Registrar shall strike the name of the company off the Register and, with effect from the date of the company's continuance, it shall cease to be a company registered under this Act.

Jurisdiction of Court

203. Nothing in this Division affects the jurisdiction of the Court to hear and determine any proceeding commenced by or against the company arising out of actions or omissions occurring before the date of its continuance.

PART 5

INSOLVENCY AND WINDING UP

Revival of company by Registrar

204. (1) When a company has been struck off the Register and dissolved under the former Act or under section 151, 208 or 241 of this Act, a person who, at the time of the dissolution of the company, was—

(a) a shareholder or director of the company;

(b) a creditor or debenture holder of the company; or

(c) a liquidator or receiver of the property of the company;

may apply to the Registrar for the revival of the company on any of the grounds referred to in subsection (3).

(2) An application made under subsection (1) shall contain the information and be in the form required by the Registrar and must be made within 20 years of the date of the dissolution of the company.

(3) If the Registrar is satisfied that, at the time that the company was dissolved, it—

(a) was still carrying on business;

(b) was a party to legal proceedings;

(c) was in liquidation or receivership; or

(d) had property that had not been disposed of;

he may issue a certificate of revival for the company and restore it to the Register upon such reasonable terms as he considers appropriate.

(4) Before reviving a company under this section, the Registrar may require—

(a) the payment of—

(i) all fees and penalties that were due from the company at the date of its dissolution, and

(ii) all fees and penalties that would have been payable at the date that the application was made to him had the company not been dissolved including, in the case of a company struck off and dissolved under the former Act, the fees that would have been payable upon its continuance under this Act; and

(b) any of the provisions of this Act, or any regulations made thereunder, being provisions with which the company had failed to comply before it was dissolved, to be complied with.

(5) The Registrar must publish a notice of the revival of a company under this section in the *Gazette*.

(6) If the Registrar refuses to revive a company under this section, he must given written notice of his refusal to the applicant.

(7) The Registrar may refer an application to revive a company made to him under this section to the Court, in which case it must be dealt with by the Court as an application to revive the company made under section 205.

(8) Where a company is revived and restored to the Register under this section, the Court, on the application of the Registrar, the company or any person referred to in subsection (1), may give such directions or make such orders as may be necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the company had not been dissolved.

(9) A person referred to under subsection (1) who is aggrieved by a decision of the Registrar made under this section may, within 28 days of the date of the decision appeal to the Court, which shall rehear the application as if it had been made under section 205.

(10) Notice of an appeal under subsection (9) must be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

Revival of company by Court

205. (1) Subject to subsection (2), when a company has been struck off the Register and dissolved under the former Act or under this Act, an interested person, including the Registrar, may apply to the Court for an order that the company be revived and restored to the Register.

(2) An application under this section—

(a) may not be made by a person who could make or who has made an application to the Registrar for the revival of the company under section 204; and

(b) must be made within 20 years of the date of the dissolution of the company.

(3) An applicant under this section, other than the Registrar, must give the Registrar notice of the application and the Registrar may appear and be heard at the hearing of the application.

(4) The Court, if it is satisfied that it is just for the company to be revived, may, upon such terms as it considers appropriate, order that the company be revived and restored to the Register.

(5) Before making an order for the revival of a company under this section, the Court may require—

(a) the payment to the Registrar of—

(i) all fees and penalties that were due from the company at the date of its dissolution, and

(ii) all fees and penalties that would have been payable at the date that the application was made to the Court had the company not been dissolved including, in the case of a company struck off and dissolved under the former Act, the fees that would have been payable upon its continuance under this Act; and

(b) any of the provisions of this Act, or any regulations made thereunder, being provisions with which the company had failed to comply before it was dissolved, to be complied with.

(6) On the receipt of an order made under this section, the Registrar shall issue a certificate of revival of the company, restore its name to the Register and publish a notice of the revival of the company in the *Gazette*.

(7) Where a company is revived and restored to the Register under this section, the Court may give such directions or make such orders as may be necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the company had not been dissolved.

Dissolution before commencing business

206. A company that has not issued any shares may be dissolved at any time by resolution of all the directors.

Dissolution where no property or liabilities

207. A company that has no property and no liabilities may be dissolved by special resolution of the shareholders, or if it has issued more than one class of shares by special resolution of the holders of each class, whether or not they are otherwise entitled to vote.

Effect of articles of dissolution

208. (1) Articles of dissolution in prescribed form must be filed with the Registrar in respect of a company described in section 206 or 207.

(2) If he is satisfied that the requirements of this Act in respect of dissolution have been complied with, the Registrar shall, upon receipt of articles of dissolution, issue a certificate of dissolution and strike the company off the Register.

(3) The company is dissolved on the date shown in its certificate of dissolution.

Proposing liquidation

209. (1) The directors of a company, or a shareholder who is entitled to vote at an annual meeting of the company, may make a proposal for the voluntary liquidation of the company.

(2) Notice of any meeting of shareholders of a company at which a voluntary liquidation and dissolution of the company is to be proposed must set out the terms of the liquidation and dissolution.

(3) A company may liquidate and dissolve by special resolution of the shareholders, or, if the company has issued more than one class of shares, by special resolution of the holders of each class, whether or not they are otherwise entitled to vote.

Filing intent to dissolve

210. (1) A statement of intent to dissolve a company must be filed with the Registrar in prescribed form.

(2) If he is satisfied that the relevant requirements of this Part have been complied with, the Registrar shall, upon receipt of a statement of intent to dissolve, issue a certificate of intent to dissolve.

(3) When a certificate of intent to dissolve a company is issued by the Registrar, the company shall cease to carry on business except to the extent necessary for its liquidation, but its corporate existence continues until the Registrar issues a certificate of dissolution of the company.

(4) After the issue of a certificate of intent to dissolve, the company shall—

(a) immediately cause notice of its intent to dissolve to be sent to each known creditor of the company;

(b) forthwith publish, in the *Gazette* and once in a newspaper distributed in Anguilla, its intent to dissolve, and take reasonable steps to give notice of its intent in every jurisdiction in which the company is registered or has a place of business at the time it filed the statement of intent to dissolve with the Registrar;

(c) proceed to collect its property, to dispose of properties that are not to be distributed in kind to its shareholders, to discharge all its obligations, and to do all other acts required to liquidate its business; and

(d) after giving the notice required under paragraphs (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind among its shareholders according to their respective rights.

Court supervised liquidation

211. (1) The Registrar or any interested person may, at any time during the liquidation of a company, apply to the Court for an order that the liquidation be continued under the supervision of the Court as provided in this Part, and the Court may so order and make any further order it thinks fit.

(2) An applicant under this section, other than the Registrar, must give the Registrar notice of the application, and the Registrar may appear and be heard at the hearing of the application.

