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ST CHRISTOPHER AND NEVIS

CHAPTER 21.03

COMPANIES ACT

and Subsidiary Legislation

Revised Edition

showing the law as at 31 December 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, No. 9 of 1986

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Companies Act

Act 22 of 1996 in force 2nd April, 1997

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Act 13 of 1998

Act 16 of 1999

Act 14 of 2001

Companies (Standard Tables) Order – Sections 7 and 222 – SRO 17 of 1997

Companies (Fees) Order – Sections 202 and 222 – SRO 18 of 1997

**Companies (Application of Share Premium) Order – Sections 3, 39 and 222 –
SRO 19 of 1997**

**Companies (Overseas Branch Register) Order – Sections 49 and 222 –
SRO 20 of 1997**

**Companies (Purchase of Own Shares) Order – Section 60 and 222 –
SRO 21 of 1997**

**Companies (Winding up Provisions) Order – Sections 189 and 222 –
SRO 22 of 1997**

**Financial Services Regulations Order – Sections 222 and 226 – SRO 25 of 1997 –
Amended by SROs 45 and 47 of 1997**

Financial Service (Fees) Order – Sections 222 and 226 – SRO 26 of 1997

**Financial Service (Business Names) Order – Sections 13, 222 and 226 –
SRO 27 of 1997 – Amended by SRO 46 of 1997**

Financial Service (Prospectuses) Order – Sections 29 and 222 – SRO 28 of 1997

Financial Services (Professional Bodies) Order – SRO 29 of 1997

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CHAPTER 21.03

COMPANIES ACT

AN ACT to provide for the incorporation, regulation and winding up of limited liability companies; and to provide for related or incidental matters.

PART I – PRELIMINARY

1. Short title.

This Act may be cited as the Companies Act.

2. Interpretation.

(1) In this Act, unless the context otherwise requires,

“accountant” means a person who is qualified as an accountant by examination conducted by one of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants and is a practising member in good standing of one of those institutes or is otherwise approved by any supervisory body of the accounting profession recognised under the law of the Federation;

“allotment”, in relation to shares, means a transaction by which a person acquires the unconditional right to be included in a company’s register of members in respect of the shares;

“annual return” means the return to be made by a company under section 72;

“articles”, in relation to a company, means its articles of association as originally framed or as altered;

“bearer certificate” means a certificate issued under subsection (1) of section 51;

“body corporate”

(a) includes a body corporate wherever or however incorporated, other than a corporation sole; and

(b) except in subsection (6) of section 3 and paragraph (a) of subsection (1) of section 207, does not include an association;

“company” means a body corporate registered under this Act, or an existing company;

“contributory” means a person liable to contribute to the assets of a company pursuant to section 193;

“Court” means the Eastern Caribbean Supreme Court or any Court with similar jurisdiction established in succession to that Court;

- “currency” includes foreign currency and any other means of exchange that may be prescribed;
- “director” means a person who occupies the position of a director, by whatever name called;
- “discount”, in relation to shares, means an amount which is less than the stated value of a share;
- “dissolved”, in relation to a company, means dissolved under this Act or any other law of the Federation;
- “distributable profits” means profits out of which the company may make a distribution under section 115;
- “document” includes summons, notice, statement, return, account, order, and other legal process, and registers;
- “equity share capital”, in relation to a company, means its issued share capital excluding any part of that capital which, neither as respects dividends, nor as respects capital, carries a right to participate beyond a specified amount in a distribution;
- “exempt company” means a company which is exempt from taxes under subsection (1) of section 207;
- “existing company” means a company registered under the Companies Act, Cap. 335 or the International Business Companies Act, both of which were repealed by section 223 of this Act;
- “external company” means a body corporate which is incorporated outside the Federation and which carries on business in the Federation or which has an address in the Federation which is used regularly for the purposes of its business;
- “the Federation” means the Federation of Saint Christopher and Nevis.
- “financial period” means a period for which a profit and loss account of a company is made up in accordance with this Act;
- “guarantee”, in relation to a company limited by guarantee, means the amount of money that each member of such a company undertakes to contribute to the assets of the company, in the event of it being wound up, while he or she is a member, or within one year after he or she ceases to be a member, for payment of the debts and liabilities of the company contracted before he or she ceases to be a member, and the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves;
- “interdict” means a person in respect of whom a curator has been appointed by any court having jurisdiction (whether in the Federation or elsewhere) in matters concerning mental disorder;
- “lawyer” means a barrister or solicitor of the Court;

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“liabilities” includes any amount reasonably necessary to be retained for the purpose of providing for any liability or loss which is either likely to be incurred or certain to be incurred but uncertain as to amount or as to the date on which it will arise;

“memorandum”, in relation to a company, means its memorandum of association as originally framed or as altered;

“Minister” means the Minister responsible for finance;

“minor” means a person who, under the law of the Federation or under the law of his or her domicile, has not reached the age of legal capacity;

“number”, in relation to shares, includes amount, where the context admits of the reference to shares being construed to include stock;

“officer”, in relation to a body corporate, means a director or liquidator;

“Order” means an Order made by the Minister;

“ordinary company” means a company which is not an exempt company;

“paid up” includes credited as paid up;

“personal representative” means the executor or administrator for the time being of a deceased person;

“premium”, in relation to shares, means an amount which is greater than the stated value of a share;

“prescribed” means prescribed by Order;

“printed” includes typewritten and a photocopy of a printed or typewritten document;

“private company” has the meaning assigned to it by subsection (3) of section 16;

“prospectus” has the meaning assigned to it by paragraph (a) of subsection (4) of section 29;

“public company” has the meaning assigned to it by subsection (1) of section 16;

“records” mean documents and other records however stored;

“Registrar” means the Registrar of companies appointed pursuant to section 197 and “his or her seal”, in relation to the Registrar, means a seal prepared under section 198;

“securities” has the meaning assigned to it by paragraph (b) of subsection (4) of section 29;

“share” means share in the share capital of a body corporate and includes stock (except where a distinction between shares and stock is expressed or implied);

“stated amount”, in relation to shares, means the aggregate amount of the stated value of a specified number of shares;

“stated value”, in relation to shares, means the minimum amount per share to be received by a company for shares issued by it;

“year” means a calendar year.

(2) A reference in this Act to a Part or section by number only, and without further identification is a reference to the Part or section of that number contained in this Act.

(3) A reference in a section or other division of this Act to a subsection or paragraph or sub-paragraph by number or letter only, and without further identification, is a reference to the subsection or paragraph or sub-paragraph of that number or letter contained in the section or other division of this Act in which that reference occurs.

(4) A reference in this Act to an enactment is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

(5) A reference to dollars in this Act is a reference to the currency of the Eastern Caribbean Central Bank.

3. **Meaning of “holding company”, “subsidiary” and “wholly-owned subsidiary”.**

(1) For the purposes of this Act, a company is, subject to subsection (4), deemed to be a subsidiary of another if, but only if,

- (a) that other either
 - (i) is a member of it and controls the composition of its board of directors; or
 - (ii) holds more than half in stated value of its equity share capital; or
- (b) the first-mentioned company is a subsidiary of any company which is that other’s subsidiary.

(2) For the purposes of subsection (1), the composition of a company’s board of directors is deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it without the consent or concurrence of another person can appoint or remove the holders of all or a majority of the directorships.

(3) For the purposes of subsection (2), the other company is deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied:

- (a) that a person cannot be appointed to it without the exercise in his or her favour by the other company of that power;
- (b) that a person’s appointment to the directorship follows necessarily from his or her appointment as director of the other company; or
- (c) that the directorship is held by the other company itself or by a subsidiary of it.

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- (4) In determining whether one company is a subsidiary of another,
 - (a) any shares held or power exercisable by the other in a fiduciary capacity are to be treated as not held or exercisable by it;
 - (b) subject to paragraph (c), any shares held or power exercisable
 - (i) by any person as nominee for the other (except where the other is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of the other (not being a subsidiary which is concerned only in a fiduciary capacity),are to be treated as held or exercisable by the other;
 - (c) any shares held or power exercisable by, or by a nominee for, the other or its subsidiary are to be treated as not held or exercisable by the other if the shares are held or the power is exercisable as above mentioned by way of security only.
- (5) For the purposes of this Act,
 - (a) a company is deemed to be another's holding company if, but only if, the other is its subsidiary; and
 - (b) a body corporate is deemed to be the wholly owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.
- (6) In this section, "company" includes any body corporate.
- (7) The Minister may, by Order, modify the provisions of this section and, without prejudice to the generality of the foregoing, any such Order may amend the meaning of "holding company", "subsidiary" or "wholly-owned subsidiary" for the purposes of all or any of the provisions of this Act.

PART II – FORMATION OF COMPANIES AND REGISTRATION

4. Method of formation.

(1) Any number of persons (none of whom is a minor or an interdict or a bankrupt) associated for any lawful purpose may by subscribing their names to a memorandum of association form a company the liability of the members of which may, according to the memorandum, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.

(2) The number of persons who, under subsection (1), may form a company may be one or any greater number.

(3) A body corporate shall not be a company until the requirements of this Act in respect of registration are satisfied and the Registrar has issued a certificate under subsection (2) of section 9.

5. Memorandum of association.

(1) Any of the subscribers to a memorandum of association or a person acting on their behalf may on delivering the memorandum to the Registrar and on payment of the prescribed registration fee apply for the registration of an incorporated company with limited liability.

(2) A memorandum delivered to the Registrar under subsection (1) shall be in the English language, shall be printed and shall state

- (a) the name of the company;
- (b) whether the liability of the members of the company is to be limited by shares or by guarantee;
- (c) in the case of a company limited by shares the maximum number of shares that the company is authorised to issue and the amount of their stated value, which may be expressed in any currency or currencies,
- (d) in the case of a company limited by guarantee, the number of members with which the company proposes to be registered and the amount of the guarantee, which may be expressed in any currency or currencies;
- (e) the period (if any) fixed for the intended duration of the company;
- (f) where the company is a public company, that it is such a company;
- (g) the full names and addresses of the subscribers who are individuals and the corporate names and the addresses of the registered or principal offices of the subscribers which are bodies corporate.

(3) No subscriber to the memorandum of any company limited by shares may take less than one share and there shall be shown on such memorandum against the name of each subscriber the number of shares he or she takes.

(4) The memorandum shall be signed by or on behalf of each subscriber in the presence of at least one witness who shall attest the signature and insert his or her name and address.

6. Articles of association.

(1) If the Standard Tables have not been prescribed under section 7, there shall be delivered to the Registrar with the memorandum, articles specifying regulations for the conduct of the company and, if the Standard Tables have been prescribed, articles may be so delivered.

(2) Articles shall be in the English language and shall

- (a) be printed;
- (b) be divided into paragraphs numbered consecutively; and
- (c) be signed by or on behalf of each subscriber of the memorandum in the presence of at least one witness who shall attest the signature and insert his or her name and address.

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7. Standard Tables.

(1) The Minister may prescribe sets of model articles to be collectively referred to as Standard Table, and thereafter a company may for its articles adopt the whole or any part of,

- (a) Standard Table A, if it is a company limited by shares; or
- (b) Standard Table B, if it is a company limited by guarantee.

(2) In the case of a company registered after the Standard Tables have been prescribed, if articles are not registered or, if articles are registered, insofar as they do not exclude or modify the relevant Table, that relevant Table (so far as applicable, and as in force at the date of the company's registration) constitutes the company's articles as if articles in the form of that relevant Table had been duly registered.

(3) If, in consequence of an Order under this section, the relevant Table is altered, the alteration does not affect a company registered before the alteration takes effect, or repeal as respects that company any portion of the relevant Table.

(4) References in this section and in section 8 to "relevant Table" are references to Standard Table A in the case of a company limited by shares and to Standard Table B in the case of a company limited by guarantee.

8. Documents to be delivered to the Registrar.

(1) With the memorandum there shall be delivered to the Registrar a statement signed by or on behalf of the subscribers of the memorandum setting out

- (a) the company's name and the address of its registered office;
- (b) whether the company is a public or a private company;
- (c) whether the company is an ordinary or an exempt company;
- (d) the nature of the business to be carried out by the company;
- (e) whether the whole or any part of the relevant Table prescribed under section 7 is to be adopted by the company;
- (f) in the case of a public company and in the case of a private company which is an ordinary company, the particulars with respect to the persons who are to be directors of the company which are required by section 85 to be contained in the register kept under section 84;
- (g) the particulars with respect to any person who is to be the secretary of the company which is required by section 86 to be contained in the register kept under section 84;
- (h) in the case of an exempt company, an undertaking that the directors of the company will forthwith notify the Minister by notice in writing if the company should no longer qualify as an exempt company; and
- (i) any other prescribed particulars.

[Inserted by Act 14/2001]

[Amended by Act 14/2001]

(2) Where a memorandum is delivered by a person as agent for the subscribers, the statement shall specify that fact and the person's name and address.

(3) A person who signs or delivers to the Registrar or concurs in delivering to the Registrar a statement which contains information that he or she knows is false, misleading or deceptive commits an offence and is liable, upon conviction, to a fine not exceeding five thousand four hundred dollars and, in the case of an individual, to imprisonment for a term not exceeding two years, or both.

[Inserted by Act 13/1998]

9. Registration.

(1) If the Registrar is satisfied that all the requirements of this Act in respect of the registration of a company have been complied with, he or she shall register the company's memorandum and articles (if any) delivered to him or her under section 5.

(2) On the registration of a company's memorandum, the Registrar shall

- (a) allocate a registration number to the company in accordance with section 199; and
- (b) give a certificate of incorporation in respect of the company stating
 - (i) the name of the company;
 - (ii) its registration number;
 - (iii) the date of its incorporation; and
 - (iv) that it is a public company, if its memorandum so states.

(3) Every certificate of incorporation shall be signed by the Registrar and sealed with his or her seal.

(4) A certificate of incorporation is conclusive evidence of the incorporation of the company and, if the certificate of incorporation states that the company is a public company, that the company is a public company.

(5) From the date of incorporation mentioned in the certificate of incorporation the subscribers of the memorandum, together with such other persons who may from time to time become members of the company, shall be a body corporate having the name contained in the memorandum capable forthwith of exercising all the functions of an incorporated company, but with such liability on the part of its members to contribute to its assets as is provided by this Act or any other enactment in the event of its being wound up.

10. Effect of memorandum and articles.

(1) Subject to the provisions of this Act, the memorandum and articles, when registered, bind the company and its members to the same extent as if they respectively had been signed and sealed by the company and by each member, and contained covenants on the part of the company and each member to observe all the provisions of the memorandum and articles.

(2) Money payable by a member to the company under the memorandum or articles is a debt due from him or her to the company.

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11. Alteration of memorandum and articles.

(1) Subject to the provisions of this Act, a company may, by special resolution, alter its memorandum.

(2) An alteration in the memorandum may extend or shorten the period (if any) fixed for the duration of the company and a company limited by guarantee may increase or decrease the number of its members by altering its memorandum.

(3) Subject to the provisions of this Act, a company may, by special resolution, alter its articles.

(4) Notwithstanding anything in the memorandum or articles, a member of a company is not bound by an alteration made in the memorandum or articles after the date on which he or she became a member, if and so far as the alteration

(a) requires him or her to take or subscribe for more shares than the number held by him or her at the date on which the alteration is made; or

(b) in any way increases his or her liability as at that date to contribute to the company's share capital or otherwise to pay money to the company, unless he or she agrees in writing, either before or after the alteration is made, to be bound by it.

(5) The power to alter the memorandum conferred by this section shall not be exercisable by an existing company so as to

(a) shorten the period of the company's existence; or

(b) alter rights attached to a class of shares which cannot be altered under the Act repealed by section 223, unless the alteration is agreed to by all the members or approved by the Court.

12. Copies of memorandum and articles for members.

(1) A company shall, on being so required by a member, send to him or her a copy of the memorandum and of the articles subject to payment of such sum (if any), not exceeding fifty dollars, as the company may require.

(2) If a company fails to comply with this section, it commits an offence and liable to a fine not exceeding one thousand dollars.

PART III – NAMES

13. Requirements as to names.

(1) The name of a company shall end with the word "Limited" (or the abbreviation "Ltd."), "Corporation" (or the abbreviation "Corp.") or "Incorporated" (or the abbreviation "Inc.").

(2) An existing company the name of which contravenes subsection (1) shall within three months from the date on which this section comes into force either change its name or establish that it has obtained from the Minister an exemption from the requirements of that subsection.

- (3) The Registrar may refuse to register
 - (a) the memorandum; or
 - (b) a special resolution changing the name of a company,

where the name to be registered is in his or her opinion in any way misleading or otherwise undesirable.

14. Change of name.

(1) Subject to section 13, a company may, by special resolution, change its name.

(2) Where a company changes its name under this section, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case, and the change of name has effect from the date on which the altered certificate is issued.

(3) A change of name by a company under this Act does not affect any rights or obligations of the company or render defective any legal proceedings by or against it, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

15. Power to require change of name.

(1) If, in the opinion of the Registrar, the name by which a company is registered is misleading or otherwise undesirable, he or she may direct the company to change it.

(2) The direction, if not made the subject of an application to the Court under subsection (3), shall be complied with within three months from the date of the direction or such longer period as the Registrar may allow.

(3) The company may, within twenty-one days from the date of the direction, apply to the Court to set it aside, and the Court may set the direction aside or confirm it.

(4) If the Court confirms the direction, it shall specify a period not being less than twenty-eight days within which it shall be complied with and may order the Registrar to pay the company such sum (if any) as it thinks fit in respect of the expense to be incurred by the company in complying with the direction.

(5) A company which fails to comply with a direction under this section commits an offence and is liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

PART IV – TYPES OF COMPANIES

16. Public companies and private companies.

(1) A public company is a company the memorandum of which states, or is deemed to state, that it is a public company.

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(2) The memorandum of a company which, when section 17 comes into force, has more than fifty members shall be deemed to state that it is a public company.

(3) A private company is a company which is not a public company.

(4) A private company may become a public company by altering its memorandum.

(5) A public company which has fewer than fifty-one members may become a private company by altering its memorandum.

(6) In determining for the purposes of this section and section 17, the number of members of a company

- (a) no account shall be taken of directors or persons who are in the employment of the company and persons who, having been formerly directors or in the employment of the company, were while directors or in that employment, and have continued after the determination of that office or employment to be, members of the company;
- (b) where a company has issued bearer certificates, each such certificate shall be deemed to have been issued to a different person and each such person shall be accounted for as one member; and
- (c) where two or more persons hold one or more shares in a company jointly, they shall be accounted for as one member.

(7) Where a company changes its status in accordance with subsection (4) or (5), the Registrar shall, upon delivery to him or her of a copy of the special resolution altering the memorandum, issue a certificate of incorporation appropriate to the altered status.

(8) The Minister may, by Order, amend subsection (5) of this section and paragraph (a) of subsection (1) of section 17 to increase the number of members provided for thereunder.

17. Consequences of certain actions of private company.

- (1) A private company shall not
- (a) enter the name of any person in its register of members or issue bearer certificates so as to increase the number of its members (excluding the persons referred to in paragraph (a) of subsection (6) of section 16) beyond fifty; or
 - (b) circulate a prospectus;

and if it does so it shall become subject to this Act as though it were a public company.

(2) If the Court, on the application of a company which has acted in contravention of paragraph (a) of subsection (1), or of any other person interested, is satisfied that it is just to relieve the company from all or any of the consequences of the breach, it may grant relief on such terms as seem to it expedient.

(3) If on the application of a private company or a public company that is about to become a private company the Minister is satisfied that by reason of the nature of the

company's activities its affairs may properly be regarded as the domestic concern of its members, the Minister may, in his or her discretion, by written notice to the company direct that subsection (1) shall apply to the company with such modifications as are specified in the direction and the Minister may at any time withdraw or amend the terms of any such direction.

(4) The company shall, within fourteen days after the making of an order under subsection (2) or the receipt of a direction under subsection (3), deliver the relevant act of the Court or a copy of the direction, as the case may be, to the Registrar, and if there is failure to comply with this subsection the company commits an offence and is liable to a fine not exceeding one thousand dollars and in the case of a continuing offence to a further fine not exceeding one hundred dollars for each day on which the offence so continues.

(5) Where there is a contravention of paragraph (b) of subsection (1) then, without derogation from the consequences under that subsection, the company and every officer of it who is in default commit an offence and is liable to a fine not exceeding two thousand five hundred dollars.

PART V – CORPORATE CAPACITY AND TRANSACTIONS

18. Capacity of company.

(1) The doctrine of *ultra vires* in its application to companies is abolished, and accordingly a company has the capacity and, subject to this Act, the rights, powers and privileges of an individual.

(2) Subsection (1) does not authorise a company to carry on any business in breach of

- (a) any enactment prohibiting or restricting the carrying on of the business; or
- (b) any provision requiring any permission or licence for the carrying on of the business.

(3) A company shall not carry on any business or exercise any power that it is restricted by its memorandum or articles from carrying on or exercising, nor shall a company exercise any of its powers in a manner contrary to its memorandum or articles.

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

19. No implied notice of public records.

No person is deemed to have notice of any records by reason only that they are made available by the Registrar, or by a company, for inspection.

20. Form of contracts.

A person acting under the express or implied authority of a company may make, vary or discharge a contract or sign an instrument on behalf of the company in the same

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manner as if the contract were made, varied or discharged or the instrument signed by an individual.

21. Transactions entered into prior to corporate existence.

(1) Where a transaction purports to be entered into by a company, or by a person as agent for a company, at a time when the company has not been formed, then, unless otherwise agreed by the parties to the transaction, the transaction has effect as one entered into by the person purporting to act for the company or as agent for it, and he or she is personally bound by the transaction and entitled to its benefits.

(2) A company may, within such period as may be specified in the terms of the transaction or if no period is specified, within a reasonable time after it is formed, by act or conduct signifying its intention to be bound thereby, adopt any such transaction and it shall thenceforth be bound by it and entitled to its benefits and the person who entered into the transaction shall cease to be so bound and entitled.

22. Common seal.

(1) Every company shall have a common seal upon which its name is engraved in legible characters, and if a company fails to comply with this subsection it commits an offence and liable to a fine not exceeding two thousand five hundred dollars.

(2) If an officer of a company or a person on its behalf uses or authorises the use of any seal purporting to be a seal of the company on which its name is not engraved as required by subsection (1), he or she commits an offence and liable to a fine not exceeding two thousand five hundred dollars.

23. Official seal for use abroad.

(1) A company which engages in business outside the Federation may, if authorised by its articles, have for use in any country, territory or place outside the Federation an official seal, which shall be a facsimile of the company's common seal with the addition on its face either of the words "Branch Seal" or the name of the country, territory or place where it is to be used.

(2) A document to which the official seal is duly affixed binds the company as if it had been sealed with the company's common seal.

(3) A company may, in writing under its common seal, authorise an agent appointed for the purpose to affix the official seal to a document to which the company is a party.

(4) As between the company and the person dealing with the agent, the agent's authority continues until that person has actual notice of the termination of the authority.

24. Official seal for share certificates, etc.

A company may, if authorised by its articles, have for use for sealing securities issued by the company and for sealing documents creating or evidencing securities so issued, an official seal which is a facsimile of the company's common seal with the addition on its face of the word "Securities".

PART VI – MEMBERSHIP**25. Definition of “member”.**

(1) The subscribers of a company’s memorandum are deemed to have agreed to become members of the company, and on its registration shall be entered as such in its register of members.

(2) Every other person

- (a) who agrees to become a member of a company, and whose name is entered in its register of members; or
- (b) who is the holder of a bearer certificate issued under this Act;

is a member of the company.

26. Membership of holding company.

(1) Except in the cases mentioned in this section, a body corporate cannot be a member of a company which is its holding company, and an allotment or transfer of shares in a company to its subsidiary is void.

(2) Subsection (1) does not prevent a subsidiary which is, when this section comes into force or when it becomes a subsidiary, a member of its holding company from continuing to be a member, but, subject to subsection (4), the subsidiary

- (a) has no right to vote at meetings of the holding company or a class of its members;
- (b) shall not acquire further shares in the holding company except on a capitalisation issue; and
- (c) shall within twelve months, or such longer period as the Court may allow, dispose of all of its shares therein.

(3) Subsections (1) and (2) apply in relation to a nominee for a body corporate which is a subsidiary as if references to the body corporate included a nominee for it.

(4) Nothing in this section applies where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless in the latter case the holding company or a subsidiary of it is beneficially interested under the trust and is not so interested only by way of security.

27. Company without members.

If a company has no member a person who, for the whole or any part of the period that it has no member,

- (a) carries on business in the name or on behalf of the company; and
- (b) knows that it has no member;

is personally liable for the payment of the company’s debts contracted during the period or that part of it and that person may be sued therefor without joinder in the proceedings of any other person.

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28. Prohibition of minors and interdicts.

A minor or an interdict may not become a member of a company unless the shares were transmitted to him or her on the death of the holder thereof.

PART VII – PROSPECTUSES

29. Prospectuses.

(1) The Minister may, by Order, prohibit both or either of the following, except in circumstances and subject to conditions specified in the Order:

- (a) the circulation of a prospectus in the Federation;
- (b) the circulation of a prospectus, in the Federation or elsewhere, by a company.

(2) Such Order may provide

- (a) for prospectuses
 - (i) to be filed with, or filed and approved by, the Minister,
 - (ii) to contain such further information as is necessary to give investors an informed assessment of any investment proposed in the prospectus,
 - (iii) to comply with such other requirements as may be specified in the Order,
- (b) for any other matter required to carry the Order into effect.

(3) Any person who fails to comply with any provision of the Order and, where the offence is committed by a body corporate, every officer of the body corporate which is in default commits an offence and liable to a fine not exceeding two thousand five hundred dollars.

(4) In this section and in sections 17, 30, 31 and 33,

- (a) “prospectus” means an invitation to the public to acquire or apply for any securities; and
- (b) “securities” mean
 - (i) shares in and debentures of a body corporate,
 - (ii) interests in any such shares or debentures, or
 - (iii) rights to acquire any of the foregoing.

(5) For the purposes of this section,

- (a) an invitation is made to the public where it is not addressed exclusively to a restricted circle of persons; and
- (b) an invitation shall not be considered to be addressed to a restricted circle of persons unless

- (i) the invitation is addressed to an identifiable category of persons to whom it is directly communicated by the inviter or his or her agent; and
- (ii) the members of that category are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the invitation; and
- (iii) the number of persons in the Federation or elsewhere to whom the invitation is so communicated does not exceed fifty.

(6) An invitation to the public to acquire or apply for securities in a company shall, if the securities are not fully paid or if the invitation is first circulated within six months after the securities were allotted, be deemed to be a prospectus circulated by the company unless it is shown that the securities were not allotted with a view to their being the subject of such an invitation.

30. Compensation for misleading statements in prospectus.

(1) A person who acquires or agrees to acquire a security to which a prospectus relates and suffers a loss in respect of the security as a result of the inclusion in the prospectus of a statement of a material fact which is untrue or misleading, or the omission from it of the statement of a material fact, shall, subject to section 31, be entitled to damages for loss suffered

- (a) in the case of securities offered for subscription, from the body corporate issuing the securities and from each person who was a director of it when the prospectus was circulated;
- (b) in the case of securities offered otherwise than for subscription, from the person making the offer and, where that person is a body corporate, from each person who was a director of it when the prospectus was circulated;
- (c) from each person who is stated in the prospectus as accepting responsibility for the prospectus, or any part of it, but, in that case, only in respect of a statement made in or omitted from that part; and
- (d) from each person who has authorised the contents of, or any part of, the prospectus.

(2) Nothing in this section shall make a person responsible by reason only of giving advice as to the contents of a prospectus in a professional capacity.

(3) This section does not affect any liability which any person may incur apart from this section.

(4) This section applies only to a prospectus first circulated after the section comes into force.

31. Exemption from liability to pay compensation.

A person shall not be liable under section 30 if he or she satisfies the Court

- (a) that the prospectus was circulated without his or her consent;

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- (b) that, having made such enquiries (if any) as were reasonable, from the circulation of the prospectus until the securities were acquired, he or she reasonably believed that the statement was true and not misleading or that the matter omitted was properly omitted;
- (c) that, after the circulation of the prospectus and before the securities were acquired he or she, on becoming aware of the untrue or misleading statement or of the omission of the statement of a material fact, took reasonable steps to secure that a correction was brought to the notice of persons likely to acquire the securities;
- (d) in the case of a loss caused by a statement purporting to be made by a person whose qualifications give authority to a statement made by him or her which was included in the prospectus with his or her consent, that when the prospectus was circulated he or she reasonably believed that the person purporting to make the statement was competent to do so and had consented to its inclusion in the prospectus; or
- (e) that the person suffering the loss acquired or agreed to acquire the securities knowing that the statement was untrue or misleading or that the matter in question was omitted.

32. Recovery of compensation.

(1) A person is not debarred from obtaining compensation from a company by reason only of his or her holding or having held shares in the company or any right to apply or subscribe for shares in the company or to be included in the company's register of members in respect of shares.

(2) A sum due from a company to a person who has acquired or agreed to acquire shares in the company being a sum due as compensation for loss suffered by him or her in respect of the shares, shall (whether or not the company is being wound up and whether the sum is due under section 30 or otherwise) be treated as a sum due to him or her otherwise than in his or her character of a member.

33. Criminal liability in relation to prospectuses.

If a prospectus is circulated with a material statement in it which is untrue or misleading or with the omission from it of the statement of a material fact, any person who authorised the circulation of the prospectus commits an offence and liable to imprisonment for a term not exceeding two years or a fine or both unless he or she satisfies the Court that he or she reasonably believed, when the prospectus was circulated, that the statement was true and not misleading or that the matter omitted was properly omitted.

PART VIII – SHARE CAPITAL

34. Nature, transfer and numbering of shares.

- (1) The shares of any member of a company
 - (a) are personal estate; and

(b) shall, subject to section 42, be transferable in the manner provided by the company's articles.

(2) Each share in a company shall, subject to subsection (3), be distinguished by its identification number.

(3) If and so long as all the issued shares in a company or all the issued shares in it of a particular class

(a) are fully paid up and carry the same rights in all respect; or

(b) are evidenced by certificates issued in accordance with section 50 or 51,

none of those shares need have an identification number.

(4) The requirements imposed by sub-paragraph (i) of paragraph (b) of subsection (1) of section 41, that the identification number of any share in a company shall be inscribed in the register of members, shall not apply in relation to a share which is not for the time being required to have an identification number by virtue of subsection (3).

35. Commissions and discounts barred.

(1) Except as permitted by section 36, no company shall issue shares at a discount or apply its shares or capital money either directly or indirectly in payment of a commission, discount or allowance to a person in return for his or her subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.

(2) Subsection (1) applies whether the shares or money be so applied by being added to the purchase money of property acquired by the company or to the contract price of work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section or section 36 shall make unlawful a payment made or remuneration given by a company to a broker making his or her usual charges for services rendered to the company.

(4) A vendor to, or promoter of, or other person who receives payment in money or shares from, a company has, and is deemed always to have had, power to apply any part of the money or shares so received in payment of a commission, the payment of which, if made directly by the company, would have been lawful under this section and section 36.

36. Commissions.

(1) A company may pay a commission to a person in consideration of his or her subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company, if the following conditions are satisfied:

(a) the payment of the commission is authorised by the company's articles;

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- (b) the commission does not exceed 10 per cent of the price at which the shares are allotted or the amount or rate authorised by the articles, whichever is less; and
- (c) in the case of a public company, the amount or rate per cent of commission, and the number of shares which persons have agreed for a commission to subscribe absolutely are disclosed
 - (i) where the shares are offered for subscription by a prospectus, in that prospectus; or
 - (ii) where the shares are not offered for subscription by a prospectus, in a statement signed by every director of the company or by his or her agent authorised in writing and delivered (before payment of the commission) to the Registrar.

(2) If default is made in complying with paragraph (c) of subsection (1) as regards delivery to the Registrar of the statement, the company and every officer of it who is in default commits an offence and liable to a fine not exceeding one thousand dollars and in the case of a continuing offence to a further fine not exceeding one hundred dollars for each day on which the offence so continues.

37. Provision for different amounts to be paid on shares.

A company, if so authorised by its articles, may

- (a) make arrangements on the allotment of shares for a difference between the shareholders in the amounts and times of payments of calls on their shares;
- (b) accept from a member the whole or a part of the amount remaining unpaid on shares held by him or her, although no part of that amount has been called up;
- (c) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

38. Alteration of share capital.

- (1) A company may, by altering its memorandum
 - (a) increase its share capital by creating new shares of such amount and in such currency or currencies as it thinks expedient;
 - (b) consolidate and divide all or any of its shares (whether issued or not) into shares of larger amount than its existing shares;
 - (c) convert all or any of its fully paid shares into stock, and re-convert that stock into fully paid shares of any denomination;
 - (d) subject to subsection (2), sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum;
 - (e) subject to subsection (3), convert any of its fully paid shares the stated amount of which is expressed in one currency into fully paid shares of a stated amount of another currency; and

- (f) cancel shares which, at the date of the passing of the resolution to cancel them, have not been taken or agreed to be taken by any person, and diminish the amount of the company's share capital by the amount of the shares so cancelled.

(2) In a sub-division under paragraph (d) of subsection (1) the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

(3) A conversion under paragraph (e) of subsection (1) shall be effected at the rate of exchange current at a time specified in the resolution being within thirty days before the conversion takes effect.

(4) The powers conferred by this section shall be exercised by the company by special resolution.

(5) A cancellation of shares under this section does not, for the purposes of this Act, constitute a reduction of share capital.

39. Application of share premiums.

(1) If a company allots shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall, as and when the premiums are paid up, be transferred to an account called the share premium account.

(2) The share premium account may be applied by the company in paying up unissued shares to be allotted to members as fully paid bonus shares, or in writing off

- (a) the company's preliminary expenses; or
- (b) the expenses of, or the commission paid or discount allowed on, any issue of shares of the company;

or in providing for any premium payable on the redemption or purchase of shares in accordance with section 56 or 58.

(3) Subject to this section, the provisions of this Act relating to the reduction of a company's share capital apply as if the share premium account were part of its paid up share capital.

(4) The Minister may, by Order, make provision for relieving companies from the requirements of this section.

40. Power to issue fractions of shares.

(1) Notwithstanding paragraph (c) of subsection (2) of section 5, a company, if authorised by its articles, may issue a fraction of a share, but

- (a) no fraction of a share shall be issued otherwise than as fully paid;
- (b) no fraction of a share shall be issued if, as a result, the total amount of the issued shares of any class would not be a whole number of shares; and

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- (c) if the holder of a fraction of a share acquires a further fraction of a share of the same class, the fractions shall be treated as consolidated.
- (2) The rights of a member in respect of the holding of a fraction of a share shall be as provided in the articles.
- (3) Subject to this section, and save as otherwise provided in the articles of the company, this Act applies to fractions of shares as it applies to whole shares.

PART IX – REGISTER OF MEMBERS AND CERTIFICATES

41. Register of members.

- (1) Every company shall keep a register of members containing, in respect of each class of its members,
 - (a) a list showing in alphabetical order the full name and address of each member who is an individual, or in the case of a body corporate, its full name, the place where it is incorporated and the address of its registered or principal office;
 - (b) in the case of a company limited by shares, with the names and addresses of each member of that class, a statement, in respect of each one of them, of
 - (i) subject to subsection (4) of section 34, the identification number of each share held by the member or, where shares are evidenced by share certificates, the identification number of each share certificate issued in the name of the member,
 - (ii) the total number of shares held by the member or, where shares are evidenced by share certificates, the number of shares contained in each share certificate issued in the name of the member.
 - (iii) the total amount paid up on the shares of the member,
 - (c) in the case of a company limited by guarantee, with the names and addresses of each member of that class, a statement, in respect of each one of them, of the amount of the guarantee agreed to be paid by the member;
 - (d) the date on which each person became a member; and
 - (e) the date on which each person ceased to be a member.
- (2) The address of a member entered in the register of members shall be deemed to be his or her actual address and whenever a member changes his or her address he or she shall give written notice of the new address to the company at its registered office; upon receipt of such a notice the directors or the secretary shall enter the change of address in the register of members.
- (3) An entry relating to a former member of the company may be removed from the register after ten years from the date on which he or she ceased to be a member.

(4) Without prejudice to any lesser period of limitation or prescription, liability incurred by a company from the making or deletion of an entry in its register of members, or from failure to make or delete any such entry, is not enforceable more than ten years after the date on which the entry was made or deleted or the failure first occurred.

(5) If a company fails to comply with this section, the company and every officer of it who is in default commit an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

42. Transfer of shares and registration.

(1) Notwithstanding anything in its articles, a company shall not, except where it has been exempted from this provision pursuant to subsection (6), register a transfer of shares in the company unless an instrument of transfer in writing has been delivered to it.

(2) Subsection (1) does not prejudice a power of the company to register as a shareholder a person to whom the right to shares in the company has been transmitted by operation of law.

(3) A transfer of the share or other interest of a deceased member of a company made by his or her personal representative, although the personal representative is not himself or herself a member of the company, is as valid as if he or she had been a member at the time of the execution of the instrument of transfer.

(4) On the application of the transferor of a share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(5) If a company refuses to register a transfer of shares the company shall, within two months after the date on which the transfer was lodged with it, give to the transferor and transferee notice of the refusal.

(6) The Minister may, by Order, provide for

- (a) the transfer of shares, or a class of shares, in a company otherwise than in accordance with subsection (1);
- (b) exemptions from the provisions of subsection (1) either as regards specified companies or classes of company or as regards specified shares or classes of shares; and
- (c) the transfer of securities of any description and of any interest therein without a written instrument.

43. Certification of transfers.

(1) For the purpose of this section,

- (a) an instrument of transfer shall be deemed to be certificated if it bears the words "certificate lodged" or words to the like effect;
- (b) the certification shall be deemed to be made by a company if

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- (i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company's behalf; and
 - (ii) the certification is signed by a person authorised to certify transfers on behalf of the company or by an officer or servant of the company or of a body corporate so authorised;
- (c) a certification is deemed to be signed by a person if
- (i) it purports to be authenticated by his or her signature or initials (whether handwritten or not), and
 - (ii) it is not shown that the signature or initials was not or were not placed there by him or her or by any other person authorised to use the signature or initials for the purpose of certifying instruments of transfer on behalf of the company.

(2) The certification by a company of an instrument of transfer of any shares or debentures in a company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on their face show a *prima facie* title to the shares or debentures in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the shares or debentures.

(3) Where a person acts on the faith of a false certification by a company made negligently the company is under the same liability to him or her as if the certification had been made fraudulently.

(4) Where a certification is expressed to be limited to forty-two days or any longer period from the date of certification, the company is not, in the absence of fraud, liable in respect of the registration of any transfer of shares or debentures comprised in the certification after the expiration of the period so limited if the instrument of transfer has not, within that period, been lodged with the company for registration.

44. Location of register.

(1) A company's register of members shall be kept at its registered office or, if it is made up at another place in the Federation, at that place.

(2) A company shall give notice to the Registrar of the place where its register of members is kept, and of any change of that place.

(3) The notice need not be given if the register has at all times since it came into existence (or, in the case of a register in existence when this section comes into force, at all times since then) been kept at the company's registered office.

(4) If a company fails for fourteen days to comply with subsection (2), the company commits an offence and is liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

45. Inspection of register.

(1) The rights conferred by this section on a person who is not a member or officer of the company or the Registrar to inspect and obtain a copy of the company's register of members shall not apply in respect of a private company which is an exempt company.

[Amended by Act 14/2001]

(2) The register of members shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, but so that not less than two hours in each business day be allowed for inspection) be open to the inspection of a member or officer of the company or the Registrar without charge and of any other person on payment of such sum (if any), not exceeding fifty dollars, as the company may require.

[Amended by Act 14/2001]

(3) A person may,

- (a) on submission to the company of a declaration under section 46; and
- (b) on payment of such sum (if any), not exceeding one hundred dollars, as the company may require;

require a copy of the register and the company shall, within ten days after the receipt of the declaration and payment, cause the copy so required to be available at the place where the register is kept for collection by that person during business hours.

(4) If inspection under subsection (2) is refused, or if a copy required under subsection (3) is not made available within the proper period, the company commits an offence and liable to a fine not exceeding two thousand five hundred dollars.

(5) In the case of refusal or default, the Court may, by order, compel an immediate inspection of the register, or direct that the copies required be made available to the person requiring them.

46. Declaration.

(1) The declaration required under subsection (3) of section 45 or subsection (4) of section 72 shall be made in writing under oath and shall state the name and address of the applicant and contain an undertaking by him or her that no information contained in the copy of the register made available to him or her will be used by him or her, or by any person who acquires any such information on behalf of the applicant, or directly or indirectly from the applicant or any such person, save for the following purposes:

- (a) to call a meeting of the company or of any class of members of the company;
- (b) to influence the voting by members at any such meeting;
- (c) an offer, in the case of a company limited by shares, to acquire all the shares, or all the shares of any class in the company other than shares in which the applicant has directly or indirectly a beneficial interest;
or
- (d) any other purpose which may be prescribed.

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(2) Where the applicant is a body corporate the declaration shall be made by a director of the body corporate and the address given shall be its address for service and where the applicant is an individual the declaration shall state his or her residential address.

(3) If any such information is used in a manner inconsistent with the terms of a declaration under subsection (1) the person who made the declaration commits an offence and liable to a fine not exceeding two thousand five hundred dollars.

47. Rectification of register.

(1) If

- (a) the name of any person is, without sufficient reason, entered in or omitted from a company's register; or
- (b) there is a failure or unnecessary delay in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2) The Court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by a party aggrieved.

(3) On an application under subsection (1) the Court may decide any question necessary or expedient to be decided with respect to the rectification of the register.

(4) Where an order is made under this section, the company in relation to which the order is made shall cause the relevant act of the Court to be delivered to the Registrar for registration within fourteen days after the making of the order; and in the event of failure to comply with this subsection the company commits an offence and liable to a fine not exceeding one thousand dollars and in the case of a continuing offence to a further fine not exceeding one hundred dollars for each day on which the offence so continues.

48. Trusts not to be entered on register.

(1) No notice of a trust, express, implied or constructive, shall be receivable by the Registrar or entered on the register of members.

(2) The register of members is *prima facie* evidence of any matters which are by this Act directed or authorised to be inserted in it.

49. Branch registers.

The Minister may, by Order, provide for the keeping by a company of a branch register of members in any place outside the Federation.

50. Share certificates.

(1) Subject to this section, every company limited by shares shall, in respect of each class of shares in it

- (a) within two months after the allotment of any of the shares in that class; and

- (b) within two months after the date on which a transfer of any of the shares of that class is lodged with the company,

complete and have ready for delivery share certificates of all shares in that class allotted or transferred unless the conditions of allotment of the shares otherwise provide.

- (2) Subsection (1) does not apply

- (a) to a transfer which the company is for any reason entitled to refuse to register and does not register; or
- (b) to an allotment or transfer of shares to a nominee of a stock exchange upon which those shares are to be, or are, listed.

(3) Each share certificate issued by a company under subsection (1) shall be distinguished by its identification number and shall state

- (a) the name of the company issuing the share certificate;
- (b) the number of shares and the class of shares in the company contained in the share certificate;
- (c) the name of the member recorded in the register of members of the company as being the holder of the shares contained in the share certificate; and
- (d) the date recorded in the register of members of the company as being the date on which the share certificate was issued by it.

(4) No share certificate issued by a company under subsection (1) shall in any manner whatsoever bear any indication of the stated value of the shares comprised in it.

(5) A share certificate sealed by the company and signed by two of its directors or by one such director and its secretary is *prima facie* evidence that the member whose name is stated in such share certificate has title to the shares contained in it.

(6) In the event of failure to comply with subsection (1), the company and every officer of it who is in default commits an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

(7) If a company to which a notice has been given by a person entitled to have share certificates delivered to him or her requiring it to make good a failure to comply with subsection (1) fails to make good the failure within ten days after the service of the notice, the Court may, on the application of that person, make an order directing the company and any officer of it to make good the failure within a time specified in the order; and the order may provide that all costs of and incidental to the application shall be borne by the company or by an officer of it responsible for the failure.

- (8) The Minister may, by Order,

- (a) provide for exemptions from the provisions of subsection (1); or
- (b) prohibit the issue of share certificates;

either in the case of specified companies or as regards specified shares or classes of shares.

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51. Certificates issued to bearer.

(1) A private company which is an exempt company, if authorised by its articles, may, in respect of any class of shares in it and with regard to any fully paid up share of that class of shares, issue a bearer certificate stating that the holder of the certificate is entitled to the share or shares therein specified, and may provide, by coupons or otherwise, for the payment of dividends on the share or shares included in such certificate.