Revocation of intent to dissolve

212. (1) At any time after the issue of a certificate of intent to dissolve a company and before the issue of a certificate of its dissolution, a certificate of intent to dissolve may be revoked by filing with the Registrar, in prescribed form, a statement of revocation of intent to dissolve the company, if the revocation is approved in the same manner as the resolution was approved under section 209(3).

(2) If he is satisfied that the relevant requirements of this Act have been complied with, the Registrar shall, upon receipt of a statement of revocation of an intent to dissolve a company, issue a certificate of revocation of intent to dissolve the company.

(3) On the date shown in the certificate of revocation of intent to dissolve a company, the revocation is effective and the company may continue to carry on its business.

Right to dissolve

213. (1) If a certificate of intent to dissolve a company has not been revoked and the company has complied with section 210(4), the company must prepare articles of dissolution.

(2) The articles of dissolution in prescribed form must be filed with the Registrar.

(3) If he is satisfied that the relevant requirements of this Act have been complied with, the Registrar shall, upon receipt of the articles of dissolution of a company under this section, issue a certificate of dissolution of the company and strike the company off the Register.

(4) The company is dissolved on the date shown in its certificate of dissolution.

Court ordered dissolution

214. (1) The Registrar or any interested person may apply to the Court for an order dissolving a company, if the company—

(a) has contravened section 18 or section 130, 132 or 157;

(b) has failed for 2 or more consecutive years to comply with the requirements of this Act with respect to the holding of annual meetings of shareholders;

(c) has procured any certificate under this Act by misrepresentation; or

(d) carries on business without a shareholder.

(2) An applicant under this section, other than the Registrar, must give the Registrar notice of the application, and the Registrar may appear and be heard at the hearing of the application.

(3) Upon an application under this section, the Court may order that the company be dissolved, or that the company be liquidated and dissolved under the supervision of the Court, and the Court may make any other order it thinks fit.

(4) Upon receipt of an order under this section or section 215, the Registrar must—

(a) if the order is to dissolve the company, issue a certificate of its dissolution and strike the company off the Register; or

(b) if the order is to liquidate and dissolve the company under the supervision of the Court, issue a certificate of intent to dissolve the company;

and publish a notice of the certificate he has issued under this section in the *Gazette*.

(5) The company is dissolved on the date shown in its certificate of dissolution.

Court ordered dissolution: other circumstances

215. (1) The Court may order the liquidation and dissolution of a company or any of its affiliated companies upon the application of a shareholder, debenture holder, creditor, director or officer if the Court is satisfied that—

(a) any unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the company after the occurrence of a specified event and that event has occurred;

(b) it is just and equitable that the company be liquidated and dissolved; or

(c) the company is insolvent or unable to pay its debts.

(2) Upon an application under this section, the Court may make such order under this section or section 217 as it thinks fit.

Court supervision of voluntary liquidation

216. (1) An application to the Court to supervise a voluntary liquidation and dissolution under section 211 must state the reasons the Court should supervise the liquidation and dissolution, and the reasons must be verified by the affidavit of the applicant.

(2) If the Court makes an order applied for under section 211, the liquidation and dissolution of the company must be continued under supervision of the Court in accordance with this Act.

Dissolution by Court

217. (1) An application to the Court under section 215 must state the reasons the company should be liquidated and dissolved, and the reasons must be verified by the affidavit of the applicant.

(2) Upon an application under section 215, the Court may make an order requiring the company and any person having an interest in the company or claim against it to show cause, at a time and place specified in the order, which must not be less than 4 weeks after the date of the order, why the company should not be liquidated and dissolved.

(3) Upon an application under section 211 to supervise a voluntary liquidation and dissolution of a company, the Court may order the directors and officers of the company to furnish to the Court all material information known to, or reasonably ascertainable by, them including—

(a) the financial statements of the company;

(b) the name and address of each shareholder of the company; and

(c) the name and address of each known creditor or claimant, including any creditor or claimant with unliquidated, future or contingent claims, and any person with whom the company has a contract.

(4) A copy of an order made under subsection (2) must—

(a) be published in a newspaper distributed in Anguilla, as directed in the order, at least once in each week before the time appointed for the hearing; and

(b) be served upon the Registrar and each person named in the order.

(5) Publication and service of an order under this section must be effected by the company or by such other person and in such manner as the Court may order.

Court powers

218. In connection with the dissolution or the liquidation and dissolution of a company, the Court may, if it is satisfied that the company is able to pay or adequately provide for the discharge of all its obligations, make any order it thinks fit, including—

(a) an order to liquidate;

(b) an order appointing a liquidator, with or without security, fixing his remuneration or replacing a liquidator;

(c) an order appointing inspectors, or referees, specifying their powers, fixing their remuneration or replacing inspectors or referees;

(d) an order determining the notice to be given to an interested person, or dispensing with notice to any person;

(e) an order determining the validity of any claim made against the company;

(f) an order, at any stage of the proceedings, restraining the directors and officers of the company from—

(i) exercising any of their powers, or

(ii) collecting or receiving any debt or other property of the company and from paying out or transferring any property of the company except as permitted by the Court;

(g) an order determining and enforcing the duty or liability of any present or former director, officer or shareholder of the company—

(i) to the company, or

(ii) for an obligation of the company;

(h) an order approving the payment, satisfaction or compromise of claims against the company and the retention of amounts for such purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the company, whether liquidated, unliquidated, future or contingent;

(i) an order disposing of, or destroying the documents and records of the company;

(j) upon the application of a creditor, the inspectors or the liquidator, an order giving directions on any matter arising in the liquidation;

(k) after notice has been given to all interested parties, an order relieving a liquidator from any omission or default on such terms as the Court thinks fit, and confirming any act of the liquidator;

(l) subject to section 223, an order approving any proposed interim or final distribution to shareholders in money or in property;

(m) an order disposing of any property belonging to creditors or shareholders who cannot be found;

(n) upon the application of any director, officer, shareholder or debenture holder, creditor or the liquidator—

(i) an order staying the liquidation on such terms and conditions as the Court thinks fit,

(ii) an order continuing or discontinuing the liquidation proceedings, or

(iii) an order to the liquidator to restore to the company all its remaining property; and

(o) after the liquidator has rendered his final accounts to the Court, an order dissolving the company.

Company to cease business

219. (1) Where a Court makes an order for the liquidation of a company, then, from the date stated in the order—

(a) the company shall cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation; and

(b) the powers of the directors and shareholders cease and are vested in the liquidator, except as specifically authorised by the Court.

(2) The liquidator may delegate any of the powers vested in him by paragraph (1)(b) to the directors or shareholders.

Appointment of liquidator

220. (1) When making an order for the liquidation of a company, or at any time thereafter, the Court may appoint any person including a director, officer or shareholder of the company, as liquidator of the company.

(2) Where an order for the liquidation of a company has been made and the office of liquidator is or becomes vacant, the property of the company is under the control of the Court until the office of liquidator is filled.

Duties of liquidator

221. A liquidator must—

(a) forthwith after his appointment, file notice of his appointment with the Registrar and give notice of his appointment to each claimant and creditor of the company known to the liquidator;

(b) forthwith give, by publication in the *Gazette* and by insertion once a week for 2 consecutive weeks in a newspaper distributed in Anguilla, notice—

(i) requiring any person indebted to the company to render an account and pay to the liquidator at the time and place specified any amount owing,

(ii) requiring any person possessing property of the company to deliver it to the liquidator at the time and place specified, and

(iii) requiring any person having a claim against the company, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than 2 months after the first publication of the notice;

and the liquidator must take reasonable steps to give notice of his appointment in every jurisdiction where the company is registered or has a place of business and to require persons described in subparagraphs (i) to (iii) to take similar action;

(c) take into his custody and control the property of the company;

(d) open and maintain a trust account for the money of the company received and paid out by him;

(e) keep accounts of the money of the company received and paid out by him;

(f) maintain separate lists of the shareholders, creditors and other persons having claims against the company;

(g) if at any time the liquidator determines that the company is unable to pay, or adequately provide for the discharge of its obligations, apply to the Court for directions;

(h) deliver to the Court and file with the Registrar, at least once in every 12-month period after his appointment, or more often as the Court may require, financial statements of the company in the form required by section 126 or 128, or in such other form as the liquidator may think proper, or as the Court may require; and

(i) after his final accounts are approved by the Court, distribute any remaining property of the company among the shareholders according to their respective rights.

Powers of liquidator

222. (1) A liquidator may—

(a) retain attorneys-at-law, accountants, engineers, appraisers and other professional advisers;

(b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the company;

(c) carry on the business of the company as required for an orderly liquidation;

(d) sell by public auction or private sale any property of the company;

(e) do all acts and execute any documents in the name and on behalf of the company;

(f) borrow money on the security of the property of the company;

(g) settle or compromise any claims by or against the company;

(h) make financial provision in respect of the custody of the documents and records of the company after its dissolution; and

(i) do all other things necessary for the liquidation of the company and the distribution of its property.

(2) A liquidator incurs no liability as liquidator if he relies in good faith upon—

(a) financial statements of the company represented to him by an officer of the company or in a written report of the auditor of the company to reflect fairly the financial condition of the company; or

(b) an opinion, a report or a statement of an attorney-at-law, accountant, an engineer, an appraiser or other professional adviser retained by the liquidator.

(3) If a liquidator has reason to believe that any person has in his possession or under his control, or has concealed, withheld or misappropriated any property of the company, the liquidator may apply to the Court for an order requiring that person to appear before the Court at the time and place designated in the order, and to be examined.

(4) If the examination referred to in subsection (3) discloses that a person has concealed, withheld or misappropriated property of the company, the Court may order that person to restore the property or pay compensation to the liquidator.

(5) A liquidator must pay the costs of liquidation out of the property of the company and must pay or make adequate provision for all claims against the company.

Final accounts of liquidator

223. (1) Within 1 year after his appointment, and after paying or making adequate provision for all claims against the company, the liquidator must apply to the Court—

(a) for approval of final accounts and for an order permitting him to distribute in money or in kind the remaining property of the company to its shareholders according to their respective rights; or

(b) for an extension of time, setting out the reasons for the extension.

(2) If a liquidator fails to make the application required by subsection (1), a shareholder of the company may apply to the Court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

(3) A liquidator must give to—

(a) the Registrar;

(b) each inspector appointed under section 218;

(c) each shareholder; and

(d) any person who provided a security or fidelity bond for the liquidator;

notice of the liquidator's intention to make application under subsection (1), and he must publish a notice thereof in a newspaper distributed in Anguilla, or as otherwise directed by the Court.

(4) If the Court approves the final accounts rendered by a liquidator, the Court must make an order—

(a) directing the Registrar to issue a certificate of dissolution;

(b) directing the custody or disposal of the documents and records of the company; and

(c) subject to subsection (5), discharging the liquidator.

(5) The liquidator must forthwith file a certified copy of the order referred to in subsection (4) with the Registrar.

(6) Upon receipt of the order referred to in subsection (4), the Registrar must issue a certificate of dissolution and strike the company off the Register.

(7) The company is dissolved on the date shown in its certificate of dissolution.

Money distribution

224. (1) If, in the course of liquidation of a company, the shareholders resolve or the liquidator proposes—

(a) to exchange all or substantially all the property of the company for shares or debentures of another body corporate for distribution to the shareholders; or

(b) to distribute all or part of the property of the company to the shareholders in kind;

a shareholder may apply to the Court for an order requiring the distribution of the property of the company to be in money.

(2) Upon application under subsection (1), the Court may order—

(a) that all the property of the company be converted into, and distributed in, money; or

(b) that the claims of any shareholder applying under this section be satisfied by a distribution in money.

Custody of records

225. A person who has been granted custody of the documents and records of a dissolved company remains liable to produce those documents and records for 6 years following the date of the company's dissolution, or until the expiry of such other shorter period as may be ordered under section 223(4).

Continuation of actions

226. (1) In this section "shareholder" includes the legal representatives of a shareholder.

(2) Notwithstanding the dissolution of a company under this Act—

(a) a civil, criminal or administrative action or proceeding commenced by or against the company before its dissolution may be continued as if the company had not been dissolved;

(b) a civil, criminal or administrative action or proceeding may be brought against the company within 2 years after its dissolution as if the company had not been dissolved; and

(c) any property that would have been available to satisfy any judgment or order if the company had not been dissolved remains available to satisfy the judgment or order.

(3) Service of a document on a company after its dissolution may be effected by serving the document upon a person shown in the articles as having consented to be a first director of the company unless a notice has been filed under section 76, in which case a document may be served upon any person shown in the last such notice to be filed.

(4) Notwithstanding the dissolution of a company, a shareholder to whom any of its property has been distributed is liable to any person claiming under subsection (2) to the extent of the amount received by that shareholder upon the distribution, but an action to enforce that liability may not be brought after 2 years from the date of the dissolution of the company.

(5) A Court may order an action referred to in subsection (4) to be brought against the persons who were shareholders as a class, subject to such conditions as the Court thinks fit, and, if the plaintiff establishes his claim, the Court may refer the proceedings to a referee or other officer of the Court, who may—

(a) add as a party to the proceedings before him each person found by the plaintiff to have been a shareholder;

(b) determine, subject to subsection (4), the amount that each person who was a shareholder should contribute towards satisfaction of the plaintiff's claim; and

(c) direct payment of the amounts so determined.