(2) Each bearer certificate issued by a company under subsection (1) shall be distinguished by its identification number and shall state

- (a) the name of the company issuing the bearer certificate;
- (b) the number of shares and the class of shares in the company contained in the bearer certificate;
- (c) the date recorded in the register of members of the company as being the date on which the bearer certificate was issued by it.

(3) No share certificate issued by a company under subsection (1) shall in any manner whatsoever bear any indication of the stated value of the shares comprised in it.

(4) A bearer certificate sealed by the company and signed by two of its directors or by one such director and its secretary is *prima facie* evidence that the holder of such bearer certificate is entitled to the shares contained in it.

(5) Shares contained in a bearer certificate may be transferred by the delivery of the bearer certificate.

(6) The holder of a bearer certificate shall be entitled, on surrendering such certificate for cancellation, to have his or her name entered in the register of members as the holder of the number of shares of the class of shares contained in the surrendered bearer certificate, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of any holder of a bearer certificate in respect of the shares comprised therein without the bearer certificate being surrendered and cancelled.

(7) The holder of a bearer certificate shall be deemed to be a member of the company within the meaning of this Act, except that the holder of a bearer certificate shall not be qualified in respect of the shares comprised in such bearer certificate for being a director of the company in cases where such a qualification is required by the articles of the company.

(8) On the issue of a bearer certificate in respect of one or more shares of any class of shares, the company shall in the section of its register of members which includes the particulars of the holders of shares of that class

- (a) reduce the number of shares held by the member then entered therein as holding the share or shares by the number of shares contained in the bearer certificate;
- (b) strike out of that section of its register the name of that member if, but only if, after having made such reduction, he or she no longer holds any share of that class; and

- (c) enter in the section of its register of members which includes the particulars of the bearer certificates issued in respect of shares of that class, the following particulars:
- (i) the identification number of the bearer certificate,
 - (ii) the number of shares contained in it,
 - (iii) the date of the issue of the bearer certificate,
 - (iv) the date of the surrender of the bearer certificate.

(9) Until the bearer certificate is surrendered, the particulars mentioned in paragraph (c) of subsection (8) shall be deemed to be the particulars which are required by section 41 to be entered in the company's register of members; and on the surrender of a bearer certificate, the date of such surrender shall have the same effect as if it were the date at which a person ceased to be a member.

(10) After the issue by the company of a bearer certificate, the annual return required by section 72 shall, in respect of each class of shares in the company, specify the total number of issued shares of that class which are represented by bearer certificates issued in accordance with this section together with the information required to be kept under section 51(8)(c).

[Amended by Act 14/2001]

(11) Any person who forges, or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any bearer certificate or coupon, or any documents purporting to be a bearer certificate or coupon, issued in pursuance of this Act, or demands or endeavours to obtain or receive any share or interest of or in any company under this Act, or to receive any dividend or money payable in respect thereof, by virtue of any such forged or altered bearer certificate, coupon, or document, purporting as aforesaid, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, commits an offence and liable to imprisonment for a term not exceeding two years or a fine or both.

(12) Any person who falsely and deceitfully personates any owner of any share or interest of or in any company, or of any bearer certificate or coupon issued in pursuance of this Act, and thereby obtains or endeavours to receive any such share or interest, or bearer certificate or coupon, or receives or endeavours to receive any money due to any such owner, as if he or she were the true and lawful owner, commits an offence and liable to imprisonment for a term not exceeding two years or a fine or both.

(13) Any person who, without lawful authority or excuse, the proof whereof shall be on the party accused, engraves or makes upon any plate, wood, stone or other material any bearer certificate or coupon, purporting to be a bearer certificate or coupon issued or made by any particular company under and in pursuance of this Act, or to be a blank bearer certificate, or coupon issued or made as aforesaid, or to be a part of such a bearer certificate or coupon, or uses any such plate, wood, stone, or other material, for the making or printing any such bearer certificate or coupon, or any such blank bearer certificate or coupon, or any part thereof respectively, or knowingly has in his or her custody or possession any such plate, wood, stone, or other material, commits an offence and liable to imprisonment for a term not exceeding two years or a fine or both

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- (14) The Minister may, by Order,
- (a) modify the provisions of this section; or
 - (b) prohibit the issue of bearer certificates,
 - (c) and upon a written application, allow any company which, prior to the coming into force of this Act, had issued bearer shares to retain those shares in the form in which they were originally issued.

[Inserted by Act 16/1999]

either in the case of specified companies or as regards specified shares or classes of shares

52. Deposit of bearer share certificate.

(1) Bearer certificates issued by a company under this Act shall be kept in St Kitts in such manner as may be prescribed, at the offices of a person authorised to carry on finance business.

(2) The authorised person referred to in subsection (1) shall maintain a record of each bearer certificate deposited in its custody which shall contain the following information:

- (a) the name of the company issuing the bearer certificate;
- (b) the identification number of the certificate, number of shares and the class of shares in the company contained in the bearer certificate;
- (c) the identity of the bearer of the certificate, that is to say, the name, address, date of birth and details of identification; and
- (d) where applicable, its beneficial owner.

(3) The authorised person shall, where custody of the bearer certificates is transferred to another custodian, notify the Registrar within seven days of such transfer and his or her notice shall include the particulars of the new custodian.

(4) The authorised person shall not effect a substitution of one bearer for another in relation to the same certificate without prior notification, in writing to the Registrar, and such notification shall include the identification number of the certificate and the date on which the change is to take effect, or within seven days after the change has taken effect.

(5) An authorised person who refuses or fails to comply with the provisions of this section commits an offence, and where the authorised person who commits the offence is a company then every director or officer concerned with the management of that company shall be liable together with the company to be convicted of that offence, unless he or she satisfies the court that the offence was committed without his or her knowledge or consent or that he or she took reasonable steps to prevent the commission of the offence.

(6) An authorised person referred to in subsection (5) shall be liable, on summary conviction,

- (a) in case of a company, to a fine of twenty thousand dollars; and
- (b) in case of an individual, to a fine of twenty thousand dollars or to imprisonment to a term not exceeding twelve months.

[Inserted by Act 14/2001 as section 51A and has now been renumbered as section 52. Other sections have been renumbered accordingly]

PART X – CLASS RIGHTS**53. Variation of class rights.**

(1) The provisions of this section are concerned with the variation of the rights attached to a class of shares in a company whose share capital is divided into shares of different classes.

(2) If provision for the variation of the rights attached to a class of shares is made in the memorandum or articles, or by the terms of issue of the shares, those rights may only be varied in accordance with those provisions.

(3) If provision is not so made the rights may be varied if, but only if,

- (a) the holders of two-thirds in stated value of the shares of the class consent in writing to the variation; or
- (b) a special resolution passed at a separate meeting of the holders of that class sanctions the variation.

(4) Any alteration of a provision in the memorandum, or articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the memorandum or articles is itself to be treated as a variation of those rights.

(5) In this section, in section 54 and (except where the context otherwise requires) in any provision for the variation of the rights attached to a class of shares contained in the memorandum or articles, or in the terms of issue of the shares, references to the variation of those rights are to be read as including references to their abrogation.

54. Shareholders' right to object to variation.

(1) If the rights attached to any class of shares are varied in a manner referred to in section 54, the holders of not less in the aggregate than one-tenth in stated value of shares of the class (being persons who did not consent to, or vote in favour of a resolution for, the variation) may apply to the Court to have the variation cancelled and, if such an application is made, the variation has no effect unless and until it is confirmed by the Court.

(2) The application to the Court must be made within twenty-eight days after the date on which the consent was given or the resolution was passed and may be made on behalf of the shareholders entitled to make it by one or more of them as they may appoint in writing.

(3) Notice signed by or on behalf of the applicants that an application to the Court has been made under this section shall be given by or on behalf of the applicants to the Registrar within seven days after it is made.

(4) The Court, after being satisfied that subsection (3) has been complied with, and after hearing the applicant and any other persons who appear to the Court to be interested in the application, may, if satisfied, having regard to all the circumstances, that the variation would unfairly prejudice the shareholders of the class, disallow the variation and shall, if not so satisfied, confirm it.

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(5) The company shall, within fourteen days after the making of an order by the Court under this section deliver the relevant act of the Court to the Registrar; and if default is made in complying with this provision, the company commits an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

55. Registration of particulars of special rights.

- (1) The provisions of this section apply to public companies.
- (2) If a company
 - (a) allots shares; or
 - (b) in the case of a company limited by guarantee, creates a class of members.

with rights which are not stated in its memorandum or articles, or in a resolution or agreement to which section 101 applies, the company shall deliver to the Registrar within one month from allotting the shares or, as the case may be, from the date on which the new class of members is created, a statement containing the particulars of those rights.

(3) Subsection (2) does not apply to a company limited by shares if the shares are in all respects uniform with shares previously allotted; and shares are not for this purpose to be treated as different from shares previously allotted by reason only that the former do not carry the same rights to dividends as the latter during the twelve months immediately following the former's allotment.

- (4) Where a company, otherwise than by an amendment of its memorandum or articles or by a resolution or agreement subject to section 101,
 - (a) varies the rights attached to a class of its shares or, in the case of a company limited by guarantee, varies the rights of any class of its members; or
 - (b) assigns a name or other designation, or a new name or other designation, to a class of its shares or, in the case of a company limited by guarantee, to a class of its members,

it shall within one month from doing so deliver to the Registrar a statement containing particulars of the variation or, as the case may be, the new name or designation so assigned.

(5) If a company fails to comply with this section, the company and every officer of it who is in default commits an offence and liable to a fine not exceeding one thousand dollars.

PART XI – REDEMPTION AND PURCHASE OF SHARES

56. Power to issue redeemable shares.

(1) Subject to the provisions of this section, and sections 57 to 59, a company may, if authorised to do so by its articles,

- (a) issue; or
- (b) convert existing non-redeemable shares, whether issued or not, into;

shares which are to be redeemed, or are liable to be redeemed, at the option of the company or the shareholder.

(2) No redeemable shares may be issued at a time when there are no issued shares of the company which are not redeemable, and no existing issued non-redeemable shares shall be converted into redeemable shares, if, as a result there are no issued shares of the company which are not redeemable.

(3) Shares may be redeemed only when they are fully paid and only from the following sources:

- (a) in the case of the stated value of the shares,
 - (i) from profits out of which a company may make a distribution under paragraph (a) of subsection (2) of section 115, or
 - (ii) from profits out of which a company may make a distribution under paragraph (b) of subsection (2) of section 115, but subject to the proviso to that paragraph, or
 - (iii) from the proceeds of a fresh issue of shares made for the purposes of the redemption;or from a combination of any of the foregoing;
- (b) in the case of any premium paid on redemption,
 - (i) from a share premium account,
 - (ii) from the sources mentioned in paragraph (a), or
 - (iii) with the sanction of a special resolution, and subject to the proviso to subsection (3) of section 115, from the sources mentioned in that subsection,or from a combination of any of the foregoing.

(4) A special resolution passed for the purposes of sub-paragraph (iii) of paragraph (b) of subsection (3) may have effect in relation to a particular redemption of shares or generally but shall not be capable of sanctioning any redemption effected more than eighteen months after the resolution is passed.

(5) If shares are redeemed wholly out of a company's profits there shall be transferred out of profits out of which the company may make a distribution under section 115 to a reserve to be called the capital redemption reserve a sum equal to the stated value of the shares redeemed.

(6) If shares are redeemed wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate stated value of the shares redeemed, the amount of the difference shall be transferred out of profits out of which the company may make a distribution under section 115 to the capital redemption reserve.

(7) The provisions of section 62 shall, except as provided by this section, apply as if the capital redemption reserve were paid up share capital of the company except that

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the reserve may be applied in paying up unissued shares to be allotted as fully paid bonus shares.

(8) Upon the redemption of shares under this section, the amount of the company's issued share capital shall be diminished by the stated value of those shares but the redemption shall not be taken as reducing the authorised share capital of the company.

(9) Where, pursuant to this section, a company is about to redeem shares, it may issue shares up to the stated amount of the shares to be redeemed as if those shares had never been issued.

(10) Any shares issued by a company before section 223 comes into force and which could have been redeemed under the Acts repealed by that section shall be subject to redemption either in accordance with the Act under which such company was originally incorporated or in accordance with the provisions of this Act.

(11) Any fund established before section 223 comes into force and which could have been used for the redemption of shares under the Act repealed by that section shall be known as the company's capital redemption reserve and shall be treated as if it had been established for the purposes of this section, and any reference in any existing enactment or in the articles of any company or in any other instrument to any fund established for the redemption of shares shall be construed as a reference to the company's capital redemption reserve.

57. Financial requirements on redemption.

A company shall not make a payment from share premium account or unrealized profits to redeem redeemable shares unless the directors reasonably believe that, immediately after the payment has been made,

- (a) the company will be able to discharge its liabilities as they fall due; and
- (b) the value of the company's assets will be not less (in the case of a payment from share premium account) than the aggregate of its liabilities or (in the case of a payment from unrealized profits) than the aggregate of
 - (i) its liabilities.
 - (ii) the stated amount of its issued shares,
 - (iii) any amount standing to the credit of its share premium account, and
 - (iv) any amount standing to the credit of its capital redemption reserve including any part of that reserve attributable to the redemption.

58. Power of company to purchase own shares.

- (1) A company may purchase its own shares (including any redeemable shares).
- (2) A purchase under this section shall, unless the company is a wholly-owned subsidiary, be sanctioned by a special resolution.

(3) If the shares are to be purchased otherwise than on a stock exchange, they shall not carry the right to vote on the resolution authorising the purchase.

(4) If the shares are to be purchased on a stock exchange the resolution authorising the purchase shall specify

- (a) the maximum number of shares to be purchased;
- (b) the maximum and minimum prices which may be paid; and
- (c) a date, not being later than eighteen months after the passing of the resolution, on which the authority to purchase is to expire.

(5) Sections 56 and 57 apply to the purchase by a company under this section of its own shares as they apply to the redemption of redeemable shares.

(6) A company may not under this section purchase its shares if as a result of the purchase there would no longer be a member of the company holding shares other than redeemable shares.

59. Financial assistance by company for purchase of own shares.

(1) Subject as provided in this section, it is not lawful for a company to give financial assistance directly or indirectly for the purpose of, or in connection with, the acquisition made or to be made by any person of any shares in the company or where the company is a subsidiary, in any holding company of it.

(2) This section does not prohibit

- (a) assistance given in the ordinary course of the company's business;
- (b) assistance given by means of any distribution of the company's assets to its members, lawfully made;
- (c) the provision by a company in good faith in the interests of the company of assistance for the purposes of an employees' share scheme; or
- (d) the making by a company of loans to persons (other than directors) employed in good faith by the company with a view to enabling those persons to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.

(3) This section does not prohibit a company from giving financial assistance if

- (a) the giving of the assistance is sanctioned by a prior special resolution of the company proposing to give it and, where the company is a wholly owned subsidiary, by prior special resolution of any holding company of it which is not itself a wholly owned subsidiary; and
- (b) the directors of the company reasonably believe that, immediately after the assistance has been given the company will be able to discharge its liabilities as they fall due and the value of the company's assets will be not less than the aggregate of
 - (i) its liabilities,
 - (ii) the stated amount of its issued shares,

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- (iii) any amount standing to the credit of its share premium account, and
- (iv) any amount standing to the credit of its capital redemption reserve.

(4) For the purposes of this section, an employees' share scheme is a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of

- (a) the *bona fide* employees or former employees of the company, the company's subsidiary or holding company or a subsidiary of the company's holding company; or
- (b) the wives, husbands, widows, widowers or minor children or minor step-children of such employees or former employees.

(5) If a company gives financial assistance in contravention of this section the company commits an offence and liable to a fine not exceeding two thousand five hundred dollars and any officer of it who is in default commits an offence and liable to imprisonment for a term not exceeding two years or a fine or both.

60. Power of the Minister to extend or modify sections 56 to 59.

(1) The Minister may, by Order, enable private companies to redeem or purchase their own shares out of capital, specifying the conditions under which this may be done.

(2) The Minister may, by Order, extend or modify the provisions of sections 56 to 59 with respect to any of the following matters:

- (a) the circumstances and the manner in which a company may redeem or purchase its own shares or give financial assistance for the acquisition of its own shares or shares in its holding company;
- (b) the transactions which are or are not to be treated as giving financial assistance for those purposes; and
- (c) the authority required for a purchase or redemption by a company of its own shares.

PART XII – REDUCTION OF CAPITAL

61. Forfeiture of shares.

A company, if authorised by its articles, may cause to be forfeited any of its shares issued, otherwise than fully paid, for failure to pay any sum due and payable thereon.

62. Special resolution for reduction of share capital.

(1) Subject to confirmation by the Court, a company may, by special resolution, reduce its share capital in any way.

- (2) In particular, and without prejudice to subsection (1), the company may

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
- (b) with or without extinguishing or reducing liability on any of its shares, cancel any paid up share capital which is lost or unrepresented by available assets; or
- (c) with or without extinguishing or reducing liability on any of its shares, pay off any paid up share capital which is in excess of the company's wants:

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

(3) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital".

63. Application to the Court for order of confirmation.

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

- (2) If the proposed reduction of share capital involves either
 - (a) a diminution of liability in respect of unpaid share capital; or
 - (b) the payment to a shareholder of any paid up share capital:

and in any other case if the Court so directs, the next three subsections have effect, but subject throughout to subsection (6).

(3) Every creditor of the company who at the date fixed by the Court is entitled to a debt or claim which if that date were the commencement of the winding up of the company, would be admissible in proof against the company is entitled to object to the reduction of capital.

- (4) The court shall settle a list of creditors entitled to object, and for that purpose
 - (a) shall ascertain, as far as possible, without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims; and
 - (b) may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction of capital.

(5) If a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may dispense with the consent of that creditor, on the company securing payment of his or her debt or claim by appropriating (as the Court may direct) the following amount:

- (a) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
- (b) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not

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ascertained, then an amount fixed by the Court after an enquiry and adjudication.

(6) If a proposed reduction of share capital involves either the diminution of a liability in respect of unpaid share capital or the payment to a shareholder of paid up share capital, the Court may, if having regard to any special circumstances of the case it thinks proper to do so, direct that subsections (3) to (5) shall not apply as regards any class or any classes of creditors.

64. Court order confirming reduction.

(1) The Court, if satisfied with respect to every creditor of the company who under section 63 is entitled to object to the reduction of capital that either

- (a) his or her consent to the reduction has been obtained; or
- (b) his or her debt or claim has been discharged or has determined, or has been secured:

may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the Court so orders, it may also make an order requiring the company to publish (as the Court directs) the reasons for reduction of capital or such other information in regard to it as the Court thinks expedient with a view to giving proper information to the public and (if the Court thinks fit) the causes which led to the reduction.

65. Registration of act and minute of reduction.

(1) The Registrar, on delivery to him or her of an act of the Court confirming the reduction of a company's share capital, and of a minute (approved by the Court) showing, with respect to the company's authorised share capital and its issued share capital as altered by the act

- (a) the amount of the share capital;
- (b) the number of shares into which it is to be divided, and the amount of each share; and
- (c) the amount (if any) at the date of the registration deemed to be paid up on each share which has been issued;

shall register the act and minute.

(2) On the registration of the act and minute the resolution for reducing the share capital as confirmed by the act shall take effect.

(3) The Registrar shall certify the registration of the act and minute and the certificate

- (a) shall be signed by the Registrar and sealed with his or her seal;
- (b) is conclusive evidence that all the requirements of this Act with respect to the reduction of share capital have been complied with, and the company's share capital is as stated in the minute.

(4) The minute when registered is deemed to be substituted for the corresponding part of the company's memorandum.

66. Liability of members on reduced shares.

(1) Where a company's share capital is reduced, a member of the company (past or present) is not liable in respect of any share to a call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by the minute and the amount paid on the share or the reduced amount (if any) which is deemed to have been paid on it.

(2) Subsections (3) and (4) apply if

- (a) a creditor, entitled in respect of a debt or claim to object to the reduction of share capital, by reason of his or her ignorance of the proceedings for reduction of share capital, or of their nature and effect with respect to his or her claim, is not entered on the list of creditors; and
- (b) after the reduction of capital, the company is unable to pay the amount of his or her debt or claim.

(3) Every person who was a member of the company at the date of the registration of the act and minute is then liable to contribute for the payment of the debt or claim in question an amount not exceeding that which he or she would have been liable to contribute if the company had commenced to be wound up on the day before that date.

(4) If the company is wound up under this Act the Court, on the application of the creditor in question and proof of ignorance referred to in paragraph (a) of subsection (2), may settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(5) Nothing in this section affects the rights of the contributories among themselves.

67. Penalty for concealing name of creditor, etc.

If an officer of the company

- (a) wilfully conceals the name of a creditor entitled to object to the reduction of capital;
- (b) wilfully misrepresents the nature or amount of the debt or claim of a creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation, he or she commits an offence and liable to a fine not exceeding two thousand five hundred dollars.

PART XIII – ADMINISTRATION**68. Registered office.**

(1) A company shall at all times have a registered office in the Federation to which all communications and notices may be addressed.

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(2) On incorporation, the situation of the company's registered office shall be that specified in the statement sent to the Registrar under section 8.

(3) The company may change the situation of its registered office from time to time by giving notice to the Registrar.

(4) The change shall take effect upon the notice being registered by the Registrar, but until the end of the period of fourteen days beginning with the date on which it is registered a person may validly serve any document on the company at its previous registered office.

(5) For the purposes of any duty of a company

(a) to keep at its registered office, or make available for public inspection there, any document; or

(b) to mention the address of its registered office in any document,

a company which has given notice to the Registrar of a change in the situation of its registered office may act on the change as from such date, not more than fourteen days after the notice is given, as it may determine.

(6) Where a company unavoidably ceases to perform at its registered office any such duty as is mentioned in paragraph (a) of subsection (5) in circumstances in which it was not practicable to give prior notice to the Registrar of a change in the situation of its registered office, but

(a) resumes performance of that duty at other premises as soon as practicable; and

(b) gives notice accordingly to the Registrar of a change in the situation of its registered office within fourteen days of doing so,

it shall not be treated as having failed to comply with that duty.

(7) In proceedings for an offence of failing to comply with any such duty as is mentioned in subsection (5), it is for the person charged to show that by reason of the matters referred to in that subsection or subsection (6) no offence was committed.

69. Company's name to be displayed at its registered office.

(1) The name of a company shall be displayed at its registered office in a conspicuous position which is accessible to the public during business hours and in letters easily legible.

(2) If the name of a company is not displayed as required in subsection (1), the company commits an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

70. Company's name to appear in its correspondence.

(1) The name of a company shall appear in legible characters in all its

(a) business letters, statements of account, invoices and order forms;

(b) notices and other official publications; and

- (c) negotiable instruments and letters of credit purporting to be signed by or on behalf of the company.

(2) If a company fails to comply with subsection (1) it commits an offence and liable to a fine not exceeding two thousand and fifty dollars.

71. Particulars in correspondence.

(1) The address of the registered office of a company shall appear in legible characters in all its business letters and order forms.

(2) If there is on the stationery used for any such letters, or on the company's order forms, a reference to the amount of share capital, the reference shall be to paid up share capital.

(3) If a company fails to comply with subsection (1) or (2) it commits an offence and liable to a fine not exceeding two thousand five hundred dollars.

72. Annual return.

(1) Every company shall, in every year before the end of the month next following the month in which the anniversary date of its incorporation or registration under this Act falls

- (a) complete an annual return containing such current information as may be prescribed as at the anniversary date of its incorporation or registration in that year;
- (b) deliver a copy of the return to the Registrar together with the prescribed filing fee;
- (c) file the original return in a register kept by it for the purpose; and

the annual return shall be signed by a Director or the Secretary to the company.

[Amended by Act 14/2001]

- (2) Every company shall state in its annual return
 - (a) the company's name and the address of its registered office;
 - (b) whether the company is a public or a private company;
 - (c) whether the company is an ordinary or an exempt company;
 - (d) the nature of the businesses carried out by the company;
 - (e) in the case of a public company and in the case of a private company which is an ordinary company
 - (i) the particulars with respect to the persons who are directors of the company which are required by section 85 to be contained in the register kept under section 84,
 - (ii) in respect of each class of members of the company, a list showing in alphabetical order the full name and address of each member of that class who is an individual, or in the case of a body corporate its full name, the place of its incorporation and the address of its registered or principal office:

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- (f) in respect of each class of members of the company, the total number of persons who are members of that class;
 - (g) in the case of a company limited by shares, a statement, in respect of each class of shares in the company, of
 - (i) the total number of issued shares of that class which are not evidenced by any certificate issued under section 50 or 51 together with the aggregate amount paid up on such shares,
 - (ii) the total number of issued shares of that class evidenced by share certificates issued under section 50 and the aggregate amount paid up on the shares comprised in such certificates,
 - (iii) the total number of issued shares of that class evidenced by bearer certificates issued under section 51,
 - (h) in the case of a company limited by guarantee, a statement, in respect of each class of members of the company, of the aggregate amount of the guarantees for that class;
 - (i) in the case of an exempt company, an undertaking that the directors of the company will forthwith notify the Minister by notice in writing if the company should no longer qualify as an exempt company;
 - (j) that the information contained in the return is current as at the anniversary date of its incorporation in the year in which it is required to be delivered;
 - (k) the name of the secretary of the company;
[Inserted by Act 14/2001]
 - (l) the name of the Custodian of any bearer certificates.
[Inserted by Act 14/2001]
- (3) The Minister may,
- (a) by written notice, direct any Company to submit together with its annual returns such information, declaration and verification as are specified in the direction, and he or she may at any time withdraw or amend the terms of the direction;
 - (b) upon written application, permit any company not to comply with any provision of this section or to disclose information in such other manner as the Minister may direct.
[Substituted by Act 16/1999]
- (4) The Registrar shall not provide to any person a copy of a return made under this section unless that person has delivered to the Registrar a declaration under section 46 in respect of it.
- (5) A company which fails to comply with any provision of subsection (1) or (2) which applies to it
- (a) commits an offence;
 - (b) is liable to be struck off the register of companies in accordance with section 206, the provisions of which shall apply accordingly; and

- (c) in the case of an offence under paragraph (b) of subsection (1), is liable to a fine not exceeding one half of the prescribed filing fee for each day the offence is permitted to continue.

73. Service of documents.

- (1) A document may be served on a company
 - (a) by leaving it at, or sending it by post to, the registered office of the company;
 - (b) in accordance with subsection (4) of section 68; or
 - (c) if an existing company has no registered office, by sending it by post,
 - (i) in the case of a company which is in compliance with the requirements of section 84 to any person who is shown on the register kept in accordance with that section as a director or secretary of the company at the address entered in that register;
 - (ii) in any other case to any person shown as a member of the company in the register of members or in the latest annual return delivered to the Registrar under section 72 at his or her address entered in that register or, as the case may be, in that return; and
 - (iii) in default thereof, to any person whose name appears as a subscriber in the company's memorandum at his or her address shown in the memorandum.

(2) Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery, within the period, if any, laid down for the service thereof; and, in providing service of such document, it shall be sufficient to prove that such document was properly addressed and that it was put as a prepaid letter into the post office.

PART XIV – DIRECTORS AND SECRETARY**74. Directors.**

(1) A private company shall have at least one director and a public company shall have at least three directors of whom at least two are not employed by the company or any of its related companies.

- (2) No person shall be a director who
 - (a) is a minor;
 - (b) is an interdict;
 - (c) is disqualified from being a director under this or any other enactment; or
 - (d) is a body corporate.

(3) Paragraph (d) of subsection (2) shall not apply to an existing company until the expiration of six months from the date on which this section comes into force.

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(4) In this section, “related company”, in relation to a company, means any body corporate which is that company’s subsidiary or holding company, or a subsidiary of that company’s holding company.

75. Duties of directors.

(1) A director, in exercising his or her powers and discharging his or her 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) Without prejudice to the operation of any rule of law empowering the members, or any of them, to authorise or ratify a breach of this section, no act or omission of a director shall be treated as a breach of subsection (1) if

- (a) all of the members of the company authorise or ratify the act or omission; and
- (b) after the act or omission the company is able to discharge its liabilities as they fall due and the value of the company’s assets is not less than its liabilities.

(3) The duties of a director imposed by this section are owed to the company alone.

76. Duty of directors to disclose interests.

(1) A director of a company who has, directly or indirectly, an interest in a transaction entered into or proposed to be entered into by the company or by a subsidiary of the company which to a material extent conflicts or may conflict with the interests of the company and of which he or she is aware, shall disclose to the company the nature and extent of his or her interest.

(2) The disclosure under subsection (1) shall be made as soon as practicable after the director becomes aware of the circumstances which gave rise to his or her duty to make it.

(3) A notice in writing given to the company by a director that he or she is to be regarded as interested in a transaction with a specified person is sufficient disclosure of his or her interest in any such transaction entered into after the notice is given.

(4) Nothing in this section prejudices the operation of any rule of law restricting directors of a company from having an interest in transactions with a company.

77. Consequences of failure to comply with section 76.

(1) Subject to subsections (2) and (3), where a director fails to disclose an interest of his or her under section 76 the company or a member of the company may apply to the Court for an order setting aside the transaction concerned and directing that the director account to the company for any profit or gain realised, and the Court may so order or make such other order as it thinks fit.

(2) A transaction is not voidable, and a director is not accountable, under subsection (1) where, notwithstanding a failure to comply with section 76,

- (a) the transaction is confirmed by special resolution; and
- (b) the nature and extent of the director's interest in the transaction were disclosed in reasonable detail in the notice calling the meeting at which the resolution is passed.

(3) Without prejudice to its power to order that a director account for any profit or gain realised, the Court shall not set aside a transaction unless it is satisfied that

- (a) the interests of third parties who have acted in good faith thereunder would not thereby be unfairly prejudiced; and
- (b) the transaction was not reasonable and fair in the interests of the company at the time it was entered into.

78. Indemnity of officers and secretary.

(1) Subject to subsections (2) and (3), any provision, whether contained in the articles of, or in a contract with, a company or otherwise, whereby the company or any of its subsidiaries or any other person, for some benefit conferred or detriment suffered directly or indirectly by the company, agrees to exempt any person from, or indemnify him or her against, any liability which by law would otherwise attach to him or her by reason of the fact that he or she is or was an officer or secretary of the company shall be void.

(2) Subsection (1) does not apply to a provision for exempting a person from or indemnifying him or her against

- (a) any liabilities incurred in defending any proceedings, whether civil or criminal,
 - (i) in which judgment is given in his or her favour or he or she is acquitted,
 - (ii) which are discontinued otherwise than for some benefit conferred by him or her or on his or her behalf or some detriment suffered by him or her, or
 - (iii) which are settled on terms which include such benefit or detriment and, in the opinion of a majority of the directors of the company (excluding any director who conferred such benefit or on whose behalf such benefit was conferred or who suffered such detriment), he or she was substantially successful on the merits in his or her resistance to the proceedings;
- (b) any liability incurred otherwise than to the company if he or she acted in good faith with a view to the best interests of the company;
- (c) any liability incurred in connection with an application made under section 216 in which relief is granted to him or her by the Court; or
- (d) any liability against which the company normally maintains insurance for persons other than directors.

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(3) Nothing in this section shall deprive a person of any exemption or indemnity to which he or she was lawfully entitled in respect of anything done or omitted by him or her before the coming into force of this section.

(4) This section does not prevent a company from purchasing and maintaining for any such officer insurance against any such liability.

79. Disqualification orders.

(1) Where it appears to the Minister or the Attorney General that it is expedient in the public interest that any person should not, without the leave of the Court, be a director of, or in any way whether directly or indirectly be concerned or take part in the management of, a company, the Minister or the Attorney General, as the case may be, may apply to the Court for an order to that effect to be made against that person.

(2) The court may make an order against a person where, on an application under this section, the Court is satisfied that his or her conduct in relation to a company makes him or her unfit to be concerned in the management of a company.

(3) An order made under subsection (2) shall be for such period not exceeding five years as the Court thinks fit.

(4) A person who acts in contravention of an order made under this section commits an offence and is liable to imprisonment for a term not exceeding two years or a fine or both.

80. Personal responsibility for liabilities where person acts while disqualified.

(1) A person who acts in contravention of an order made under section 79 is personally responsible for such liabilities of the company as are incurred at a time when that person was, in contravention of the order, involved in the management of the company.

(2) Where a person is personally responsible under subsection (1) for liabilities of a company he or she is jointly and severally liable in respect of those liabilities with the company and any other person who, whether under this section or otherwise, is so liable.

(3) For the purposes of this section, a person is involved in the management of a company if he or she is a director of the company or if he or she is concerned in, whether directly or indirectly, or takes part in, the management of the company.

81. Validity of acts of director.

The acts of a director are valid notwithstanding any defect that may afterwards be found in his or her appointment or qualification.

82. Secretary.

(1) Every company shall have a secretary who is resident in the Federation and may have one or more assistant secretaries who, or each of whom, may be an individual or a body corporate.

[Amended by Act 14/2001]

(2) A sole director shall not also be a secretary.

(3) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to an assistant secretary or, if there is no assistant secretary capable of acting, by or to an officer of the company authorised generally or specially in that behalf by the directors.

(4) No company shall have as secretary to the company a body corporate the sole director of which is a sole director of the company.

83. **Qualifications of secretary.**

(1) It shall be the duty of the directors of a public company to take all reasonable steps to secure that the secretary and each assistant 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.

(2) For the purpose of this section, a person who

- (a) on the coming into force of this section was the secretary or assistant or deputy secretary of a public company;
- (b) is a lawyer;
- (c) is an accountant;
- (d) is a member in good standing of such other professional bodies as the Minister may by Order designate; or
- (e) is a person who, by virtue of his or her holding or having held any other position or being a member of any other 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 or assistant secretary of a public company, if the director does not know otherwise.

(3) A private exempt company must have as its secretary a person authorised to carry on either trust or corporate business.

[Inserted by Act 14/2001]

84. **Register of directors and secretaries.**

(1) Every company shall keep at its registered office a register of its directors and secretary, and the register shall, with respect to the particulars to be contained in it, comply with sections 85 and 86.

(2) The register shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, but so that not less than two hours in each business day be allowed for inspection) be open to the inspection of the Registrar and of a member or officer of the company without charge and, in the case of a public company, of any other person on payment of such sum (if any), not exceeding twenty-five dollars, as the company may require.

(3) The Registrar shall not disclose or make use of any information obtained by him or her as a result of the exercise of the right conferred upon him or her by subsection

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(2) except for the purpose of enabling any provision of this Act or any obligation owed to the company by an officer or secretary of the company to be enforced.

(4) If an inspection required under this section is refused, or if there is a failure to comply with subsection (1), the company and every officer of it who is in default commit an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

(5) In the case of a refusal of inspection of the register, the Court may, by order, compel an immediate inspection of it.

85. Particulars of directors.

(1) Subject to the provisions of this section, the register kept by a company under section 84 shall contain the following particulars with respect to each director:

- (a) his or her present forenames and surname;
- (b) any former forenames or surname;
- (c) his or her business or usual residential address;
- (d) his or her nationality;
- (e) his or her business occupation (if any);
- (f) his or her date of birth; and
- (g) the date on which he or she became a director and, where appropriate, the date on which he or she ceased to be a director.

(2) In subsection (1) and section 87,

- (a) “surname”, in the case of a peer or a person usually known by a title different from his or her surname, means that title; and
- (b) the reference to a former forename or surname does not include,
 - (i) in the case of a peer or a person usually known by a British title different from his or her surname, the name by which he or she was known previous to the adoption of or succession to the title, or
 - (ii) in the case of any person, a former forename or surname where that name or surname was changed or disused before the person bearing the name attained the age of twenty, or has been changed or disused for a period of not less than twenty years.

86. Particulars of secretaries.

The register to be kept by a company under section 85 shall contain the following particulars with regard to the secretary, or, where there are assistant secretaries, with respect to each of them:

- (a) in the case of an individual, his or her present forenames and surname, any former forenames or surname and his or her usual residential address;

- (b) in the case of a body corporate, its full name, the place where it is incorporated and the address of its registered or principal office; and
- (c) in either case, the date on which he or she or it became the secretary or assistant secretary and, where appropriate, the date on which he or she or it ceased to be the secretary or assistant secretary.

PART XV – MEETINGS

87. Participation in meetings.

(1) Subject to the articles of a company, if a member is by any means in communication with one or more other members so that each member participating in the communication can hear what is said by any other of them, each member so participating in the communication is deemed to be present at a meeting with the other members so participating.

(2) Subsection (1) applies to the participation in such communication by directors or by members of a committee of directors as it applies to the participation of members of a company.

88. Annual general meeting.

(1) Subsections (2) and (3) shall have effect subject to subsections (4) to (7).

(2) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notice calling it, but so long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(3) In the case of a public company, not more than eighteen months, and in the case of a private company, not more than twenty-two months shall elapse between the date of one annual general meeting and the date of the next.

(4) If all members of a private company agree in writing that an annual general meeting shall be dispensed with, then so long as the agreement has effect, it shall not be necessary for that company to hold an annual general meeting.

(5) In any year in which an annual general meeting would be required to be held but for such an agreement and in which no such meeting has been held, any member of the company may by written notice to the company given not later than three months before the end of the year require the holding of an annual general meeting in that year.

(6) Notwithstanding anything contained in any such agreement, it shall cease to have effect

- (a) if any person who becomes a member of the company while the agreement is in force does not within two months of becoming a member accede to the agreement;
- (b) if any member of the company gives written notice to the company determining the agreement; or

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(c) if the company ceases to be a private company.

(7) If such an agreement ceases to have effect, whether pursuant to subsection (6) or otherwise, and an annual general meeting has not previously been held in the year in which the cessation takes place, the directors shall forthwith call an annual general meeting to be held within three months after the agreement ceases to have effect.

(8) If a public company fails to comply with subsection (2) or (3), it and every director of it who is in default commit an offence and liable to a fine not exceeding two thousand five hundred dollars.

89. Minister's power to call meeting in default.

(1) If default is made in holding a meeting in accordance with section 88 the Minister may, on the application of any officer, secretary or member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Minister thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conduct of the meeting, the operation of the company's articles.

(2) The directions that may be given under subsection (1) include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) If default is made in complying with directions given under subsection (1), the company and any officer or secretary of it who is in default commits an offence and liable to a fine not exceeding two thousand five hundred dollars.

(4) A general meeting held under this section shall, subject to any directions of the Minister, be deemed to be an annual general meeting of the company, but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held, unless at that meeting the company resolves that it shall be so treated.

(5) Where a company so resolves, a copy of the resolution shall, within twenty-one days after it is passed, be forwarded to the Registrar and recorded by him or her, and if default is made in complying with this subsection, the company commits an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

90. Requisition of meetings.

(1) The directors of a company shall, notwithstanding anything in the company's articles, on a members' requisition, forthwith proceed to call a general meeting or, as the case may be, a meeting of the holders of a class of shares to be held as soon as practicable but in any case not later than two months after the date of the deposit of the requisition.

(2) A members' requisition is a requisition of

- (a) members of the company holding at the date of the deposit of the requisition not less than one-tenth in the stated value of the shares which at that date carry the right of voting at the meeting requisitioned; or
- (b) in the case of a company limited by guarantee, members of it representing not less than one-tenth of the total voting rights of all the members having at the date of deposit of the requisition a right to vote at the meeting requisitioned.

(3) The requisition shall state the objects of the meeting, and shall be signed by or on behalf of the requisitionists and deposited at the registered office of the company, and may consist of several documents in similar form each signed by or on behalf of one or more requisitionists.

(4) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to call a meeting to be held within two months of that date, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves call a meeting, but a meeting so called shall not be held after three months from that date.

(5) A meeting called under this section by requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors.

(6) Reasonable expenses incurred by the requisitionists by reason of the failure of the directors to call a meeting shall be repaid to the requisitionists by the company, and sums so repaid shall be retained by the company out of sums due or to become due from the company by way of fees or other remunerations in respect of their services to the directors who were in default.

(7) In the case of a meeting at which a resolution is to be proposed as a special resolution the directors are deemed not to have duly called the meeting if they do not give the notice required for special resolutions by section 91.

91. Definition of special resolution.

(1) A resolution is a special resolution when it has been passed by a majority of not less than two-thirds of such members as (being entitled to do so) vote in person, or by proxy, at a general meeting of the company or at a separate meeting of any class of members of the company of which in either case not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given.

(2) If it is so agreed by a majority in number of the members having the right to attend and vote at such a meeting upon the resolution, being a majority

- (a) together holding not less than ninety-five per cent in stated value of the shares giving that right; or
- (b) in the case of a company limited by guarantee, together representing not less than ninety-five per cent of the total voting rights at that meeting of all the members:

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a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

(3) At any meeting at which a special resolution is proposed, a declaration by the chairperson that the resolution is carried is, unless a poll is demanded, conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) In computing the majority on a poll demanded on the question that a special resolution be passed, reference is to be had to the number of votes cast for and against the resolution.

(5) For the purposes of this section, notice of a meeting is deemed duly given, and the meeting duly held, when the notice is given and the meeting held in manner provided by this Act or the company's articles.

(6) References in this Act to a special resolution are, unless otherwise expressly provided, references to a special resolution passed at a general meeting of the company.

92. Notice of meetings.

(1) A provision of a company's articles is void insofar as it provides for the calling of a meeting of the company or of any class of members of the company (other than an adjourned meeting) by a shorter notice than,

- (a) in the case of the annual general meeting, twenty-one days' notice in writing; and
- (b) in the case of a meeting, other than an annual general meeting or a meeting for the passing of a special resolution, fourteen days' notice in writing.

(2) Save insofar as the articles of a company make other provision in that behalf (not being a provision avoided by subsection (1), any meeting of the company or of any class of members of the company (other than an adjourned meeting) may be called,

- (a) in the case of the annual general meeting, by twenty-one days' notice in writing; and
- (b) in the case of a meeting, other than an annual general meeting or a meeting for the passing of a special resolution, by fourteen days' notice in writing.

(3) Notwithstanding that a meeting is called by shorter notice than that specified in subsection (2) or in the company's articles (as the case may be), it is deemed to have been duly called if it is so agreed,

- (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and
- (b) otherwise, by a majority in number of the members having the right to attend and vote at the meeting, being a majority
 - (i) together holding no less than ninety-five per cent in stated value of the shares giving a right to attend and vote at the meeting; or

- (ii) in the case of a company limited by guarantee, together representing not less than ninety-five per cent of the total voting rights at that meeting of all the members.

93. General provisions as to meetings and votes.

Insofar as the articles of the company do not make other provision in that behalf, the following provisions apply to general meetings of the company or to meetings of any class of members of the company:

- (a) notice of a meeting shall be given to every member entitled to receive it by delivering or posting it to his or her registered address;
- (b) where a company has issued any bearer certificate, the notice referred to in paragraph (a) shall be published in one or more newspapers circulated in the Federation, but the directors may also publish such notice in one or more newspapers circulated elsewhere than in the Federation;
- (c) members holding not less than one-tenth in stated value of the issued shares carrying a right to vote thereat or, in the case of a company limited by guarantee, not less than five per cent in number of the members of the company may call a meeting;
- (d) subject to paragraphs (e) and (h), no business shall be transacted at any meeting unless a quorum is present and two members present in person or by proxy
 - (i) together holding not less than one-third in stated value of the issued shares carrying a right to vote at the meeting; or
 - (ii) in the case of a company limited by guarantee, together representing not less than one-third of the total voting rights at that meeting of all the members,shall be a quorum;
- (e) if a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place, and, if at such adjourned meeting, a quorum is not present within half an hour from the time appointed for the meeting, or if during such adjourned meeting a quorum ceases to be present, then any member present in person or by proxy shall be a quorum;
- (f) any member elected by the members present at a meeting may be chairperson of it and in the case of an equality of votes the chairperson of the meeting shall be entitled to a casting vote in addition to any vote he or she may have;
- (g) on a show of hand every member has one vote and on a poll every member has

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- (i) one vote for every share held by him or her and, in the case of stock, one vote for each share from which the holding of stock arose; or
- (ii) in the case of a company limited by guarantee, the number of votes specified in the company's articles and, in default thereof, one vote;
- (h) in the case where a company has only one member, or where all the issued shares of any class of shares in any company are held by only one member, that member present in person or by proxy shall be deemed to constitute a meeting.

94. Representation of body corporate at meetings.

(1) A body corporate, whether or not a company within the meaning of this Act, may, if it is a member or creditor of a company, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting

- (a) of a company;
- (b) of any class of members of a company; or
- (c) of creditors of a company.

(2) A person so authorised is entitled to exercise the same powers on behalf of the body corporate which he or she represents as that body corporate could exercise if it were an individual member or creditor of the company.