Whereabouts of claimants unknown

227. (1) Upon the dissolution of a company, the portion of property distributable to a creditor or shareholder who cannot be found must be converted into money and paid into the Consolidated Fund.

(2) A payment under subsection (1) is in satisfaction of the debt or claim of the creditor or shareholder.

(3) If, at any time within 6 years after the date on which any money is paid into the Consolidated Fund under subsection (1), any person establishes his entitlement to the money paid into the Fund, he is entitled to be paid an equivalent amount out of the Consolidated Fund.

Property to vest in Crown

228. (1) Subject to section 226(2) and section 227, any property of a company that has not been disposed of at the date of the company's dissolution vests in the Crown.

(2) When a company is revived under section 204, any property (other than money) that was vested in the Crown pursuant to subsection (1) on the dissolution of the company and that has not been disposed of must be returned to the company upon its revival.

(3) The company is entitled to be paid out of the Consolidated Fund—

(a) any money received by the Crown under subsection (1) in respect of the company; and

(b) if property other than money vested in the Crown under subsection (1) in respect of the company and that property has been disposed of, an amount equal to the lesser of—

(i) the value of the property at the date it vested in the Crown, and

(ii) the amount realised by the Crown by the disposition of that property.

Disclaimer of property by Crown

229. (1) For the purposes of this section, "onerous property" means—

(a) an unprofitable contract; or

(b) property of the company that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act.

(2) Subject to subsection (3), the Minister may, by notice in writing published in the *Gazette*, disclaim the Crown's title to onerous property that vests in the Crown pursuant to section 228.

(3) A statement in a notice disclaiming property under this section that the vesting of the property in the Crown first came to the notice of the Minister on a specified date shall, in the absence of proof to the contrary, be evidence of the fact stated.

(4) Unless the Court, on the application of the Minister, orders otherwise, the Minister is not entitled to disclaim property unless the property is disclaimed—

(a) within 12 months of the date upon which the vesting of the property under section 228 came to the notice of the Minister; or

(b) if any person interested in the property gives notice in writing to the Minister requiring him to decide whether he will or will not disclaim the property, within 3 months of the date upon which he received the notice;

whichever occurs first.

(5) Property disclaimed by the Minister under this section shall be deemed not to have vested in the Crown under section 228.

(6) A disclaimer under this section—

(a) operates so as to determine, with effect from immediately prior to the dissolution of the company, the rights, interests and liabilities of the company in or in respect of the property disclaimed; and

(b) does not, except so far as is necessary to release the company from liability, affect the rights or liabilities of any other person.

(7) A person suffering loss or damage as a result of a disclaimer under this section—

(a) shall be treated as a creditor of the company for the amount of the loss or damage, taking into account the effect of any order made by the Court under subsection (8); and

(b) may apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

(8) The Court may, on an application made under paragraph (7)(b), make an order under that subsection if it is satisfied that it is just for the disclaimed property to be delivered to or vested in the applicant.

Company limited by shares and guarantee

230. 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 up 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 amounts that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

PART 6

ADMINISTRATION AND GENERAL

Division 1

Functions of the Registrar

Responsibility of Registrar

231. (1) There is established the office of Registrar of Companies as a public office to which appointments are to be made in accordance with section 66 of the Constitution of Anguilla.

(2) Under the general supervision of the Minister, the Registrar of Companies is responsible for the administration of this Act.

(3) A seal may be required by the Minister for use by the Registrar in the performance of his duties.

Immunity

232. No liability attaches to the Registrar or any person acting under the authority of the Registrar for any act done in good faith in the discharge of his functions under this Act.

Register of Companies

233. (1) The Registrar shall maintain a Register of Companies in which to keep the name of every company—

(a) that is—

(i) incorporated under this Act,

(ii) continued as a company under this Act, or

(iii) restored to the Register under this Act; and

(b) that has not been subsequently struck off that Register.

(2) The Registrar shall maintain a Register of Foreign Companies in which to keep the name of every body corporate registered as a foreign company under Division 3 of Part 4.

(3) Duplicates of the Register of Companies and the Register of Foreign Companies may be kept in any place outside Anguilla.

Sending notices, etc. to directors or shareholders

234. (1) A notice or document required or permitted by this Act, the regulations, articles or the by-laws to be sent to a shareholder or director of a company may be sent by telex, telefax, by prepaid post or cable or by electronic means addressed to, or may be delivered personally to—

(a) the shareholder at his latest address as shown in the records of the company or its transfer agent; and

(b) the director at his latest address as shown in the records of the company or in the articles of incorporation or the latest notice filed under section 76 as appropriate.

(2) Each of the following is, for the purposes of this Act, a director of a company—

(a) a person named in the articles as a person who has consented to be a first director of a company, unless notice has been given in a notice accepted for filing under section 76 that the person has ceased to be a director of the company; and

(b) a person whose appointment as a director has been notified to the Registrar in a notice filed under section 76, unless notice has been given in a subsequent notice accepted for filing under section 76 that the person has ceased to be a director of the company.

Presumption of receipt

235. A notice or document sent in accordance with section 234 to a shareholder or director of a company is, for the purpose of this Act, presumed to be received by him at the time, having regard to the mode of dispatch, that it would in its ordinary course be delivered.

Undelivered documents

236. If a company sends a notice or document to a shareholder in accordance with section 234 and the notice or document is returned on 3 consecutive occasions because the shareholder cannot be found, the company need not send any further notices or documents to the shareholder until he informs the company in writing of his new address.

Waiver of notice

237. Where a notice or document is required to be sent pursuant to this Act, the sending of the notice or document may be waived, or the time for the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to the notice or document.

Certificate by company

238. A certificate issued on behalf of a company stating any fact that is set out in the articles, the by-laws, any unanimous shareholder agreement, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a trust deed or other contract to which the company is a party, may be signed by a director, an officer or a transfer agent of the company.

Evidentiary value

239. When introduced as evidence in any civil, criminal, or administrative action or proceeding—

(a) a fact stated in a certificate referred to in section 238;

(b) a certified extract from a register of members or debenture holders of a company; or

(c) a certified copy of minutes or extracts from minutes of a meeting of shareholders, directors or a committee of directors of a company;

is, in the absence of evidence to the contrary, proof of the fact so certified without proof of the signature or official character of the person appearing to have signed the certificate.

Registrar's certificate as to certain facts

240. The Registrar may furnish any person with a certificate stating—

(a) that a company has or has not sent to the Registrar a document required to be filed with him under this Act;

(b) that a name, whether that of a company or not, is or is not on the Register; or

(c) that a name, whether that of a company or not, was or was not on the Register on a stated date.