95. Power of court to order meetings.

(1) If for any reason it is impracticable to call a meeting of a company, or of the holders of a class of shares in a company, in a manner in which those meetings may be called, or to conduct the meeting in the manner specified in the articles or this Act, the Court may, either of its own motion or on the application

- (a) of a director of the company; or
- (b) of a member of the company who would be entitled to vote at the meeting,

order a meeting to be called, held and conducted in any manner the Court thinks fit.

(2) Where such an order is made, the Court may give such ancillary or consequential directions as it thinks expedient.

(3) The directions that may be given under subsection (2) include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

96. Resolutions in writing.

(1) Anything that may be done by a resolution (including a special resolution but excluding a resolution removing an auditor) passed at a meeting of a company or at a meeting of any class of members of the company may, subject to the company's articles,

be done by a resolution in writing signed by or on behalf of each member who, at the date when the resolution is deemed to be passed, would be entitled to vote on the resolution if it were proposed at a meeting.

(2) A resolution in writing may consist of several instruments in the same form each signed by or on behalf of one or more members.

(3) A resolution under this section shall be deemed to be passed when the instrument, or the last of several instruments, is last signed or on such later date as is specified in the resolution.

(4) Any document attached to a resolution in writing under this section shall be deemed to have been laid before a meeting of the members signing the resolution.

(5) Sections 99 and 101 apply to a resolution in writing under this section as if it had been passed at a meeting.

(6) Nothing in this section affects or limits any rule of law relating to the effectiveness of the assent of members, or any class of members, of a company given to any document, act or matter otherwise than at a meeting of them.

97. Proxies.

(1) A member of a company entitled to attend and vote at a meeting of the company is entitled to appoint another person as his or her proxy, or one or more other persons as alternate proxies, none of whom need be members unless the articles of an existing company otherwise provides, to attend and vote instead of him or her, and a proxy appointed to attend and vote instead of a member has also the same right as the member to speak at the meeting, but when a proxy has conflicting instructions from more than one member, he or she is not entitled to vote except on a poll.

(2) In every notice calling a meeting of the company there shall appear with reasonable prominence a statement

- (a) that a member entitled to attend and vote is entitled to appoint a proxy, or one or more alternate proxies, to attend and vote instead of him or her; and
- (b) unless the articles of an existing company otherwise provides, that a proxy or alternate proxy need not also be a member.

(3) In the event of failure to comply with subsection (2) as respects any meeting, every officer of the company who is in default commits an offence and liable to a fine not exceeding two thousand five hundred dollars.

(4) A provision contained in a company's articles is void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting or adjourned meeting in order that the appointment may be effective.

(5) If for the purpose of a meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be given notice of the meeting and to vote at the meeting by proxy, then every officer of the company who knowingly and

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wilfully authorises or permits their issue in that manner commits an offence and liable to a fine not exceeding two thousand five hundred dollars; but an officer is not so liable by reason only of the issue to a member at his or her request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxy, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(6) This section applies to meetings of any class of members of a company as it applies to general meetings and in this Act unless the context otherwise requires, “proxy” includes any alternate proxy.

98. Demand for poll.

(1) A provision contained in a company’s articles is void in so far as it would have the effect either

- (a) of excluding the right to demand a poll at a general meeting, or at a meeting of any class of members, on any question other than the election of the chairperson of the meeting or the adjournment of the meeting; or
- (b) of making ineffective a demand for a poll on any such question which is made either
 - (i) by not less than five members having the right to vote at the meeting;
 - (ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
 - (iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) The instrument appointing a proxy to vote at such a meeting is deemed also to confer authority to demand or join in demanding a poll; and for the purposes of subsection (1), a demand by a person as proxy or alternate proxy for a member is the same as a demand by the member.

(3) On a poll taken at such a meeting, a member entitled to more than one vote need not, if he or she votes, use all his or her votes or cast all the votes he or she uses in the same way.

99. Minutes.

(1) Every company shall cause minutes of all proceedings at general meetings, meetings of the holders of any class of its shares, meetings of its directors and of committees of directors to be entered in books kept for that purpose, and the names of the directors present at each such meeting shall be recorded in the minutes.

(2) Any such minute, if purporting to be signed by the chairperson of the meeting at which the proceedings took place, or by the chairperson of the next succeeding meeting, is evidence of the proceedings.

(3) Where minutes have been made in accordance with this section then, until the contrary is proved, the meeting is deemed duly held and convened, and all proceedings which took place at the meeting to have duly taken place.

(4) If a company fails to comply with subsection (1), the company and every officer of the company who is in default commits an offence and liable to a fine not exceeding two thousand five hundred dollars, and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

100. Inspection of minute books.

(1) The books containing the minutes of a general meeting or of a meeting of the holders of a class of shares held after this section comes into force shall be kept at the company's registered office, and shall during business hours be open to the inspection of a member without charge.

(2) A member may require, on submission to the company of a written request and on payment of such sum (if any), not exceeding fifty dollars, as the company may require, a copy of any such minutes and the company shall, within seven days after the receipt of the request and the payment, cause the copy so required to be made available at the registered office of the company for collection during business hours.

(3) If an inspection required under this section is refused or if a copy required under this section is not sent within the proper time, the company commits an offence and liable to a fine not exceeding one thousand dollars.

(4) In the case of a refusal or default, the Court may make an order compelling an immediate inspection of the books in respect of all proceedings of general meetings, or meetings of the holders of a class of shares or directing that the copies required be furnished to the persons requiring them.

101. Filing of resolutions.

(1) A printed copy of every resolution or agreement to which this section applies shall, within twenty-one days after it is passed or made, be forwarded to the Registrar and recorded by him or her.

(2) A printed copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the memorandum or articles issued after the passing of the resolution or the making of the agreement, and a printed copy of every such resolution or agreement shall be forwarded to a member at his or her request on payment of such sum (if any), not exceeding fifty dollars, as the company may require.

(3) This section applies to

- (a) special resolutions;
- (b) resolutions or agreements which have been agreed to by all the members of a company but which, if not so agreed to, would not have

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been effective for their purpose unless they had been passed as special resolutions;

- (c) resolutions or agreements which have been agreed to by all the holders of some class of shares but which, if not so agreed to, would not have been effective for their purpose unless they had been passed or agreed to by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the holders of any class of shares though not agreed to by all those holders;

which are passed, agreed to or entered into after this section comes into force.

(4) If a copy of a resolution or agreement is not delivered to the Registrar as required by subsection (1) there shall be payable by the company when the copy is delivered a prescribed late filing fee.

(5) If a company fails to comply with subsection (2), it commits an offence and liable to a fine not exceeding one thousand dollars.

(6) Save as otherwise provided by this Act, a resolution or agreement to which this section applies has effect notwithstanding that a copy is not delivered to the Registrar as required by subsection (1).

102. Resolution passed at adjourned meeting.

Where a resolution is passed at an adjourned meeting of

- (a) a company;
- (b) any class of members of a company; or
- (c) the directors or a committee of directors of a company;

the resolution is for all purposes to be treated as having been passed on the date on which it was in fact passed, and is not to be deemed passed on any earlier date.

PART XVI – ACCOUNTS AND AUDITS

103. Accounting records.

(1) Every company shall keep accounting records which are sufficient to show and explain its transactions and are such as to

- (a) disclose with reasonable accuracy, at any time, the financial position of the company at that time; and
- (b) enable the directors to ensure that any accounts prepared by the company under this Part comply with the requirements of this Act.

(2) A company's accounting records shall be kept at such place as the directors think fit and shall at all times be open to inspection by the company's officers and the secretary.

(3) If accounting records of a public company are kept at a place outside the Federation, returns with respect to the business dealt with in the accounting records so kept

shall be sent to, and kept in, the Federation, and shall at all times be open to such inspection, and shall be such as to

- (a) disclose with reasonable accuracy the financial position of the business in question at intervals of not more than six months; and
- (b) enable the directors to ensure that any accounts prepared by the company under this Part comply with the requirements of this Act.

(4) Subject to section 195, accounting records which a company is required by this section to keep shall be preserved by the company for twelve years from the date on which they are made.

104. **Register of mortgages and charges.**

(1) Every company shall keep a register of all mortgages and charges and enter in it in respect of each mortgage or charge

- (a) a short description of the property mortgaged or charged;
- (b) the amount of charge created; and
- (c) the names of the mortgagees or persons entitled to such charge.

(2) If a company fails to comply with subsection (1), the company and every officer of the company who is in default commit an offence and liable to a fine not exceeding two thousand five hundred dollars.

(3) The provisions of sections 44 and 45 shall, *mutatis mutandis*, apply to the company's register of mortgages and charges.

105. **Accounts.**

(1) The directors of every company shall prepare accounts for a period of not more than eighteen months beginning on the date the company was incorporated or, if the company has previously prepared a profit and loss account, beginning at the end of the period covered by the most recent account:

Provided that an existing company which has not prepared a profit and loss account for a period ending within twelve months before the date on which this section comes into force shall not be required to prepare accounts for a period beginning earlier than that date.

(2) The accounts shall be prepared in accordance with generally accepted accounting principles and show a true and fair view of the profit or loss of the company for the period and of the state of the company's affairs at the end of the period and comply with any other requirements of this Act.

(3) A company's accounts shall be approved by the directors and signed on their behalf by one of them.

(4) Within seven months after the end of the financial period, the accounts for that period shall be

- (a) prepared, and where it is required under this Act, examined and reported upon by auditors; and

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- (b) subject in the case of a private company to subsection (5), laid before a general meeting together with a copy of the auditors' report (if any).
- (5) If at the end of any financial period of a company, an agreement under subsection (4) of section 88 dispensing with the holding of an annual general meeting has effect
 - (a) the company shall not be obliged to lay the accounts for that period or a copy of any auditors' report before a general meeting;
 - (b) but if any member of the company, not later than eight months after the end of that period, by written notice given to the company so requires, those accounts and a copy of any auditors' report thereon shall be laid before a general meeting which shall be held within twenty-eight days after the receipt of the notice by the company, or after approval of the accounts by the directors, whichever shall last occur.
- (6) In this Part, references to "accounts" are to those prepared in accordance with this section.

106. Copies of accounts.

(1) Any member of a company who has not previously been furnished with a copy of the company's latest accounts is entitled, on written request made by him or her to the company and without charge, to be furnished with a copy of those accounts together, where the accounts have been audited, with a copy of the auditors' report.

(2) If default is made in complying with such a request within seven days after its making, the company and every officer of the company who is in default commit an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

107. Delivery of accounts to the Registrar.

(1) In respect of each financial period, the directors of a public company shall deliver to the Registrar a copy of the accounts for the period signed on behalf of the directors by one of them together with a copy of the report thereon by the auditors.

(2) In respect of each financial period, the directors of a private company which is an ordinary company shall deliver to the Registrar

- (a) a copy of the accounts for the period signed on behalf of the directors by one of them together with a copy of the report thereon by its auditors (if any); or
 - (b) a certificate of solvency for the period signed on behalf of the directors by at least one of them and by the auditors (if any).
- (3) Every certificate of solvency delivered to the Registrar pursuant to paragraph (b) of subsection (2) shall state
 - (a) the company's name and the address of its registered office;

- (b) the amounts of the total assets and liabilities of the company as shown in its accounts;
- (c) whether or not in the opinion of the auditors of the company, or if there is no such auditor, of each of its directors, the company will be able to discharge its liabilities as they fall due;
- (d) that the information contained in the certificate is current as at the end of the financial period for which it is delivered and accurately reflect the state of the company's affairs as determined by reference to the accounts required to be prepared for that period;
- (e) the name and address of the auditors of the company, or if there is no such auditor at the end of the financial period mentioned in paragraph (d), whether or not any such auditor was appointed by the company or by its directors during that period;
- (f) if the auditors of the company refuse to sign the certificate or if a director of the company objects to anything stated therein, the fact that such refusal or objection was made (as the case may be).

(4) The documents referred to in subsections (1) and (2) shall be delivered to the Registrar within ten months after the end of the financial period to which they relate and if any document so delivered is in a language other than English, the directors shall annex to the copy of that document a translation of it into English, certified to be a correct translation.

(5) Where for special reasons the Minister sees fit, he or she may by notice in writing extend a period mentioned in subsection (1), (4) or (5) of section 105 or in subsection (4) of this section by such period as is specified in the notice.

108. Failure to comply with section 103, 105 or 107.

- (1) If a company fails to comply with the provisions of section 103, 105 or 107
 - (a) the company commits an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence under section 107 to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues; and
 - (b) in the case of a public company, every officer of the company who is in default commits an offence and liable to imprisonment for a term not exceeding two years or a fine or both.

(2) A director or auditor of a company who signs or delivers to the Registrar or concurs in delivering to the Registrar a certificate required by paragraph (b) of subsection (2) of section 107 which contains a statement that is false, misleading or deceptive or an opinion that he or she has no reasonable ground to believe to be accurate commits an offence and liable to imprisonment for a term not exceeding two years or a fine or both.

109. Power to make Order as to accounts.

- (1) The Minister may, by Order, extend or modify the provisions of this Part.

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- (2) Without prejudice to the generality of the foregoing, such Order may provide for
- (a) the inclusion in accounts of group accounts dealing with the affairs of a company and its subsidiaries;
 - (b) the inclusion in accounts of a report by the directors dealing with such matters as may be specified;
 - (c) the accounting principles to be applied in the preparation of accounts;
 - (d) the appointment, remuneration, removal, resignation, rights and duties of auditors,

and different provisions may be made for different cases or classes or case.

(3) If a company fails to comply with the provisions of such Order the company and every officer of the company who is in default commits an offence.

110. Appointment and removal of auditors.

- (1) Where
- (a) a company is a public company;
 - (b) the articles of the company so require; or
 - (c) a resolution of the company in general meeting so requires;

the company shall appoint auditors who shall examine and report in accordance with this Act upon the accounts prepared pursuant to section 105.

(2) Subject to subsections (4) and (5), a company which is required by this section to appoint auditors shall at each annual general meeting appoint auditors to hold office from the conclusion of that meeting to the conclusion of the next annual general meeting.

(3) The directors or (failing the directors) the company in general meeting may, at any time before the first annual general meeting, appoint auditors who shall hold office until the conclusion of that meeting.

(4) If a private company required by this section to appoint auditors dispenses with the holding of an annual general meeting pursuant to subsection (4) of section 88 any auditors then in office shall continue to act and be deemed to be re-appointed for each succeeding financial period until the conclusion of the next annual general meeting or until the company in general meeting resolves that the appointment of the auditors be brought to an end.

(5) If a private company which has dispensed as aforesaid with the holding of an annual general meeting becomes bound to appoint auditors and there are no auditors in office, the directors shall appoint auditors who shall continue to act until the conclusion of the next annual general meeting.

(6) The directors or the company in general meeting may fill any casual vacancy in the office of auditors and fix their remuneration.

(7) A company may by resolution at any time remove an auditor notwithstanding anything in any agreement between the company and the auditor.

(8) Nothing in this section is to be taken as depriving a person removed under it of compensation or damages payable to him or her in respect of the termination of his or her appointment as auditor.

(9) If a company fails to comply with subsection (1), the company and every officer of the company who is in default commit an offence and liable to a fine not exceeding two thousand five hundred dollars.

111. Auditors' report.

(1) This section, and sections 112 and 114, apply only to a company which is required to appoint auditors pursuant to section 110.

(2) A company's auditors shall make a report to the company's members on the accounts examined by them.

(3) The auditors' report shall state whether in their opinion the accounts have been properly prepared in accordance with this Act and in particular whether a true and fair view is given.

112. Auditors' duties and powers.

(1) A company's auditors shall, in preparing their report, carry out such investigations as will enable them to form an opinion as to the following matters:

- (a) whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them;
- (b) whether the company's accounts are in agreement with the accounting records and returns.

(2) If the auditors are of the opinion that proper accounting records have not been kept, or that proper returns adequate for their audit have not been received from branches not visited by them, or if the accounts are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.

(3) The auditors have a right of access at all times to the company's records, and are entitled to require from the company's officers and the secretary such information and explanations as they think necessary for the performance of their duties as auditors.

(4) Every auditor is entitled to receive notice of, and attend, any meeting of shareholders and to be heard on any part of the business of the meeting which concerns the auditors.

(5) If the auditors fail to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state that fact in their report.

(6) An auditor of a company may resign his or her office by depositing a notice in writing to that effect together with a statement under subsection (7) at the company's registered office; and any such notice operates to bring his or her term of office to an end on the date on which the notice is deposited, or on such later date as may be specified in the notice.

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(7) When an auditor ceases for any reason to hold office he or she shall deposit at the company's registered office

- (a) a statement to the effect that there are no circumstances connected with his or her ceasing to hold office which he or she considers should be brought to the notice of the members or creditors of the company; or
- (b) a statement of any circumstances as are mentioned above.

(8) Where a statement under subsection (7) falls within paragraph (b) of that section, the company shall within fourteen days send a copy of the statement to every member of the company and to every person entitled to receive notice of general meetings.

(9) If a person ceasing to hold office as auditor fails to comply with subsection (7) he or she commits an offence and is liable to a fine not exceeding two thousand five hundred dollars.

(10) If a company fails to comply with subsection (8) the company and every officer of the company who is in default commit an offence and is liable to a fine not exceeding two thousand five hundred dollars.

113. **False statements to auditors.**

Where section 110 requires a company to appoint auditors, an officer and the secretary of the company commits an offence and is liable to imprisonment for a term of two years or a fine or both if he or she knowingly or recklessly makes to the company's auditors a statement (whether written or oral) which

- (a) conveys or purports to convey any information or explanation which the auditors require, or are entitled to require, as auditors of the company; and
- (b) is misleading, false or deceptive in a material particular.

114. **Qualification for appointment as auditor.**

(1) No person shall be qualified for appointment as auditor of a company under section 110 unless he or she is an accountant.

- (2) Notwithstanding subsection (1),
 - (a) a body corporate; or
 - (b) a partnership;

is so qualified if, but only if, each director (in the case of a body corporate) or each partner (in the case of a partnership) is so qualified.

- (3) No auditor is so qualified if he or she is a person who is
 - (a) an officer or secretary or servant of the company or a partner or employee of such a person; or
 - (b) a person against whom an order made under section 79 is in force.

(4) An auditor is also not so qualified if he or she is, under subsection (2), disqualified for appointment as auditor of any other body corporate which is that

company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(5) No person appointed under section 110 shall act as auditor of a company at a time when he or she knows that he or she is disqualified for appointment to that office, and if an auditor of a company to his or her knowledge becomes so disqualified during his or her term of office he or she shall thereupon vacate his or her office and give notice in writing to the company that he or she has vacated it by reason of that disqualification.

(6) A person who acts as auditor in contravention of subsection (4), or fails without reasonable excuse to give notice of vacating his or her office as required by that subsection, commits an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

- (7) The Minister may, by Order,
- (a) amend the definition of "accountant"; or
 - (b) amend any provision of this section;

so as to allow, subject to such conditions as are specified in the Order, any person who does not meet the requirements of this section to be a person qualified for appointment as auditor of a company.

(8) Subsections (5) and (6) shall not apply to an existing company until the expiration of six months from the date on which this section comes into force.

PART XVII – DISTRIBUTIONS

115. Restrictions on distributions.

(1) A company shall not make a distribution except in accordance with this section.

- (2) A company may make a distribution, at any time,
- (a) out of its realised profits less its realised losses;
 - (b) out of its realised revenue profits less its revenue losses, whether realised or unrealised, provided the directors reasonably believe that, immediately after the distribution has been made
 - (i) the company will be able to discharge its liabilities as they fall due, and
 - (ii) the value of the company's assets will not be less than the amount of its liabilities.

(3) A company may, with the sanction of a special resolution, make a distribution out of its unrealised profits less its losses, whether realised or unrealised, provided the directors reasonably believe that immediately after the distribution has been made

- (a) the company will be able to discharge its liabilities as they fall due; and

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- (b) the value of the company's assets will not be less than the aggregate of
 - (i) its liabilities,
 - (ii) the stated amount of its issued shares,
 - (iii) any amount standing to the credit of its share premium account, and
 - (iv) any amount standing to the credit of its capital redemption reserve.
- (4) In this Part,
 - (a) "distribution" means every description of distribution of a company's assets to its members in their characters of members, whether in cash or otherwise, except distribution by way of
 - (i) an issue of shares as fully or partly paid bonus shares,
 - (ii) the redemption or purchase of any of the company's shares out of the proceeds of a fresh issue of shares or share premium account,
 - (iii) the reduction of share capital by extinguishing or reducing the liability of any of the members on any of the company's shares in respect of share capital not paid up, or by paying off paid up share capital, and
 - (iv) a distribution of assets to members of the company on its winding up.
 - (b) references to profits of any description are to accumulated profits of that description made at any time so far as not previously utilised by distribution or capitalization;
 - (c) references to losses of any description are to accumulated losses of that description made at any time so far as not previously written off in a reduction or reorganisation of capital duly made;
 - (d) references to profits and losses of any description are to profits and losses of that description ascertained in accordance with generally accepted accounting principles;
 - (e) "capitalisation" means
 - (i) applying profits in wholly or partly paying up unissued shares in the company to be allotted to members as fully or partly paid bonus shares, or
 - (ii) transferring the profits to capital redemption reserve.
- (5) A company shall not apply an unrealised profit in paying up debentures.
- (6) Where the directors of a company are, after making all reasonable enquiries, unable to determine whether a particular profit made before the provisions of this section came into force is realised or unrealised, they may treat it as realised; and where, after making such enquiries, they are unable to determine whether a particular loss so made is realised or unrealised, they may treat the loss as unrealised.

116. Consequences of unlawful distribution.

Where a distribution, or part of a distribution, made by a company to one of its members is made in contravention of section 115 and, at the time of the distribution, he or she knows or has reasonable grounds for believing that it is so made, he or she is liable to repay it, or that part of it, to the company or, in the case of a distribution made otherwise than in cash, to pay the company a sum equal to the value of the distribution, or that part, at that time.

PART XVIII – AMALGAMATION AND ARRANGEMENTS**117. Takeover offers.**

(1) In this Part, “a takeover offer” means an offer to acquire all the shares, or all the shares of any class or classes, in a company (other than shares which at the date of the offer are already held by the offeror), being an offer on terms which are the same in relation to all the shares to which the offer relates or, where those shares include shares of different classes, in relation to all the shares of each class.

(2) In subsection (1), “shares” means shares which have been allotted on the date of the offer but a takeover offer may include among the shares to which it relates all or any shares that are subsequently allotted before a date specified in or determined in accordance with the terms of the offer.

(3) The terms offered in relation to any shares shall, for the purposes of this section, be treated as being the same in relation to all the shares or, as the case may be, all the shares of a class to which the offer relates notwithstanding any variation permitted by subsection (4).

(4) A variation is permitted by this subsection where

- (a) the law of a country or territory outside the Federation precludes the acceptance of an offer in the form or any of the forms specified or precludes it except after compliance by the offeror with conditions with which he or she is unable to comply or which he or she regards as unduly onerous; and
- (b) the variation is such that the persons by whom the acceptance of an offer in that form is precluded are able to accept an offer otherwise than in that form but of substantially equivalent value.

(5) The reference in subsection (1) to shares already held by the offeror includes a reference to shares which he or she has contracted to acquire but that shall not be construed as including shares which are the subject of a contract binding the holder to accept the offer when it is made, being a contract entered into by the holder for nothing other than a promise by the offeror to make the offer.

(6) Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, the revision shall not be regarded for the purposes of this Part as the making of a fresh offer and references in this Part to the date of the offer shall accordingly be construed as references to the date of which the original offer was made.

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(7) In this Part, “the offeror” means, subject to section 123, the person making a takeover offer and “the company” means the company whose shares are the subject of the offer.

118. Right of offeror to buy out minority shareholders.

(1) If, in a case in which a takeover offer does not relate to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire not less than nine-tenths in value of the shares to which the offer relates he or she may give notice to the holder of any shares to which the offer relates which the offeror has not acquired or contracted to acquire that he or she desires to acquire those shares.

(2) If, in a case in which a takeover offer relates to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire not less than nine-tenths in value of the shares of any class to which the offer relates, he or she may give notice to the holder of any shares of that class which the offeror has not acquired or contracted to acquire that he or she desires to acquire those shares.

(3) No notice shall be given under subsection (1) or (2) unless the offeror has acquired or contracted to acquire the shares necessary to satisfy the minimum specified in that subsection before the end of the period of four months beginning with the date of the offer, and no such notice shall be given after the end of the period of two months beginning with the date on which he or she has acquired or contracted to acquire shares which satisfy that minimum.

(4) When the offeror gives the first notice in relation to an offer he or she shall send a copy of it to the company together with a declaration by him or her that the conditions for the giving of the notice are satisfied.

(5) Where the offeror is a body corporate (whether or not a company within the meaning of this Act) the declaration shall be signed by a director.

(6) Any person who fails to send a copy of a notice or a declaration as required by subsection (4) or makes such a declaration for the purposes of that subsection knowing it to be false or without having reasonable grounds for believing it to be true commits an offence and liable to imprisonment for a period not exceeding two years or a fine or both.

(7) If a person is charged with any offence for failing to send a copy of a notice as required by subsection (4) it is a defence for him or her to prove that he or she took reasonable steps for securing compliance with that subsection.

(8) Where during the period within which a takeover offer can be accepted the offeror acquires or contracts to acquire any of the shares to which the offer relates but otherwise than by virtue of acceptances of the offer, then if

- (a) the value of that for which they are acquired or contracted to be acquired (“the acquisition value”) does not at that time exceed the value of that which is receivable by an acceptor under the terms of the offer; or
- (b) those terms are subsequently revised so that when the revision is announced the acquisition value, at the time mentioned in paragraph (a), no longer exceeds the value of that which is receivable by an acceptor under those terms,

the offeror shall be treated for the purposes of this section as having acquired or contracted to acquire those shares by virtue of acceptances of the offer; but in any other case those shares shall be treated as excluded from those to which the offer relates.

119. Effect of notice under section 118.

(1) The following provisions shall, subject to section 122, have effect where a notice is given in respect of any shares under section 118.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer.

(3) Where the terms of an offer are such as to give the holder of any shares a choice of payment for his or her shares the notice shall give particulars of the choice and state

- (a) that the holder of the shares may within six weeks from the date of the notice indicate his or her choice by a written communication sent to the offeror at an address specified in the notice; and
- (b) which payment specified in the offer is to be taken as applying in default of his or her indicating a choice as aforesaid;

and the terms of the offer mentioned in subsection (2) shall be determined accordingly.

(4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with, and if the payment chosen by the holder of the shares

- (a) is not cash and the offeror is no longer able to make that payment; or
- (b) was to have been made by a third party who is no longer bound or able to make that payment;

the payment shall be taken to consist of an amount of cash payable by the offeror which at the date of the notice is equivalent to the chosen payment.

(5) At the end of six weeks from the date of the notice the offeror shall forthwith

- (a) send a copy of the notice to the company; and
- (b) make payment to the company for the shares to which the notice relates.

(6) The copy of the notice sent to the company under paragraph (a) of subsection (5) shall be accompanied by an instrument of transfer executed on behalf of the shareholder by a person appointed by the offeror, and on receipt of that instrument the company shall register the offeror as the holder of those shares.

(7) Where the payment referred to in paragraph (b) of subsection (5) is to be made in shares or securities to be allotted by the offeror the reference in that subsection to the making of payment shall be construed as a reference to the allotment of the shares or securities to the company.

(8) Any sum received by a company under paragraph (b) of subsection (5) and any other payment received under that subsection shall be held by the company on trust for

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the person entitled to the shares in respect of which the sum or other payment was received.

(9) Any sum received by a company under paragraph (b) of subsection (5) and any dividend or other sum accruing from any other payment received by a company under that subsection, shall be paid into a separate bank account, being an account the balance on which bears interest at an appropriate rate and can be withdrawn by such notice (if any) as is appropriate.

(10) Where after reasonable inquiry made at such intervals as are reasonable the person entitled to any sum or other payment held on trust by virtue of subsection (8) cannot be found and ten years have elapsed since the sum or other payment was received or the company is wound up, the sum or other payment (together with any interest, dividend or other benefit that has accrued from it) shall be paid to the Accountant-General.

(11) The expenses of any inquiry mentioned in subsection (10) may be defrayed out of the money or other property held on trust for the person or persons to whom the inquiry relates.

120. Right of minority shareholder to be bought out by offeror.

(1) If a takeover offer relates to all the shares in a company and at any time before the end of the period within which the offer can be accepted

- (a) the offeror has by virtue of acceptance of the offer acquired or contracted to acquire some (but not all) of the shares to which the offer relates; and
- (b) those shares, with or without any other shares in the company which he or she has acquired or contracted to acquire, amount to not less than nine-tenths in value of all the shares in the company;

the holder of any shares to which the offer relates who has not accepted the offer may by a written communication addressed to the offeror require him or her to acquire those shares.

(2) If a takeover offer relates to shares of any class or classes and at any time before the end of the period within which the offer can be accepted

- (a) the offeror has by virtue of acceptance of the offer acquired or contracted to acquire some (but not all) of the shares of any class to which the offer relates; and
- (b) those shares, with or without any other shares of that class which he or she has acquired or contracted to acquire, amount to not less than nine-tenths in value of all the shares of that class;

the holder of any shares of that class who has not accepted the offer may by a written communication addressed to the offeror require him or her to acquire those shares.

(3) Within one month of the time specified in subsection (1) or, as the case may be, subsection (2) the offeror shall give any shareholder who has not accepted the offer notice of the rights that are exercisable by him or her under that subsection, and if the notice is given before the end of the period mentioned in that subsection it shall state that the offer is still open for acceptance.

(4) A notice given under subsection (3) may specify a period for the exercise of the rights, conferred by this section and in that event the rights shall not be exercisable after the end of that period, but no such period shall end less than three months after the end of the period within which the offer can be accepted.

(5) Subsection (3) does not apply if the offeror has given the shareholder a notice in respect of the shares in question under section 118.

(6) If the offeror fails to comply with subsection (3) he or she and, if the offeror is a company, every officer of the company who is in default or to whose neglect the failure is attributable, commits an offence and liable to a fine not exceeding two thousand five hundred dollars, and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

(7) If an offeror, other than a company, is charged with an offence for failing to comply with subsection (3) it is a defence for him or her to prove that he or she took all reasonable steps for securing compliance with that subsection.

121. Effect of requirement under section 120.

(1) The following provisions shall, subject to section 122, have effect where a shareholder exercises his or her rights in respect of any shares under section 120.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed.

(3) Where the terms of an offer are such as to give the holder of shares a choice of payment for his or her shares the holder of the shares may indicate his or her choice when requiring the offeror to acquire them and the notice given to the holder under subsection (3) of section 120

- (a) shall give particulars of the choice and of the rights conferred by this subsection; and
- (b) may state which payment specified in the offer is to be taken as applying in default of his or her indicating a choice;

and the terms of the offer mentioned in subsection (2) shall be determined accordingly.

(4) Subsection (3) applies whether or not any time limit or other conditions applicable to the choice under the terms of the offer can still be complied with, and if the payment chosen by the holder of the shares

- (a) is not cash and the offeror is no longer able to make that payment; or
- (b) was to have been made by a third party who is no longer bound or able to make that payment;

the payment shall be taken to consist of an amount of cash payable by the offeror which at the date when the holder of the shares requires the offeror to acquire them is equivalent to the chosen payment.

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122. Applications to the Court.

(1) Where a notice is given under section 118 to the holder of any shares the Court may, on an application made by him or her, within six weeks from the date on which the notice was given,

- (a) order that the offeror shall not be entitled and bound to acquire the shares; or
- (b) specify terms of acquisition different from those of the offer.

(2) If an application to the Court under subsection (1) is pending at the end of the period mentioned in subsection (5) of section 119 that subsection shall not have effect until the application has been disposed of.

(3) Where the holder of any shares exercises his or her rights under section 120 the Court may, on an application made by him or her or the offeror, order that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the Court thinks fit.

(4) No order for costs or expenses shall be made against a shareholder making an application under subsection (1) or (3) unless the Court considers

- (a) that the application was unnecessary, improper or vexatious; or
- (b) that there has been unreasonable delay in making the application or unreasonable conduct on his or her part in conducting the proceedings on the application.

(5) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under subsection (1) or (2) of section 118 the Court may, on the application of the offeror, make an order authorising him or her to give notices under that section if satisfied

- (a) that the offeror has, after reasonable inquiry, been unable to trace one or more of the persons holding shares to which the offer relates;
- (b) that the shares which the offeror has acquired or contracted to acquire by virtue of acceptance of the offer, together with the shares held by the person or persons mentioned in paragraph (a), amount to not less than the minimum specified in that section; and
- (c) that the terms offered are fair and reasonable;

but the Court shall not make an order under this subsection unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the offer.

123. Joint offers.

(1) A takeover offer may be made by two or more persons jointly and in that event this Part has effect with the following modifications.

(2) The conditions for the exercise of the rights conferred by sections 118 and 120 shall be satisfied by the joint offerors acquiring or contracting to acquire the necessary shares jointly (as respects acquisitions by virtue of acceptance of the offer) and either jointly or separately (in other cases), and, subject to the following provisions, the rights

and obligations of the offeror under those sections and sections 119 and 121 shall be respectively joint rights and joint and several obligations of the joint offerors.

(3) It shall be a sufficient compliance with any provision of those sections requiring or authorising a notice or other document to be given or sent by or to the joint offerors that it is given or sent by or to any of them, but the declaration required by subsection (4) of section 118 shall be made by all of them and, in the case of a joint offeror being a company, signed by a director of that company.

(4) In section 117, subsection (7) of section 119 and section 124 references to the offeror shall be construed as references to the joint offerors or any of them.

(5) In subsection (6) of section 119 references to the offeror shall be construed as references to the joint offerors or such of them as they may determine.

(6) In paragraph (a) of subsection (4) of section 119 and paragraph (a) of subsection (4) of section 121 references to the offeror being no longer able to make the relevant payment shall be construed as references to none of the joint offerors being able to do so.

(7) In section 122 references to the offeror shall be construed as references to the joint offerors except that any application under subsection (3) or (5) may be made by any of them and the reference in paragraph (a) of subsection (5) to the offeror having been unable to trace one or more of the persons holding shares shall be construed as a reference to none of the offerors having been able to do so.

124. Associates.

(1) The requirement in subsection (1) of section 117 that a takeover offer must extend to all the shares, or all the shares of any class or classes, in a company shall be regarded as satisfied notwithstanding that the offer does not extend to shares which associates of the offeror hold or have contracted to acquire, but, subject to subsection (2), shares which any such associate holds or has contracted to acquire, whether at the time when the offer is made or subsequently, shall be disregarded for the purposes of any reference in this Part to the shares to which a takeover offer relates.

(2) Where during the period within which a takeover offer can be accepted any associate of the offeror acquires or contracts to acquire any of the shares to which the offer relates, then, if the condition specified in paragraph (a) or (b) of subsection (8) of section 118 is satisfied as respects those shares they shall be treated for the purpose of that section as shares to which the offer relates.

(3) In paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 120 the reference to shares which the offeror has acquired or contracted to acquire shall include a reference to shares which any associate of his or her has acquired or contracted to acquire.

(4) In this section, “associate”, in relation to an offeror, means

- (a) a nominee of the offeror;
- (b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary;
- (c) a body corporate in which the offeror is substantially interested.

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(5) For the purposes of paragraph (b) of subsection (4) a company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.

(6) For the purposes of paragraph (c) of subsection (4) an offeror has a substantial interest in a body corporate if

- (a) that body or its directors are accustomed to act in accordance with his or her directions or instructions; or
- (b) he or she is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body.

(7) Where the offeror is an individual his or her associates shall also include his or her spouse and any minor child or step-child of his or her.

125. Convertible securities.

(1) For the purposes of this Part, securities of a company shall be treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares, and references to the holder of shares or a shareholder shall be construed accordingly.

(2) Subsection (1) shall not be construed as requiring any securities to be treated

- (a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe; or
- (b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.

126. Power of company to compromise with creditors and members.

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

(2) If a majority in number representing three-quarters in value of the creditors or class of creditors, or members or class of members, present and voting either in person or by proxy at the meeting, agree to a compromise or arrangement, the compromise or arrangement, if sanctioned by the Court, is binding on all creditors or the class of creditors or on the members or class of members, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) The Court's order under subsection (2) has no effect until the relevant act of the Court has been delivered to the Registrar for registration; and the relevant act of the Court shall be annexed to every copy of the company's memorandum issued after the order has been made.

(4) If a company fails to comply with subsection (3), it commits an offence and liable to a fine not exceeding two thousand five hundred dollars.

(5) In this section and section 127, “arrangement” includes a reorganisation of the company’s share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

127. Information as to compromise to be circulated.

(1) This section applies where a meeting of creditors or a class of creditors, or of members or a class of members, is called under section 126.

(2) With the notice calling the meeting which is given to a creditor or member there shall be included a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company (whether as directors or as members or as creditors of the company or otherwise) and the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the same interests of other persons.

(3) In every notice calling the meeting which is given by advertisement there shall be included either a statement mentioned in subsection (2) or a notification of the place at which, and the manner in which, creditors or members entitled to attend the meeting may obtain copies of the statement.

(4) Where the compromise or arrangement affects the rights of debenture holders of the company, the same explanation as respects the trustees of a deed for securing the issue of the debentures as it is required to give as respects the company’s directors shall be given in the statement.

(5) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(6) If a company fails to comply with a requirement of this section the company and every officer of it who is in default commit an offence and liable to a fine not exceeding two thousand five hundred dollars; and for this purpose a trustee of a deed for securing the issue of debentures of the company is deemed an officer of it; but a person is not liable under this subsection if he or she shows that the default was due to the refusal of another person, being a director or trustee for debenture holders, to supply the necessary particulars of his or her interests.

(7) A director of the company, and a trustee for its debenture holders, shall give notice to the company of such matters relating to himself or herself as may be necessary for the purposes of this section; and a person who defaults in complying with this subsection commits an offence and is liable to a fine not exceeding two thousand five hundred dollars.

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128. Provisions for facilitating company reconstruction or amalgamation.

(1) This section applies where application is made to the Court under section 126 for the sanctioning of a compromise or arrangement proposed between a company and any persons mentioned in that section.

(2) If it is shown

- (a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of a company or companies, or the amalgamation of two or more companies; and
- (b) that under the scheme the whole or part of the undertaking or the property of a company concerned in the scheme (“a transferor company”) is to be transferred to another company (“the transferee company”);

the Court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters:

- (i) the transfer to the transferee company of the whole or part of the undertaking and of the property or liabilities of a transferor company,
- (ii) the allotting or appropriation by the transferee company of shares, debentures, policies or other similar interests in that company which under the compromise or arrangement are to be allotted or appropriated by the company to or for any person,
- (iii) the continuation by or against the transferee company of legal proceedings pending by or against a transferor company,
- (iv) the dissolution, without winding up, of a transferor company,
- (v) the provision to be made for persons who, within a time and in a manner which the Court directs, dissent from the compromise or arrangement,
- (vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(3) If an order under this section provides for the transfer of property or liabilities, then

- (a) that property is by virtue of the order transferred to, and vests in, the transferee company; and
- (b) those liabilities are, by virtue of the order, transferred to and become liabilities of that company;

and property (if the order so directs) vests freed from any hypothec, security interest or other charge which is by virtue of the compromise or arrangement to cease to have effect.

(4) Where an order is made under this section, every company in relation to which the order is made shall cause the relevant act of the Court to be delivered to the Registrar for registration within fourteen days after the making of the order; and in the

event of failure to comply with this subsection, the company commits an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

(5) In this section, “property” includes property, rights and powers of every description, and “liabilities” include duties.

PART XIX – INVESTIGATIONS

129. Appointment of inspectors by Minister.

- (1) If the Minister has *prima facie* evidence that
 - (a) a company was formed or is to be dissolved for an unlawful or fraudulent purpose;
 - (b) the business or affairs of a company are or have been carried on unlawfully or with intent to defraud any person;
 - (c) persons concerned with the formation, business or affairs of a company have in connection therewith acted fraudulently or dishonestly; or
 - (d) in any case it is in the public interest that an investigation of the company be made;

he or she may appoint one or more competent inspectors to investigate the affairs of a company and to report on them as the Minister may direct.

(2) The appointment may be made on the application of the Registrar, the company or a member, officer or creditor of the company.

(3) The Minister may, before appointing inspectors, require the applicant, other than the Registrar, to give security, to an amount not exceeding twenty-five thousand dollars or such other sum as may be prescribed for payment of the costs of the investigation.

- (4) This section applies whether or not the company is being wound up.

130. Powers of inspectors.

(1) If inspectors appointed under section 129 to investigate the affairs of a company think it necessary for the purposes of their investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company’s subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, they shall have power to do so; and they shall report on the affairs of the other body corporate so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the first mentioned company.

(2) Inspectors so appointed may at any time in the course of their investigation, without the necessity of making an interim report, inform the Minister and the Attorney-General of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.

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131. Production of records and evidence to inspectors.

(1) If inspectors appointed under section 129 consider that any person is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him or her

- (a) to produce and make available to them all records in his or her custody or power relating to that matter;
- (b) at reasonable times and on reasonable notice, to attend before them; and
- (c) otherwise to give them all assistance in connection with the investigation which he or she is reasonably able to give;

and it is that person's duty to comply with the requirement.

(2) Inspectors may, for the purposes of the investigation, examine on oath any such person as is mentioned in subsection (1), and may administer an oath accordingly.

(3) An answer given by a person to a question put to him or her in exercise of the powers conferred by this section may be used in evidence against him or her.

132. Power of inspectors to call for directors' bank accounts.

If inspectors appointed under section 129 have reasonable grounds for believing that a director, or past director, of the company or other body corporate whose affairs they are investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in the Federation or elsewhere, into or out of which there has been paid money which has been in any way connected with an act or omission, or series of acts or omissions, which constitutes misconduct (whether fraudulent or not) on the part of that director towards the company or other body corporate or its members, the inspectors may require the director to produce and make available to them all records in the director's possession or under his or her control relating to that bank account.

133. Authority for search.

(1) Inspectors appointed under section 129 may, for the purpose of an investigation under that section, apply to the Court for a warrant under this section in relation to specified premises.

(2) If the Court is satisfied that the conditions in subsection (3) are fulfilled it may issue a warrant authorising a police officer and any other person named in the warrant to enter the specified premises (using such force as is reasonably necessary for the purpose) and to search them.

(3) The conditions referred to in subsection (2) are:

- (a) that there are reasonable grounds for suspecting that there is on the premises material (whether or not it can be particularised) which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and

- (b) that the investigation for the purposes of which the application is made might be seriously prejudiced unless immediate entry can be secured to the premises.

(4) Where a person has entered premises in the execution of a warrant issued under this section, he or she may seize and retain any material, other than items subject to legal professional privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

- (5) In this section, “premises” include any place and, in particular, include
 - (a) any vehicle, vessel, aircraft or hovercraft;
 - (b) any offshore installation; and
 - (c) any tent or movable structure.

134. **Obstruction.**

Any person who wilfully obstructs any person acting in the execution of a warrant issued under section 133 commits an offence and liable to imprisonment for a term not exceeding two years or a fine or both.

135. **Failure to co-operate with inspectors.**

- (1) If any person
 - (a) fails to comply with a requirement under section 131 or 132; or
 - (b) refuses to answer any question put to him or her by the inspectors for the purpose of the investigation;

the inspectors may certify the refusal in writing to the Court.

(2) The Court may thereupon inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement in defence, the Court may punish the offender as if he or she had been guilty of contempt of the Court.

(3) Notwithstanding the generality of the foregoing, no proceedings for an offence or for the recovery of any penalty shall be instituted under this section against any person who refuses to answer any question if such refusal is made pursuant to section 213.

136. **Inspectors’ reports.**

(1) The inspectors may, and if so directed by the Minister shall, make interim reports to the Minister and on the conclusion of their investigation shall make a final report to the Minister.

- (2) The Minister may
 - (a) forward a copy of any report made by the inspectors to the company’s registered office;
 - (b) furnish a copy on request and on payment of the prescribed fee to

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- (i) any member of the company or other body corporate which is the subject of the report,
 - (ii) any person whose conduct is referred to in the report,
 - (iii) the auditors of the company or that body corporate,
 - (iv) the applicants for the investigation,
 - (v) any other person whose financial interests appear to the Minister to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or otherwise; and
- (c) cause the report to be printed and published.

137. Power to bring civil proceedings on behalf of body corporate.

(1) If, from any report made or information obtained under this Part, it appears to the Minister that civil proceedings ought in the public interest to be brought by a body corporate, the Minister may himself or herself bring those proceedings in the name and on behalf of the body corporate.

(2) The Minister shall, at the expense of the Government, indemnify the body corporate against any costs or expenses incurred by it in, or in connection with, proceedings brought under this section.