Striking off Register

241. (1) The Registrar may strike a company off the Register if—

(a) the company fails to send any return, notice, document or prescribed fee to the Registrar as required under this Act;

(b) the company has not commenced business within 3 years after the date of its certificate of incorporation; or

(c) the Registrar is satisfied that the company has ceased to carry on business or is not in operation.

(2) Before striking a company off the Register under subsection (1), the Registrar shall send it a notice in prescribed form stating—

(a) the grounds on which it is intended to strike the company off the Register; and

(b) that, unless the company shows cause to the contrary and remedies the defaults set out in the notice, if any, within 90 days after the date of the notice, it will be struck off the Register.

(3) After the expiration of the time mentioned in the notice, the Registrar may, unless the company has shown cause to the contrary and, if appropriate, remedied the defaults set out in the notice, issue a certificate of dissolution and strike the company off the Register.

(4) The company is dissolved on the date shown in its certificate of dissolution.

(5) The Registrar shall publish a notice of the striking off and dissolution of the company in the *Gazette*.

Liability to continue

242. Where a company is struck off the Register, the liability of the company and of every director, officer or shareholder of the company continues and may be enforced as if it has not been struck off the Register.

Service on company

243. A notice or document may be served on a company—

(a) by leaving it at, or sending it by telex or telefax or by prepaid post or cable addressed to, the registered office of the company; or

(b) by personally serving any director, officer, receiver, receiver-manager or liquidator of the company.

Reservation of name

244. The Registrar may in prescribed form, on request, reserve for 90 days a name for an intended company or for a company about to change its name.

Prohibited names

245. The name of a company—

(a) shall not be the same as, or similar to, the name or business name of any other person if the use of that name would be likely to confuse or mislead unless the other person consents in writing to the use of that name in whole or in part, and if required by the Registrar, provides an undertaking acceptable to the Registrar to cease carrying on business under that name within 6 months of the date of the undertaking;

(b) shall not be identical to the name of a body corporate incorporated under the laws of Anguilla before 1st January, 1995;

(c) shall not suggest or imply the patronage of Her Majesty or any member of the Royal Family or connection with Her Majesty's Government or any department thereof in the United Kingdom or elsewhere;

(d) shall not suggest or imply a connection with a political party or a leader of a political party;

(e) shall not suggest or imply a connection with a university or a professional association recognised by the laws of Anguilla unless the university or professional association concerned consents in writing to the use of the proposed name; and

(f) shall not be a name that is prohibited by the regulations.

Refusal of articles

246. The Registrar may refuse to accept articles of incorporation or continuance for a company or to register articles amending the name of a company if—

(a) the name is not distinctive because—

(i) it is too general,

(ii) it is descriptive only of the quality, function or other characteristic of the goods or services in which the company deals or intends to deal, or

(iii) primarily it is only a geographic name used alone,

unless the applicant establishes that the name has through use acquired, and continues to have, a secondary meaning;

(b) the name is defectively inaccurate in describing—

(i) the business, goods or services in association with which it is proposed to be used,

(ii) the conditions under which the goods or services will be produced or supplied, or

(iii) the persons to be employed in the production or supply of those goods and services;

(c) it is likely to be confused with that of a company that was dissolved;

(d) it contains the word or words “credit union”, “co-operative”, or “co-op” when it connotes a cooperative venture; or

(e) it is, in the opinion of the Registrar, for any reason objectionable.

Use of names of dissolved companies

247. Notwithstanding the provisions of sections 245 and 246, the Registrar may accept articles of incorporation or continuance for a company or register articles amending the name of a company if the name is identical or similar to the name of a company that has been and remains struck off the Register and dissolved under the former Act or this Act if—

(a) the company has been struck off the Register and dissolved for a continuous period of more than 3 years;

(b) no application made to revive the company under section 204 or 205 remains undetermined; and

(c) no appeal against a decision of the Registrar under section 204 is pending.

Name of amalgamated company

248. If 2 or more companies amalgamate, the amalgamated company may have—

(a) the name of 1 of the amalgamating companies;

(b) a distinctive combination that is not confusing of the names of the amalgamating companies; or

(c) a distinctive new name that is not confusing.

Division 2

Investigation of Companies

Definition

249. In this Division, “inspector” means an inspector appointed by an order made under section 250(2).

Investigation order

250. (1) A shareholder or debenture holder of a company, or the Registrar, may apply to the Court, *ex parte* or upon such notice as the Court may require, for an order directing that an investigation be made of a company and any of its affiliated companies.

(2) If, upon an application under subsection (1) in respect of a company, it appears to the Court that—

(a) the business of the company or any of its affiliates is or has been carried on with intent to defraud any person;

(b) the company or any of its affiliates was formed for a fraudulent or unlawful purpose, or is to be dissolved for a fraudulent or unlawful purpose;

(c) persons concerned with the incorporation, business or affairs of the company or any of its affiliates have in connection therewith acted fraudulently or dishonestly; or

(d) it is in the public interest that an investigation of the company be made;

the Court may make any order it thinks fit with respect to an investigation of the company and any of its affiliated companies by an inspector.

(3) If a shareholder or debenture holder makes an application under subsection (1), he shall give the Registrar reasonable notice of it, and the Registrar is entitled to appear and be heard at the hearing of the application.

(4) An *ex parte* application under this section shall be heard *in camera*.

(5) No person shall publish anything relating to an *ex parte* proceeding except with the authorisation of the Court or the written consent of the company that is being, or to be, investigated.

Contents of order and copies of reports

251. (1) An order under section 250(2) shall include an order to investigate and an order appointing an inspector, who may be the Registrar, and fixing his remuneration and may include—

(a) an order replacing the inspector;

(b) an order determining the notice to be given to any interested person, or dispensing with notice to any person;

(c) an order authorising an inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;

(d) an order requiring any person to produce documents or records to the inspector;

(e) an order authorising an inspector to conduct a hearing, administer oaths or affirmation and examine any person upon oath or affirmation, and establishing rules for the conduct of the hearing;

(f) an order requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath or affirmation;

(g) an order giving directions to an inspector or any interested person on any matter arising in the investigation;

(h) an order requiring an inspector to make an interim or final report to the Court;

(i) an order determining whether a report of an inspector should be published, and, if so, ordering the Registrar to publish the report in whole or in part, or to send copies to any person the Court designates; and

(j) an order requiring an inspector to discontinue an investigation.

(2) An inspector shall file with the Registrar a copy of every report made by the inspector pursuant to an order under this section.

(3) A report received by the Registrar under subsection (2) must not be disclosed to any person other than in accordance with an order of the Court made under paragraph (1)(i).

Inspector's powers

252. An inspector under this Division—

(a) has the powers set out in the order appointing him; and

(b) shall upon request produce to an interested person a copy of the order.