138. Expenses of investigating a company's affairs.

(1) The expenses of, and incidental to, an investigation by inspectors shall be defrayed in the first instance by the Minister, but the following are liable to make repayment to the Minister to the extent specified:

- (a) a person who
 - (i) is convicted in proceedings on a prosecution instituted as a result of the investigation, or
 - (ii) is ordered to pay the costs of the whole or any part of the proceedings brought under section 137,may in the same proceedings be ordered to pay those expenses to the extent specified in the order;
- (b) a body corporate in whose name proceedings are brought under that section is liable to the amount or value of any sums or property recovered by it as a result of those proceedings;
- (c) a body corporate which has been the subject of the investigation is liable except so far as the Minister otherwise directs; and
- (d) the applicant or applicants for the investigation (other than the Registrar), is or are liable to the extent (if any) which the Minister may direct.

(2) For the purposes of this section, costs or expenses incurred by the Minister in, or in connection with, proceedings brought under section 137 (including expenses

incurred under subsection (2) of it) are to be treated as expenses of the investigation giving rise to the proceedings.

(3) A liability to repay the Minister imposed by paragraph (a) or (b) of subsection (1) is (subject to satisfaction of his or her right to repayment) a liability also to indemnify all persons against liability under paragraph (c) or (d) of that subsection; and a liability imposed by paragraph (a) is (subject as mentioned above) a liability also to indemnify all persons against liability under paragraph (b).

(4) A person liable under subsection (1) is entitled to a contribution from any other person liable under the same subsection according to the amount of their respective liabilities under it.

(5) Expenses to be defrayed by the Minister under this section shall, so far as not recovered under it, be paid out of money provided by the Government.

(6) There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Minister may determine in respect of general staff costs and overheads.

139. Inspectors' report to be evidence.

(1) A copy of a report of inspectors certified by the Minister to be a true copy, is admissible in legal proceedings as evidence of the opinion of the inspectors in relation to a matter contained in the report.

(2) A document purporting to be a certificate mentioned in subsection (1) shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

140. Privileged information

Nothing in this Part requires the disclosure or production to the Minister or to an inspector appointed by him or her

- (a) by a person of information or records which he or she would in an action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the Court except, if he or she is a lawyer, the name and address of his or her client;
- (b) by a company's bankers (as such) of information or records relating to the affairs of any of their customers other than the company or other body corporate under investigation.

141. Investigation of external companies.

This Part applies to external companies and to bodies corporate which have at any time been external companies as if they were companies under this Act, but subject to such adaptations and modifications as may be prescribed by the Minister.

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PART XX – UNFAIR PREJUDICE

142. Power for member to apply to Court.

(1) A member of a company may apply to the Court for an order under section 144 on the ground that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members (including at least himself or herself) or that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

(2) The provisions of this section and sections 143 and 144 apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law, as those provisions apply to a member of the company; and references to a member or members are to be construed accordingly.

143. Power for Minister to apply to Court.

If in the case of a company

- (a) the Minister has received a report under section 136; and
- (b) it appears to the Minister that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members, or that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial,

the Minister may apply to the Court for an order under section 144.

144. Powers of Court.

(1) If the Court is satisfied that an application under section 142 or 143 is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

- (2) Without prejudice to the generality of subsection (1), the Court's order may
- (a) regulate the conduct of the company's affairs in the future;
 - (b) require the company to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained it has omitted to do;
 - (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the Court may direct;
 - (d) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly;
 - (e) suspend the exercise of the powers of the directors;
 - (f) appoint an interim receiver of the company;

- (g) order the directors to meet and to consider any matter and to give all necessary directions and orders in relation thereto.

(3) If an order under this section requires the company not to make any, or any specified, alterations in the memorandum or articles, the company shall not then without leave of the Court make such alterations in breach of that requirement.

(4) An alteration in the company's memorandum or articles made by virtue of an order under this section is of the same effect as if duly made by resolution of the company, and the provisions of this Act apply to the memorandum or articles as so altered accordingly.

(5) The act of the Court recording the making of an order under this section altering, or giving leave to alter, a company's memorandum or articles shall, within fourteen days from the making of the order or such longer period as the Court may allow, be delivered by the company to the Registrar for registration, and if a company fails to comply with this subsection, the company commits an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

PART XXI – SUMMARY WINDING UP

145. Application of this Part.

This Part applies to the winding up of a company which has no liabilities or which is able to discharge its liabilities in full within twelve months after the commencement of the winding up and such winding up is a summary winding up.

146. Procedure for summary winding up at end of period of existence.

(1) Upon the date when the period (if any) fixed by the memorandum for the duration of a company expires the company shall be deemed to pass a special resolution for winding up.

(2) Within twenty-one days after that date a notice of the resolution so deemed to be passed shall be delivered to the Registrar.

(3) If a statement of solvency has been made in accordance with subsection (2) of section 147 within twenty-eight days before the date referred to in subsection (1) and is delivered to the Registrar with the notice referred to in subsection (2), the company shall be wound up summarily in accordance with this Part.

147. Procedure for any other summary winding up.

- (1) A company may be wound under this Part
- (a) by passing a special resolution that it be wound up summarily; and
 - (b) by delivering to the Registrar a statement of solvency in accordance with subsection (2).

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(2) A statement of solvency shall be signed by each of the directors and state that, having made full inquiry into the company's affairs, each of them is satisfied

- (a) that the company has no assets and no liabilities;
- (b) that the company has assets and no liabilities; or
- (c) that the company will be able to discharge its liabilities in full within six months after the commencement of the winding up;

as the case may be.

(3) A resolution for summary winding up has no effect unless

- (a) the resolution is passed within twenty-eight days after the statement of solvency has been signed by each of the directors; and
- (b) the statement is delivered to the Registrar with the copy of the resolution delivered in accordance with section 101.

148. Commencement of winding up.

A summary winding up under which assets of the company are to be distributed commences when the copy of the resolution for winding up or (as the case may be) the notice referred to in subsection (2) of section 145 and the statement under section 147 are registered by the Registrar.

149. Effect on status of company.

After the commencement of a summary winding up of a company which has assets the corporate state and capacity of the company continue until the company is dissolved but, from the commencement of the winding up, its powers shall be exercised only so far as may be required for the realization of the assets of the company, the discharge of any liabilities of the company and the distribution of its assets in accordance with section 151.

150. Appointment of liquidator.

(1) The company, at the meeting at which the resolution for summary winding up is passed, or at any subsequent meeting, may, by special resolution, appoint a person to be liquidator for the purposes of the winding up.

(2) On the appointment of a liquidator all the powers of the directors cease except so far as the resolution appointing the liquidator or any subsequent special resolution otherwise provides and, subject to any such resolution and to section 151, all those powers shall thereafter be exercisable by the liquidator.

(3) Section 84 applies to a liquidator appointed under this section as it applies to a director.

151. Application of assets and dissolution.

(1) On the registration by the Registrar of a statement delivered under section 147 that the company has no assets and no liabilities the company is dissolved.

(2) On the registration by the Registrar of a statement so delivered that the company has assets and no liabilities the company shall forthwith proceed to distribute its

assets among its members according to their rights or otherwise as provided by the memorandum or articles.

(3) On the registration by the Registrar of a statement so delivered that the company will be able to discharge its liabilities in full within six months after the commencement of the winding up the assets of the company shall be applied in satisfaction of the company's liabilities and, subject to that application, shall be distributed as aforesaid.

(4) As soon as the company has completed the distribution of its assets in accordance with subsection (2) or (3), it shall deliver to the Registrar a statement signed by each of the directors or, if the distribution has been completed by a liquidator appointed under section 150, by the liquidator, that each director or (as the case may be) the liquidator, having made full inquiry into the company's affairs, is satisfied that the company has no assets and no liabilities and, upon the registration of the statement, the company is dissolved.

152. **Effect of insolvency.**

(1) This section applies where, after the commencement of a summary winding up, the directors (or, if there is a liquidator, the liquidator) form the opinion that the company has liabilities which it will be unable to discharge in full within six months after the commencement of the winding up.

(2) When that opinion is formed it shall be recorded in the minutes of a meeting of the directors or, as the case may be, by the liquidator.

(3) The directors (or, if there is a liquidator, the liquidator) shall

- (a) by not less than fourteen days' notice given by post, call a meeting of the creditors of the company to be held in the Federation within twenty-eight days after that opinion was recorded and the company shall in the notice nominate a person to be liquidator for the purpose of a creditors' winding up;
- (b) when that notice is given to the creditors, deliver a copy of it to the Registrar;
- (c) not less than ten days before the day for which the meeting is called, give notice of the meeting by advertisement in *the Gazette* and in one of the newspapers published in the Federation;
- (d) during the period before the creditors' meeting is held, furnish any creditor free of charge with such information concerning the affairs of the company as he or she may reasonably request; and
- (e) make out a statement as to the affairs of the company and lay that statement before the creditors' meeting.

(4) The statement as to the affairs of the company shall be verified by affidavit by some or all of the directors or (if there is a liquidator) by the liquidator.

(5) If there is a liquidator, he or she shall preside at the creditors' meeting and, if there is no liquidator, a director nominated by the directors shall preside.

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(6) As from the day on which the creditors' meeting under this section is held the winding up becomes a creditors' winding up and this Act has effect as if that meeting was the meeting of creditors mentioned in section 161.

(7) If the directors or, as the case may be, the liquidator, without reasonable excuse, fail to comply with their obligations under this section or if a director or, as the case may be, the liquidator fails to comply with subsection (5) so far as requiring him or her to preside at the creditors' meeting, the directors or the director or the liquidator (as the case may be), commit an offence and liable to a fine not exceeding two thousand five hundred dollars.

(8) A director or liquidator who signs a statement delivered to the Registrar under section 147 or 151 without having reasonable grounds for stating that the company has no liabilities or that it will be able to discharge its liabilities in full within six months after the commencement of the winding up commits an offence and liable to imprisonment for a term not exceeding two years or a fine or both.

153. Liability of past directors and others.

(1) This section applies where

- (a) a company is dissolved under section 151;
- (b) an order is made under section 214 declaring the dissolution void;
- (c) when that order is made the company's assets (if any) are not sufficient for the discharge of all the liabilities admissible to proof against the company in a creditors' winding up; and
- (d) the company's assets (if any) at the time of its dissolution were not sufficient for the discharge of all such liabilities at that time.

(2) Any person to whom any assets were distributed under section 151 and any director or liquidator who signed a statement delivered to the Registrar under section 147 or 151 that the company had no liabilities (except a person who shows that he or she had reasonable grounds for being satisfied when he or she signed the statement that the company had no liabilities) are, so as to enable the insufficiency referred to in paragraph (d) of subsection (1) to be met, liable to contribute to the following extent to the company's assets.

(3) A person to whom any such distribution was made is liable to contribute an amount not exceeding the amount or value of the assets which were distributed to him or her and the directors and any such liquidator are jointly and severally liable with that person to contribute that amount.

(4) A person who is liable to contribute, or who has contributed, any amount to the assets under this section may apply to the Court for an order directing any person jointly and severally liable with him or her in respect of that amount to pay him or her such amount as the Court thinks fair and reasonable.

154. Remuneration of liquidator.

A liquidator appointed under section 150 shall be entitled to receive from the company such remuneration as is agreed between him or her and the company before his

or her appointment or as is at the time of his or her appointment subsequently approved by the company in general meeting or by the Court.

155. Cesser of office by liquidator.

A liquidator appointed under section 150 may be removed from office by a special resolution of the company and shall vacate office if he or she ceases to be qualified to hold that office.

PART XXII – WINDING UP BY THE COURT

156. Power for Court to wind up.

(1) A company may be wound up by the Court if the Court is of the opinion that it is just and equitable that the company should be wound up.

(2) An application to the Court under this section may be made by the company or creditor of the company, or by a director or any member of the company.

[Amended by Act 14/2001]

(3) If the Court orders a company to be wound up under this section, it may appoint a liquidator and may from time to time direct the manner in which the winding-up is to be conducted.

(4) The act of the Court ordering the winding up of a company shall, within fourteen days after the making of the order, be delivered by the company to the Registrar and recorded by him or her.

(5) An order for winding up shall operate in favour of all the creditors and of the contributories of the company as if made on the joint petition of a creditor and a contributory.

[Inserted by Act 14/2001]

(6) If the company fails to comply with subsection (4) it and every officer of it in default commit an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

PART XXIII – CREDITORS' WINDING UP

157. Application of this Part.

This Part applies to the winding up of a company otherwise than under Part XXI or Part XXII and such winding up is a creditors' winding up.

158. Procedure for creditors' winding up at end of period of existence.

(1) Upon the date when the period (if any) fixed by the memorandum for the duration of a company expires the company shall be deemed to pass a special resolution for winding up.

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(2) Within twenty-one days after that date a notice of the resolution so deemed to be passed shall be delivered to the Registrar.

(3) If a statement of solvency is not delivered to the Registrar in accordance with subsection (3) of section 146, the company shall be wound up in a creditors' winding up in accordance with this Part and for that purpose section 152 shall apply as though the opinion referred to in that section has been recorded on the date referred to in subsection (1) of this section.

159. Procedure for any other creditors' winding up.

(1) A company may be wound up under this Part if the company so resolves by special resolution.

(2) When a company has passed a resolution for a creditors' winding up, it shall, within fourteen days of the passing of the resolution, give notice of the resolution by advertisement in the *Gazette*.

(3) In the event of failure to comply with this subsection (2), the company and every officer of it who is in default commit an offence and is liable to a fine not exceeding two thousand five hundred dollars, and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

160. Commencement and effects of creditors' winding up.

(1) A creditors' winding up is deemed to commence when the resolution for winding up is passed or, where section 152 applies, when the winding up becomes a creditors' winding up; and the company shall from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.

(2) The corporate state and capacity of the company continue until the company is dissolved.

(3) A transfer of shares, not being a transfer made to or with the sanction of the liquidator, and an alteration in the status of the company's members made after the commencement of the winding up is void.

(4) After the commencement of the winding up no action shall be taken or proceeded with against the company except by leave of the Court and subject to such terms as the Court may impose.

161. Meeting of creditors in creditors' winding up.

(1) The company shall

(a) not less than fourteen days before the day on which there is to be held the company meeting at which the resolution for a creditors' winding up is to be proposed give by post to its creditors notice calling a meeting of creditors to be held in the Federation on the same day as, and immediately following the conclusion of, the company meeting

- and nominating a person to be liquidator for the purposes of a creditors' winding up;
- (b) give notice of the creditors' meeting by advertisement in the *Gazette* not less than ten days before the day for which that meeting has been called;
- (c) during the period before the creditors' meeting furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require.

(2) The directors shall

- (a) make out a statement as to the affairs of the company, verified by affidavit by some or all of the directors;
- (b) lay that statement before the creditors' meeting; and
- (c) appoint a director to preside at that meeting;

and the director so appointed shall attend the meeting and preside over it.

(3) If

- (a) the company without reasonable excuse fails to comply with subsection (1);
- (b) the directors without reasonable excuse fail to comply with subsection (2); or
- (c) a director without reasonable excuse fails to comply with subsection (2), so far as requiring him or her to attend and preside at the creditors' meeting;

the company, the directors or the director (as the case may be) commit an offence and liable to a fine not exceeding two thousand five hundred dollars.

162. **Appointment of liquidator.**

(1) The creditors and the company at their respective meetings mentioned in section 161 may nominate a person to be liquidator for the purpose of the winding up.

(2) Where a creditors' meeting is called in accordance with section 152, the person nominated to be liquidator in the notice calling the meeting shall be deemed, for the purposes of this section, to have been nominated as aforesaid by the company.

(3) The person nominated by the creditors, or if no person is nominated by the creditors, the person nominated, or deemed to have been nominated, by the company is appointed liquidator with effect from the conclusion of the creditors' meeting.

(4) In the case of different persons being nominated, a director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either

- (a) directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors; or

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(b) appointing some other person to be liquidator instead of the person nominated by the creditors.

(5) A liquidator appointed under this section shall, within fourteen days after his or her appointment, give notice thereof signed by him or her to the Registrar and to the creditors.

(6) A liquidator who fails to comply with subsection (5) commits an offence and is liable to a fine not exceeding two thousand five hundred dollars, and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

(7) Section 84 applies to a liquidator appointed under this section as it applies to a director.

163. Appointment of liquidation committee.

(1) A creditors' meeting may appoint a liquidation committee consisting of not more than five persons to exercise the functions conferred on it by or under this Act.

(2) If a committee is appointed, the company may, in general meeting, appoint such number of persons not exceeding five as they think fit to act as members of the committee.

(3) The creditors may resolve that all or any of the persons so appointed by the company ought not to be members of the committee, and if the creditors so resolve

- (a) the persons mentioned in the resolution are not then, unless the Court otherwise directs, qualified to act as members of the committee; and
- (b) on an application to the Court under this provision the Court may appoint other persons to act as such members in place of the persons mentioned in the resolution.

164. Remuneration of liquidator, cesser of directors' powers, and vacancy in office of liquidator.

(1) A liquidator in a creditors' winding up is entitled to receive such remuneration as is agreed between him or her and the liquidation committee or, if there is no committee, between him or her and the creditors or, failing any such agreement, as is fixed by the Court.

(2) On the appointment of a liquidator in a creditors' winding up, all the powers of the directors cease, except so far as the liquidation committee (or, if there is no committee, the creditors) sanction their continuance.

(3) The creditors may at any time remove a liquidator.

(4) If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by the Court) the creditors may fill the vacancy.

165. No liquidator appointed.

(1) This section applies where a creditors' winding up has commenced but no liquidator has been appointed.

(2) During the period before the appointment of a liquidator, the powers of the directors shall not be exercised except

- (a) with the sanction of the Court;
- (b) to secure compliance with section 161; or
- (c) to protect the company's assets.

(3) If the directors, without reasonable excuse, fail to comply with this section, they commit an offence and liable to a fine not exceeding two thousand five hundred dollars.

166. Costs of creditors' winding up.

All costs, charges and expenses properly incurred in a creditors' winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

167. Payment of interest on debts.

Any surplus remaining after payment of the debts proved in the winding up, before being applied for any other purpose, shall be applied in paying interest on those debts which bore interest prior to the commencement of the winding up in respect of the period during which they have been outstanding since the commencement of the winding up and at the rate of interest applicable apart from the winding up.

168. Arrangement when binding on creditors.

(1) An arrangement entered into between a company immediately preceding the commencement of, or in the course of, a creditors' winding up and its creditors is (subject to the right of appeal under this section) binding

- (a) on the company, if sanctioned by a special resolution; and
- (b) on the creditors, if acceded to by three-quarters in number and value of them.

(2) A creditor or contributor may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

169. Meeting of company and creditors.

(1) If a creditors' winding up continues for more than twelve months, the liquidator shall call a general meeting of the company and a meeting of the creditors to be held at the first convenient date within three months after the end of the first twelve months from the commencement of the winding up, and of each succeeding twelve months, or such longer period as the Minister may allow, and shall lay before the meetings

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an account of his or her acts and dealings and of the conduct of the winding up during the preceding twelve months.

(2) If the liquidator fails to comply with this section, he or she commits an offence and is liable to a fine not exceeding two thousand five hundred dollars.

170. Final meeting and dissolution.

(1) As soon as the affairs of a company in a creditors' winding up are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.

(2) Each such meeting shall be called by not less than twenty-one days' notice sent by post, accompanied by a copy of the liquidator's account.

(3) Within seven days after the date of the meetings (or, if they are not held on the same date, after the date of the later one) the liquidator shall make a return to the Registrar of the holding of the meetings and of their dates and in the case of a public company a copy of the account.

(4) If the copy is not delivered or the return is not made in accordance with subsection (3), the liquidator commits an offence and liable to a fine not exceeding two thousand five hundred dollars, and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

(5) If a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by subsection (3), deliver a return that the meeting was duly called and that no quorum was present, and when that return is made the provisions of that subsection as to the making of the return are, in respect of that meeting, deemed complied with.

(6) The Registrar on receiving the account and, in respect of each such meeting, either of the returns mentioned above, shall forthwith register them, and at the end of three months from the registration of the return the company is deemed to be dissolved, but the Court may, on the application of the liquidator or of another person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(7) The person on whose application an order of the Court under this section is made shall, within fourteen days after the making of the order, deliver to the Registrar the relevant act of the Court for registration, and if that person fails to do so he or she commits an offence and is liable to a fine not exceeding one thousand dollars and in the case of a continuing offence to a further fine not exceeding one hundred dollars for each day on which the offence so continues.

(8) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section he or she commits an offence and liable to a fine not exceeding two thousand five hundred dollars.

171. Powers and duties of liquidator.

(1) The liquidator in a creditors' winding up may, with the sanction of the Court or the liquidation committee (or, if there is no such committee, a meeting of the creditors),

- (a) pay a class of creditors in full;
- (b) compromise any claim by or against the company.

(2) The liquidator may, without sanction, exercise any other power of the company as may be required for its beneficial winding up.

(3) The liquidator may

- (a) settle a list of contributories (and the list of contributories is *prima facie* evidence of the persons named in it to be contributories);
- (b) make calls;
- (c) summon general meetings of the company for the purpose of obtaining its sanction by special resolution or for any other purpose he or she may think fit.

(4) The liquidator shall pay the company's debts and adjust the rights of the contributories among themselves.

(5) The appointment or nomination of more than one person as liquidator shall declare whether any act to be done is to be done by all or any one or more of them, and in default, any such act may be done by two or more of them.

172. Power to disclaim onerous property.

(1) Subject to this section, the liquidator in a creditors' winding up may, within six months after the commencement of the winding up, by the giving of notice, signed by him or her and referring to this section and section 173, to each person who is interested in or under any liability in respect of the property disclaimed, disclaim any onerous movable property, or any onerous immovable property situated outside the Federation, and may do so notwithstanding that he or she has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.

(2) For the purposes of this section,

- (a) onerous movable property is any
 - (i) unprofitable contract, and
 - (ii) other movable property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act;
- (b) onerous immovable property is any immovable property of the company situated outside the Federation and having the characteristics mentioned in sub-paragraph (ii) of paragraph (a).

(3) A disclaimer under this section shall operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company from liability, affect the rights or liabilities of any other person.

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(4) A person sustaining loss or damage in consequence of the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

173. Powers of Court in respect of disclaimed property.

(1) This section applies where the liquidator of a company has disclaimed property under section 172.