Hearing *in camera*

253. (1) An interested person may apply to the Court for—

(a) an order that a hearing conducted by an inspector be heard *in camera*; and

(b) directions on any matter arising in the investigation.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector may appear and be heard at the hearing of the application.

Incriminating evidence

254. No person is excused from attending and giving evidence and producing documents and records to an inspector by reason only that the evidence tends to incriminate that person or subject him to any proceeding or penalty, but the evidence may not be used or received against him in any proceeding thereafter instituted against him, other than a prosecution for perjury in giving the evidence.

Privilege absolute

255. An oral or written statement or report made by an inspector or any other person in an investigation under this Division has absolute privilege.

Summons regarding ownership interest

256. (1) If the Registrar is of the opinion that, for the purposes of this Act, there is reason to enquire into the ownership or control of a share or debenture of a company or any of its affiliates, the Registrar may apply to the Court by summons.

(2) The Registrar shall cause a copy of the summons to be served on the company at its registered office unless the Court, upon sufficient cause shown in that behalf, dispenses with the service of summons on the company.

(3) The Court may after due enquiry order any person that it considers has or had an interest in the share or debenture, or acts or has acted on behalf of a person with an interest, to furnish to the Court, or to any person the Court appoints—

(a) information that the person has or can reasonably be expected to obtain as to present and past interests in the share or debenture; and

(b) the names and addresses of the persons so interested and of any person who acts or has acted in relation to the share or debenture on behalf of the persons so interested.

(4) For the purposes of subsection (1), a person has an interest in a share or debenture if—

(a) he has a right to vote or to acquire or dispose of the share or debenture or any interest in it;

(b) his consent is necessary for the exercise of the rights or privileges of any other person interested in the share or debenture; or

(c) any other person interested in the share or debenture can be required, or is accustomed, to exercise rights or privileges attached to the share or debenture in accordance with his instructions.

(5) A person that fails to comply with an order made by the Court under subsection (3) commits an offence.

Attorney-client privilege

257. Nothing in this Division affects the privilege that exists in respect of an attorney-at-law and his client.

Inquiries by Court

258. The Court may in relation to any person make any inquiries that relate to compliance with this Act by any person.

Division 3

Enforcement

Definition

259. In this Division "member", in relation to a company, means—

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

(b) a member of a company limited by guarantee or limited by shares and guarantee.

Restraining or compliance order

260. (1) If a company or a director of a company engages, or proposes to engage, in conduct that contravenes this Act, the articles or by-laws of the company or any unanimous shareholder agreement, the Court may, on the application of a member or a director of the company, make an order directing the company or director to comply with, or restraining the company or director from engaging in conduct that contravenes, this Act, the articles or by-laws or any unanimous shareholder agreement.

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

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

Derivative actions

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

(a) bring proceedings in the name and on behalf of that company; or

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

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

(a) whether the member is acting in good faith;

(b) whether the derivative action is in the interests of the company taking account of the views of the company's directors on commercial matters;

(c) whether the proceedings are likely to succeed;

(d) the costs of the proceedings in relation to the relief likely to be obtained;

(e) whether an alternative remedy to the derivative claim is available.

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

(a) the company does not intend to bring, diligently continue or defend, or discontinue the proceedings, as the case may be; or

(b) it is in the interests of the company that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders or members as a whole.

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

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

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

Costs of derivative action

262. (1) If the Court grants leave to a member to bring or intervene in proceedings under section 261, it shall, on the application of the member, order that the whole of the reasonable costs of bringing or intervening in the proceedings must be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.

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

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

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

Powers of Court when leave granted under section 261

263. The Court may, at any time after granting a member leave under section 261, make any order it considers appropriate in relation to proceedings brought by the member or in which the member intervenes, including—

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

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

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

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

Compromise, settlement or withdrawal of derivative action

264. No proceedings brought by a member or in which a member intervenes with the leave of the Court under section 261 may be settled or compromised or discontinued without the approval of the Court.

Personal actions by members

265. A member of a company may bring an action against the company for breach of a duty owed by the company to him as a member.

Prejudiced members

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

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

(a) requiring the company or any other person to acquire the shareholder's shares;

(b) requiring the company or any other person to pay compensation to the applicant;

(c) regulating the future conduct of the company's affairs;

(d) amending the articles or by-laws of the company;

(e) appointing a receiver of the company;

(f) liquidating the company under the supervision of the Court;

(g) directing the rectification of the records of the company;

(h) setting aside any decision made or action taken by the company or its directors in breach of this Act or the articles or by-laws of the company.

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

Representative actions

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

(a) as to the control and conduct of the proceedings;

(b) as to the costs of the proceedings; and

(c) directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the members represented.

Division 4

Regulations

Regulations

268. (1) The Governor may make any regulations that are required for the better administration of this Act and in particular, the Governor may make regulations—

(a) prescribing any matter required or authorised by this Act to be prescribed;

(b) requiring the payment of a fee in respect of the filing, examination or copy of any documents or in respect of any action that the Registrar is required or authorised to take under this Act, or the payment of a penalty in respect of the late filing of any document, and prescribing the amount of the fee or penalty;

(c) prescribing the contents of returns, notices or other documents required to be filed with the Registrar or to be issued by him;

(d) prescribing the rules with respect to exemptions permitted by this Act;

(e) respecting the names of companies or classes thereof;

(f) respecting the authorised capital of companies;

(g) respecting the transfer of shares and the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares or classes or series of shares of companies;

(h) respecting the designation of classes of shares;

(i) prescribing the matters relating to the appointment of proxies;

(j) prescribing that specified companies be exempt from certain provisions of this Act;

(k) respecting the conduct, duties and responsibilities of registered agents;

(l) respecting any other matter required for the efficient administration of this Act.

(2) Regulations made under this section are subject to negative resolution.

Approval of certificates and other documents by the Registrar

269. (1) The Registrar may approve the content and form of certificates or other documents required or permitted to be issued by him under this Act.

(2) The Registrar shall publish all certificates or other documents approved by him under subsection (1) in the *Gazette*.

(3) The Registrar may not approve forms of certificates or other documents under this section if forms of such documents have been prescribed in regulations made under section 268.

Division 5

Offences and Penalties

False and misleading reports, returns, etc.

270. (1) A person who makes or assists in making a report, return, notice or other document—

(a) that is required by this Act or the regulations to be filed with the Registrar or sent to any other person; and

(b) that—

(i) contains an untrue statement of a material fact, or

(ii) omits to state a material fact required in the report, return, notice or other document or necessary to make a statement contained in it not misleading in the light of the circumstances in which it was made;

commits an offence.

(2) A person does not commit an offence under subsection (1) if the making of the untrue statement or the omission of the material fact was unknown to him and with the exercise of reasonable diligence could not have been known to him.

Punishment of offences

271. (1) A person who commits an offence set out in Column 1 of the Schedule is liable on summary conviction—

(a) if an individual, to the penalty set out opposite the offence in Column 4 of the Schedule; or

(b) if not an individual, to the penalty set out opposite the offence in Column 3 of the Schedule;

and, in either case, to the daily default fine (if any) set out opposite the offence in Column 5 of the Schedule for each day during which the default continues.

(2) Where an offence set out in Column 1 of the Schedule is committed by a body corporate, a director or officer who authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction—

(a) if an individual, to the penalty set out opposite the offence in Column 4 of the Schedule; or

(b) if not an individual, to the penalty set out opposite the offence in Column 3 of the Schedule;

and, in either case, to the daily default fine (if any) set out opposite the offence in Column 5 of the Schedule for each day during which the default continues.

(3) The Proceeds of Criminal Conduct Act applies to an offence that is set out in Column 1 of the Schedule and is indicated in that Column with an asterisk, notwithstanding that the offence is punishable only on summary conviction.

Other offences

272. Every person who is guilty of an offence under this Act or the regulations for which no punishment is provided elsewhere in this Act is liable on summary conviction to a fine of $10,000.

Order to comply

273. When a person is convicted of an offence under this Act or the regulations, the Court having jurisdiction to try the offence may, in addition to any punishment it may impose, order that person to comply with the provision of this Act or the regulations for the contravention of which he has been convicted.

Limitation on prosecutions

274. A prosecution for an offence under this Act or the regulations may be instituted within 2 years from the time when the subject matter of the prosecution arose.

Civil remedies unaffected

275. No civil remedy for any act or omission is affected by reason that the act or omission is an offence under this Act.

Division 6

Miscellaneous

Security for costs

276. Where a company is plaintiff in an action or other legal proceeding, the Court having jurisdiction in the matter may, if it appears that there is reason to believe that the company will be unable to pay the defendant's costs if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

PART 7

TRANSITIONAL AND MISCELLANEOUS PROVISIONS

Former-Act Companies

Former-Act company

277. (1) On 1st January, 1995—

(a) all corporate instruments of a former-Act company; and

(b) all cancellations, suspensions, proceedings, acts, registrations and things;

lawfully done under any provision of the former Act are presumed to have been lawfully done under this Act, and continue in effect under this Act as though they had been lawfully done under this Act.

(2) For the purposes of this section, "lawfully done" means to have been lawfully granted, issued, imposed, taken, done, commenced, filed, or passed, as the circumstances require.

Effect of corporate instrument

278. (1) Notwithstanding any other provision of this Act, but subject to subsection (3), if any provision of a corporate instrument of a former-Act company lawfully in force immediately before 1st January, 1995 is inconsistent with, repugnant to, or not in compliance with, this Act, that provision is not illegal or invalid only by reason of that inconsistency, repugnancy or non-compliance.

(2) Any act, matter or proceeding or thing done or taken by the former-Act company or any director, shareholder, member or officer of the company under the provision mentioned in subsection (1) is not illegal or invalid by reason only of the inconsistency, repugnancy or non-compliance men-

tioned in that subsection, or by reason of being prohibited or not authorised by the law as it is after 1st January, 1995.

(3) Section 97 applies to a former-Act company immediately upon 1st January, 1995.

Continuation as company

279. Every former-Act company shall, within 2 years after 1st January, 1995, apply to the Registrar for a certificate of continuance under this Act.

Amending instrument

280. Within the period referred to in section 279, any amendments to, or replacement of, the corporate instruments of a former-Act company shall be made as nearly as possible in accordance with this Act.

Articles of continuance

281. (1) Articles of continuance may, without so stating in the articles, effect any amendment to the corporate instruments of a former-Act company if the amendment is an amendment that a company incorporated under this Act can make in its articles.

(2) Articles of continuance in prescribed form shall be filed with the Registrar.

(3) A shareholder or member may not dissent under section 161 in respect of an amendment made under subsection (1).

Certificate of continuance

282. (1) Upon receipt of an application under this Division, the Registrar shall, if the applicant complies with all reasonable requirements of the Registrar to have the continued company accord with the requirements of this Act, issue a certificate of continuance to the former-Act company.

(2) On the date shown in the certificate of continuance—

(a) the former-Act company becomes a company to which this Act applies as if it had been incorporated under this Act;

(b) the articles of continuance are the articles of incorporation of the continued company; and

(c) except for the purposes of section 64(1), the certificate of continuance is the certificate of incorporation of the continued company.

Preservation of company

283. (1) When a former-Act company is continued as a company under this Act—

(a) the property of the former-Act company continues to be the property of the company;

(b) the company continues to be liable for the obligations of the former-Act company;

(c) an existing cause of action, claim or liability to prosecute is unaffected;

(d) a civil, criminal or administrative action or proceeding pending by or against the former-Act company may be continued by or against the company; and

(e) a conviction against, or ruling, order or judgment in favour of or against the former-Act company may be enforced by or against the company.

(2) When the Registrar determines, on the application of a former-Act company, that it is not practicable to change a reference to the nominal or par value of shares of a class or series that the former-Act company was authorised to issue before it was continued as a company under this Act, the Registrar may, notwithstanding section 28, permit the company to continue to refer in its articles to those shares, whether issued or non-issued as shares having a nominal or par value.

(3) A company shall set out in its articles the maximum number of shares of a class or series referred to in subsection (2), and it may not amend its articles to increase that maximum number of shares or to change the nominal or par value of the shares.

Previous shares

284. (1) A share of a former-Act company issued before the company was continued under this Act is presumed to have been issued in compliance with this Act and with the provisions of the articles of continuance, irrespective of whether the share is fully paid, and irrespective of any designation, rights, privileges, restrictions or conditions attached to the share, or set out on, or referred to in, the certificate representing the share, and the continuance under this Act does not deprive a shareholder of any right or privilege that he claims under an issued share of the company, nor does it relieve him of any liability in respect of an issued share of the company.

(2) For the purposes of this section, “share” includes an instrument issued pursuant to section 37(1).

Continuance not applied for in time

285. (1) Subject to this section, a former-Act company that does not apply to the Registrar for a certificate of continuance within the time limit under section 279 shall, on the expiration of that time be deemed to be continued under this Act.

(2) The Court may, on the application of a company deemed to be continued pursuant to subsection (1) or of the Registrar, make such order as it thinks fit for the purpose of securing the company’s compliance with this Act or otherwise in respect of its continuance under this Act.

(3) Where a company makes an application under this section, it shall give the Registrar notice thereof and, where the Registrar is the applicant under this section, he shall give the company notice thereof and on any application the company and the Registrar are entitled to appear and be heard.

(4) The cost of an application under this section shall, unless the Court otherwise orders, be paid by the company.

Effect of earlier references

286. (1) A reference in any corporate instrument of any body corporate to the former Act or any procedure under the former Act in relation to any former-Act company continued under this Act, shall

be construed as a reference to the provisions of this Act or procedure thereunder that is the equivalent provision or procedure under this Act.

(2) When there is no equivalent provision in this Act to the provision or procedure in or under the former Act referred to in the corporate instrument of a body corporate, the provision or proceeding of the former Act is to be applied, and stands unrepealed to the extent necessary to give effect to that reference in the corporate instrument.

Shares with nominal or par value

287. Subject to section 283(2), when a former-Act company is continued under this Act, a share with nominal or par value issued by the company before it was so continued is, for the purposes of section 28(2), deemed to be a share without nominal or par value.

Stated capital accounts

288. When a former-Act company is continued under this Act—

(a) then, notwithstanding section 33(2), it is not required to add to a stated capital account any consideration received by it before it was continued, unless the shares in respect of which the consideration is received are issued after the company is continued under this Act;

(b) an amount unpaid in respect of a share issued by the former-Act company before it was continued shall be added to the stated capital account that is maintained for the shares of that class or series; and

(c) its stated capital account for the purposes of—

(i) section 40(2),

(ii) section 45, and

(iii) section 54(2)(b),

includes the amount that would have been included in stated capital if the company had been incorporated under this Act.

Citation

289. This Act may be cited as the Companies Act, Revised Statutes of Anguilla, Chapter C65.

SCHEDULE

(Section 271)

OFFENCES AND PENALTIES

COLUMN 1 Section of Act creating offence	COLUMN 2 General nature of offence	COLUMN 3 Penalty (corporate body)	COLUMN 4 Penalty (individual)	COLUMN 5 Daily default fine
11(7)	Person carrying on business under misleading name	$25,000	$25,000, imprisonment for 6 months or both	
14(4)	Company using name that has been revoked by the Registrar	$25,000	$25,000, imprisonment for 6 months or both	$50
15(3)	Failing to state name or registered office in written communication or document issued by a company	$10,000	$10,000	
35(7)	Director authorising, permitting or acquiescing in the issue of shares of an authorised series before filing articles of amendment	$10,000	$10,000	
40(3)	Company making payment to purchase or acquire own shares when insolvent	$25,000	$25,000, imprisonment for 6 months or both	
41(4)	Company making payment to purchase or acquire own shares under section 41(3) when insolvent	$25,000	$25,000, imprisonment for 6 months or both	
42(3)	Company making payment to purchase or redeem redeemable shares when insolvent	$25,000	$25,000, imprisonment for 6 months or both	
45(8)	Company reducing stated capital when insolvent	$25,000	$25,000, imprisonment for 6 months or both	
52(2)	Company declaring or paying a dividend when insolvent	$25,000	$25,000, imprisonment for 6 months or both	

53(4)	Company paying a dividend out of unrealised profits	$25,000	$25,000, imprisonment for 6 months or both	
54(3)	Provision of illicit financial assistance by company or affiliated company	$25,000	$25,000, imprisonment for 6 months or both	
65(3)*	Individual acting as director when disqualified by Court		$25,000, imprisonment for 1 year or both	
76(3)	Company or foreign company failing to notify a change in directors	$5,000	$5,000	$50
91(6)	Director failing to disclose interest in contract	$10,000	$10,000	
125(8)	Company failing to send notice of meeting of shareholders to consider extraordinary transaction	$10,000	$10,000	
126(4)*	Company failing to keep sufficient accounting records	$25,000	$25,000, imprisonment for 6 months or both	
127(2)	Company failing to keep accounts and returns at registered office	$25,000	$25,000, imprisonment for 6 months or both	
128(5)	Director failing to place financial returns of a public company before an annual meeting of shareholders	$10,000	$10,000	
130(5)	Company failing to keep consolidated financial returns at the registered office	$10,000	$10,000	
131(3)	Company publishing unapproved or unaudited financial statements	$10,000	$10,000	
132(2)	Company failing to send annual financial returns to shareholders.	$10,000	$10,000	
133(5)	Company failing to file financial statements with the Registrar	$5,000	$5,000	$50
136(3)*	Person acting as auditor while ineligible for appointment		$25,000, imprisonment for 6 months or both	

143(3)	Auditor or former auditor failing to attend meeting of shareholders of a company		$10,000	
144(3)	Company failing to send auditor's comments to shareholders	$10,000	$10,000	
147(4)	Director or officer failing to notify auditor of an error or misstatement in financial statement	$25,000	$25,000, imprisonment for 6 months or both	
149(7)	Company failing to change registered office	$10,000	$10,000	$50
149(8)*	Person providing the registered office of a non-domestic company without a relevant licence	$25,000	$25,000, imprisonment for 6 months or both	$50
150(7)	Company failing to change registered agent	$10,000	$10,000	$50
150(8)*	Person acting as registered agent of a non-domestic company without a relevant licence	$25,000	$25,000, imprisonment for 6 months or both	$50
151(7)	Registered agent failing to file copy of notice of intention to cease to act with Registrar	$10,000	$10,000	$50
152(8)	Company failing to keep records	$25,000	$25,000, imprisonment for 6 months or both	
154(3)	Company failing to keep minutes and other records	$25,000	$25,000, imprisonment for 6 months or both	
156(2)	Person failing to take reasonable care of company's records	$25,000	$25,000, imprisonment for 6 months or both	
157(6)	Person failing to permit access to company records, etc.	$10,000	$10,000	
158(4)	Company failing to file annual return	$5,000	$5,000	$50
172(3)	Company failing to maintain a register of charges	$25,000	$25,000, imprisonment for 6 months or both	

179(2)*	Company offering shares to the public before publishing a prospectus	$25,000	$25,000, imprisonment for 1 year or both	
183(2)*	Company failing to issue a new prospectus or give reasonable notice	$25,000	$25,000, imprisonment for 1 year or both	
188(3)	Foreign company carrying on business in Anguilla without being registered as a foreign company	$10,000	$10,000	
190(2)	Foreign company failing to file amended constituting instrument	$5,000	$5,000	
191(3)	Foreign company failing to file annual return	$5,000	$5,000	
192(3)*	Foreign company failing to comply with requirements regarding issuing prospectus and carrying on business in Anguilla	$25,000	$25,000, imprisonment for 6 months or both	
256(5)*	Person failing to comply with an order of the Court	$25,000	$25,000, imprisonment for 6 months or both	$50
270(1)*	Person making a false or misleading report or return	$25,000	$25,000, imprisonment for 1 year or both	