(2) An application may be made to the Court under this section by

- (a) a person who claims an interest in the disclaimed property; or
- (b) a person who is under a liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.

(3) Subject to subsection (4), the Court may, on an application under this section, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to

- (a) a person entitled to it or a trustee for such a person; or
- (b) a person subject to a liability mentioned in paragraph (b) of subsection (2) or a trustee for such a person.

(4) The Court shall not make an order by virtue of paragraph (b) of subsection (3) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(5) The effect of an order under this section shall be taken into account in assessing for the purpose of subsection (4) of section 172 the extent of loss or damage sustained by a person in consequence of the disclaimer.

174. Unenforceability of liens on records.

(1) Subject to subsection (2), in a creditors' winding up a lien or other right to retain possession of any records of a company shall be unenforceable to the extent that its enforcement would deny possession of those records to the liquidator.

(2) Subsection (1) does not apply to a lien on documents which give a title to property and are held as such.

175. Reference of questions and powers to the Court.

(1) The liquidator or a contributory or creditor may apply to the Court to determine a question arising in a creditors' winding up, or to exercise all or any of the powers which the Court might exercise if a declaration had been made in relation to the company under the Insolvency Act.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

(3) An act of the Court recording the making of an order under this section staying the proceedings in the winding up shall, within fourteen days after the making of

the order, be delivered by the company, or otherwise as may be ordered by the Court, to the Registrar, who shall enter it in his or her records relating to the company.

(4) If a company fails to comply with subsection (3) it commits an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

176. Appointment or removal of liquidator by the Court.

(1) If, for any reason, there is, in a creditors' winding up, no liquidator acting, the Court may appoint a liquidator.

(2) The Court may, on reason being given, remove a liquidator in a creditors' winding up and appoint another.

177. Transactions at an undervalue and preferences.

- (1) Subject to this section, where a company has at a relevant time
- (a) entered into a transaction with any person at an undervalue; or
 - (b) given a preference to any person

the liquidator in a creditors' winding up may apply to the Court for such order as the Court thinks fit for restoring the position to what it would have been if the company had not entered into that transaction or given that preference, as the case may be.

(2) For the purposes of this section, a company enters into a transaction with a person at an undervalue if the company

- (a) makes a gift to that person or it otherwise enters into a transaction with that person on terms for which there is no consideration; or
 - (b) enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.
- (3) For the purposes of this section, a company gives a preference to a person if
- (a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and
 - (b) the company
 - (i) does anything, or
 - (ii) suffers anything to be done,

which has the effect of putting that person into a position which in the event of the company going into insolvent liquidation will be better than the position he or she would have been in if that thing had not been done.

(4) The Court shall not make an order under this section in respect of a preference given to any person unless the company which gave it was influenced in

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deciding to give it by a desire to produce in relation to that person the effect referred to in paragraph (b) of subsection (3).

(5) Subject to subsection (6), the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given,

- (a) in the case of a transaction at an undervalue, at a time in the period of five years ending with the date of commencement of the winding up;
- (b) in the case of a preference which is not a transaction at an undervalue, at a time in the period of one year ending with that date.

(6) Subject to subsection (7), where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (a) or (b) of subsection (5), that time is not a relevant time unless the company

- (a) is at that time unable to pay its debts as they fall due; or
- (b) becomes unable to pay its debts as they fall due in consequence of the transaction or preference.

(7) Subsection (6) shall not apply to a transaction at an undervalue which takes place less than two years before the date of commencement of the winding up.

(8) This section shall not apply to a transaction entered into or a preference given before the section comes into force.

178. Responsibility of persons for wrongful trading.

(1) Subject to subsection (3), if in the course of a creditors' winding up it appears that subsection (2) applies in relation to a person who is or has been a director of the company, the Court on the application of the liquidator may, if it thinks it proper to do so, order that that person be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company arising after the time referred to in subsection (2).

(2) This subsection applies in relation to a person if

- (a) at some time before the date of commencement of the winding up of the company that person
 - (i) knew that there was no reasonable prospect that the company would avoid a creditors' winding up, or
 - (ii) on the facts known to him or her was reckless as to whether the company would avoid such a winding-up; and
- (b) that person was a director of the company at that time.

(3) The Court shall not make an order under subsection (1) with respect to any person if it is satisfied that after either condition specified in paragraph (a) of subsection (2) was first satisfied in relation to him or her that person took reasonable steps with a view to minimising the potential loss to the company's creditors.

(4) On the hearing of an application under this section, the liquidator may himself or herself give evidence or call witnesses.

179. Responsibility for fraudulent trading.

(1) If, in the course of a creditors' winding up it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of another person, or for a fraudulent purpose, the Court may, on the application of the liquidator, order that persons who were knowingly parties to the carrying on of the business in that manner are to be liable to make such contributions to the company's assets as the Court thinks proper.

(2) On the hearing of the application the liquidator may himself or herself give evidence or call witnesses.

(3) Where the Court makes an order under this section or section 178, it may give such further directions as it thinks proper for giving effect to the order.

(4) Where the Court makes an order under this section or section 178 in relation to a person who is a creditor of the company, it may direct that the whole or part of a debt owed by the company to that person and any interest thereon shall rank in priority after all other debts owed by the company and after any interest on those debts.

(5) This section and section 178 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the order under subsection (1) is to be made.

180. Extortionate credit transactions.

(1) This section applies in a creditors' winding up where the company is, or has been, a party to a transaction for, or involving, the provision of credit to the company.

(2) Subject to subsection (5), the Court may, on the application of the liquidator, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of three years ending with the commencement of the winding up.

(3) For the purposes of this section, a transaction is extortionate if, having regard to the risk accepted by the person providing the credit,

- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or
- (b) it otherwise grossly contravened ordinary principles of fair dealing.

(4) An order under this section with respect to a transaction may contain one or more of the following as the Court thinks fit:

- (a) provision setting aside the whole or part of an obligation created by the transaction;
- (b) provision otherwise varying the terms of the transaction or varying the terms on which a security for the purposes of the transaction is held;
- (c) provision requiring a person who is or was a party to the transaction to pay to the liquidator sums paid to that person, by virtue of the transaction, by the company;

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(d) provision requiring a person to surrender to the liquidator property held by him or her as security for the purposes of the transaction;

(e) provision directing accounts to be taken between any persons.

(5) This section shall not apply to a transaction entered into before the section comes into force.

181. Deliver and seizure of property.

(1) Where a person has in his or her possession or control property or records to which a company appears in a creditors' winding up to be entitled, the Court may require that person forthwith (or within a period which the Court may direct) to pay, deliver, convey, surrender or transfer the property or records to the liquidator.

(2) Where

(a) the liquidator seizes or disposes of property which is not property of the company; and

(b) at the time of seizure or disposal the liquidator believes, and has reasonable grounds for believing, that he or she is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property;

the liquidator shall not be liable to any person in respect of loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the liquidator, and shall have a lien on the property, or the proceeds of its sale, for expenses incurred in connection with the seizure or disposal.

182. Liability in respect of purchase or redemption of shares.

(1) This section applies when a company is being wound up in a creditors' winding up and

(a) it has under section 56 or 58 or under an Order made under section 60 made a payment out of share premium account in respect of the redemption or purchase of any of its own shares (in this section referred to as "the relevant payment"); and

(b) the aggregate amount of the company's assets and the amounts paid by way of contribution to its assets (apart from this section) is not sufficient for payment of its liabilities and the expenses of the winding up.

(2) If the winding up commenced within one year of the date on which the relevant payment was made, then

(a) the person from whom the shares were redeemed or purchased; and

(b) the directors at the time the payment was authorised except a director who shows that, on reasonable grounds, he or she held the belief referred to in section 57.

are, so as to enable that insufficiency to be met, liable to contribute to the following extent to the company's assets.

(3) A person from whom any of the shares were redeemed or purchased is liable to contribute an amount not exceeding so much of the relevant payment as was made by the company in respect of his or her shares, and the directors are jointly and severally liable with that person to contribute that amount.

(4) A person who has contributed an amount to the assets in pursuance of this section may apply to the Court for an order directing any other person jointly and severally liable in respect of that amount to pay him or her an amount as the Court thinks just and equitable.

(5) Section 193 does not apply in relation to liability accruing by virtue of this section.

(6) The Minister may, by Order, make such modifications to this section as appear to be reasonably necessary in consequence of any Order made under section 60.

183. Resolutions passed at adjourned meetings.

Where a resolution is passed at an adjourned meeting of a company's creditors, the resolution is treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

184. Duty to co-operate with liquidator.

(1) In a creditors' winding up each of the persons mentioned in subsection (2) shall

- (a) give the liquidator information concerning the company and its promotion, formation, business, dealings, affairs or property which the liquidator may at any time after the commencement of the winding up reasonably require; and
- (b) attend on the liquidator at reasonable times and on reasonable notice when requested to do so.

(2) The persons referred to in subsection (1) are:

- (a) those who are, or have at any time been, officers of the company;
- (b) those who have taken part in the formation of the company at any time within one year before the commencement of the winding up;
- (c) those who are in the employment of the company, or have been in its employment within that year, and are in the liquidator's opinion capable of giving information which he or she requires; and
- (d) those who are, or have within that year been, officers of, or in the employment of, another company which is, or within that year was, an officer of the company in question.

(3) For the purposes of subsection (2), "employment" includes employment under a contract for services.

(4) If a person without reasonable excuse fails to comply with an obligation imposed by this section, he or she commits an offence and is liable to a fine not exceeding two thousand five hundred dollars, and in the case of a continuing offence to a further fine

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not exceeding two hundred and fifty dollars for each day on which the offence so continues.

(5) Paragraph (d) of subsection (2) shall cease to have effect on the expiration of eighteen months from the date on which section 74 comes into force.

185. Liquidator to report possible criminal offences.

(1) If it appears to the liquidator in the course of a creditors' winding up that any person has committed an offence in relation to the company for which he or she is criminally liable, he or she shall forthwith report the matter to the Minister.

(2) Where a report is made by the liquidator under subsection (1), the Minister shall thereupon investigate the matter and for the purpose of the investigation may exercise any of the powers which are exercisable by inspectors appointed under section 129 to investigate a company's affairs.

(3) If, from any information obtained under this section, it appears to the Minister that a person has committed an offence as mentioned in subsection (1), the Minister shall refer the matter to the Director of Public Prosecutions.

(4) If it appears to the Court in the course of a creditors' winding up that any person has committed an offence as mentioned in subsection (1), and that no report with respect to the matter has been made by the liquidator under that subsection, the Court may direct the liquidator to make such a report, and on a report being made accordingly this section shall have effect as though the report had been made in pursuance of subsection (1).

186. Obligations arising under section 185.

(1) For the purpose of an investigation by the Minister under subsection (2) of section 185, an obligation imposed on a person by a provision of this Act to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in that subsection is to be regarded as an obligation similarly to assist the Minister in his or her investigation.

(2) An answer given by a person to a question put to him or her in exercise of the powers conferred by subsection (2) of section 185 may be used in evidence against him or her.

(3) Where criminal proceedings are instituted by the Director of Public Prosecutions following a report or reference under section 185, the liquidator and every officer and agent of the company past and present (other than the defendant) shall give the Director of Public Prosecutions any assistance in connection with the prosecution which he or she is reasonably able to give, and for this purpose, "agent" includes a banker or lawyer of the company and a person employed by the company as auditor, whether or not that person is an officer of the company.

(4) If a person fails or neglects to give assistance as required by subsection (3), the Court may, on the application of the Director of Public Prosecutions, direct the person to comply with that subsection, and if the application is made with respect to a liquidator, the Court may (unless it appears that the failure or neglect to comply was due to the

liquidator not having in his or her hands sufficient assets of the company to enable him or her to do so) direct that the costs shall be borne by the liquidator personally.

PART XXIV – GENERAL PROVISIONS IN WINDING UP

187. Distribution of company's property.

Subject to the rights of preferred creditors and to the provisions of any enactment as to preferential payments, a company's property shall, on winding up, be realised and applied in satisfaction of the company's liabilities *pari passu* and, subject to that application, shall (unless the memorandum or articles otherwise provide) be distributed among the members according to their rights and interests in the company.

188. Enforcement of liquidator's duty to make returns, etc.

(1) If, in a winding up, a director or a liquidator who has defaulted in delivering a document or in giving any notice which he or she is by law required to deliver or give fails to make good the default within fourteen days after the service on him or her of a notice requiring him or her to do so the Court has the following powers:

- (a) on an application made by a creditor or contributory of the company, or by the Registrar, the Court may make an order directing the director or the liquidator to make good the default within the time specified in the order;
- (b) the Court's order may provide that costs of and incidental to the application shall be borne, in whole or in part, by the director or the liquidator personally.

(2) Nothing in subsection (1) prejudices the operation of any enactment imposing penalties on a director or a liquidator in respect of a default mentioned therein.

189. Qualifications of liquidator.

(1) A person who is not an individual is not qualified to act as a liquidator.

(2) The Minister may prescribe the qualifications required for any person to act as a liquidator.

(3) An appointment made in contravention of this section or any Order made under it is void, and a person who acts as liquidator when not qualified to do so commits an offence and liable to imprisonment for a term not exceeding two years or a fine or both.

(4) A liquidator shall vacate office if he or she ceases to be a person qualified to act as a liquidator.

190. Corrupt inducement affecting appointment of liquidator.

A person who gives or agrees or offers to give to a member or creditor of a company any valuable benefit with a view to securing his or her own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself or herself, as the company's liquidator, commits an offence and liable to a fine.

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191. Notification by liquidator of resignation, etc.

(1) A liquidator who resigns, is removed or for any other reason vacates office shall within fourteen days after the resignation, removal or vacation of office give notice thereof, signed by him or her, to the Registrar and in the case of a creditors' winding up (except where the removal is pursuant to subsection (3) of section 164) to the creditors.

(2) If a liquidator fails to comply with subsection (1) he or she commits an offence and liable to a fine not exceeding two thousand five hundred dollars, and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

192. Notification that company is in liquidation.

(1) When a company is being wound up, every invoice, order for goods or services or business letter issued by or on behalf of the company, or a liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is in liquidation.

(2) In the event of failure to comply with this section, the company and every officer of the company who is in default commit an offence and liable to a fine not exceeding two thousand five hundred dollars.

193. Liability as contributories of present and past members.

(1) When a company is wound up, every present and past member is liable to contribute to its assets to an amount sufficient for payment of its liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, but, without prejudice to section 182,

- (a) a member, past or present, is not liable under this subsection to contribute in respect of any shares allotted before this section comes into force;
- (b) a past member is not liable to contribute if he or she has ceased to be a member for one year or more before the commencement of the winding up;
- (c) a past member is not liable to contribute in respect of a liability of the company contracted after he or she ceased to be a member;
- (d) a past member is not liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act or the Acts repealed by section 221;
- (e) no contribution is required from a past or present member exceeding
 - (i) in the case of a company limited by shares, the amount (if any) unpaid on the shares in respect of which he or she is liable; and
 - (ii) in the case of a company limited by guarantee, the amount of the guarantee in respect of which he or she is liable;
- (f) a sum due to a member of the company (in his or her character of a member) by way of dividends, profits or otherwise is not deemed to

be a liability of the company, payable to that member in a case of competition between himself or herself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) The liability imposed on contributories by the Acts repealed by section 221 shall continue to apply in respect of shares allotted before this section comes into force.

194. Bar against other proceedings.

The winding up of a company under this Act bars the right to take any other proceedings in bankruptcy.

195. Disposal of records.

(1) When a company has been wound up and is about to be dissolved, its records and those of a liquidator may be disposed of as follows:

- (a) in the case of a summary winding up, in the way that the company by special resolution directs; and
- (b) in the case of a creditors' winding up, in the way that the liquidation committee or, if there is no such committee, the company's creditors, may direct.

(2) After ten years from the company's dissolution no responsibility rests on the company, a liquidator, or a person to whom the custody of the records has been committed, by reason of any record not being forthcoming to a person claiming to be interested in it.

(3) The Minister may direct that for such period as he or she thinks proper (but not exceeding ten years from the company's dissolution), the records of a company which has been wound up shall not be destroyed.

(4) If a person acts in contravention of a direction made for the purposes of this section, he or she commits an offence and liable to a fine not exceeding two thousand five hundred dollars.

PART XXV – EXTERNAL COMPANIES

196. Power to make Order as to external companies.

(1) A body corporate incorporated outside the Federation shall not carry on business in the Federation or have an address in the Federation which it uses regularly for the purpose of its business until the requirements of subsections (2), (3) and (4) of this section have been satisfied and the Registrar has issued a certificate to the body corporate under subsection (7) of this section.

(2) A director of a body corporate falling within the provisions of subsection (1) of this section or an agent acting on his or her behalf may, on delivering to the Registrar a statement and on payment of the prescribed registration fee, apply for the body corporate to be registered as an external company under this Act.

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(3) A director or agent who delivers a statement to the Registrar under subsection (2) of this section shall ensure that the statement is printed in the English Language, and shall state

- (a) the particulars of the corporate body, that is to say, its name, place and date of incorporation and its registered number (if any) in that place;
- (b) the address of its registered office or principal place of business at its place of Incorporation;
- (c) the address of its office for service in the Federation;
- (d) with respect to each of its directors,
 - (i) in the case of an individual, his or her present forename and surname, any former forenames or surname, and his or her usual residential address, and
 - (ii) in the case of a body corporate, its full name, the place where it is incorporated and the address of its registered or principal office,
 - (iii) in either case, the date on which he or she or it became such a director;
- (e) with respect to its secretary, or where there are assistant secretaries, with respect to each of them,
 - (i) in the case of an individual, his or her present forename and surname, any former forenames or surnames, and his or her usual residential address,
 - (ii) in the case of a body corporate, its full name, the place where it is incorporated and the address of its registered or principal office,
 - (iii) in either case, the date of which he or she or it became such a secretary;
- (f) with respect to its agent in the Federation, or where there are more than one such agent, with respect to each of them,
 - (i) in the case of an individual, his or her present forename and surname, any former forenames or surnames, and his or her usual residential address, and
 - (ii) in the case of a body corporate, its full name, the place where it is incorporated and the address of its registered or principal office, and
 - (iii) in either case, the date on which he or she or it became such an agent;
- (g) that its directors will forthwith notify the Registrar in writing if any alterations are made in the names or addresses of any person referred to in paragraphs (d), (e) and (f) or in any of the instruments referred to in subsection (5);
- (h) the nature of the business to be carried out by the external company;

- (i) if the statement is delivered by a person as agent for the directors of the external company, the name and address of such a person; and
- (j) any other prescribed particulars.

(4) There shall be delivered to the Registrar with the statement referred to in subsection (3) of this section a certified copy of the instruments constituting or defining the constitution of the body corporate.

(5) When an instrument or document that is required to be filed with the Registrar under this section is not in the English Language, a certified translation of that instrument shall be delivered to him or her.

(6) The Registrar shall register the external company's statement delivered to him or her under subsection (3) of this section if he or she is satisfied that all requirements of this section in respect of the registration of the external company have been complied with.

- (7) The Registrar shall, on the registration of an external company's statement,
- (a) allocate a registration number to the external company in accordance with section 199 of this Act; and
 - (b) issue a certificate of registration in respect of the external company stating
 - (i) the name of the external company,
 - (ii) its registration number, and
 - (iii) the date of its registration.

(8) The Registrar shall sign and seal every certificate of registration issued under this section with his or her seal and such a certificate issued under this section shall be conclusive evidence of the registration of the external company under this Act

- (9) An external company shall at all times have in the Federation
- (a) an office for service to which all communication and notices may be addressed; and
 - (b) at least one agent authorised to accept on its behalf service of process and any notice required to be served on it;

and on registration or revival of registration under this Act, the address of the external company's office for service and the name and address of each of its agents shall be as specified in the statement referred to in subsection (3) of this section.

(10) Subject to such regulations as the Minister may make in that behalf, the Minister may suspend or revoke the registration of any external company for failing to comply with any requirements of this section, or for any other prescribed cause, and the Minister may, subject to those regulations, remove a suspension or cancel a revocation, except that the rights of the creditors of an external company shall not be affected by the suspension or revocation of its registration under this Act.

(11) When an external company ceases to carry on any business in or from within the Federation, it shall file a notice to that effect with the Registrar who shall thereupon cancel the registration of the external company, except that if an external company ceases

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to exist and the Registrar is made aware of the circumstance by evidence satisfactory to him or her, then he or she shall cancel the registration of the external company.

(12) Where the registration of an external company has been cancelled under subsection (11) of this section, the Registrar may revive the registration of the external company under this Act by issuing a new certificate of registration if the company files with him or her a statement under subsection (3) of this section and pays the prescribed filing fee.

(13) Registration or revival of registration under this Act of an external company retroactively authorises all previous acts of the company as though the company has been registered at the time of those acts, except for the purposes of a prosecution for any offence under this section.

(14) The following provisions of this Act shall apply *mutatis mutandis* to external companies:

- (a) subsection (3) of section 13;
- (b) subsections (2) and (3) of section 14;
- (c) section 15;
- (d) subsections (3) and (4) of section 18;
- (e) sections 19, 20 and 72; and
- (f) Parts VII, XIII and XIX.

(15) A body corporate falling within the provisions of subsection (1) or (2) of this section which fails to comply with any provision of this section which applies to it commits an offence and is liable, upon conviction, to a fine not exceeding five thousand four hundred dollars and in the case of a continuing offence under this section to a further fine not exceeding five hundred and forty dollars for each day on which the offence continues.

(16) A director of a body corporate falling within the provisions of subsection (1) or (2) of this section who signs or delivers to the Registrar or concurs in delivering to the Registrar a document required by this section which contains,

- (a) a statement that he or she knows is false, misleading or deceptive; or
- (b) an opinion that he or she has no reasonable ground to believe to be accurate;

commits an offence and is liable, upon conviction, to a fine not exceeding five thousand four hundred dollars and, if the director is an individual, to imprisonment for a term not exceeding two years, or both.

(17) An external company that has been continued from the amalgamation of two or more external companies shall comply with this section as though it were a new registration of an external company, irrespective of the fact that one or more of the external companies that were continued by the amalgamation had been registered under this Act at the date of the amalgamation or thereafter.

(18) A company falling within the provisions of subsection (1) or (2) of this section which is carrying on business in the Federation immediately before the date on

which this section comes into force shall, within a period of three months, from that date comply with all the provisions of this section which applies to it.

- (19) The provisions of section 207 shall not apply to external companies.

[Substituted by Act 13/1998]

PART XXVI – REGISTRAR

197. Registrar and other officers.

(1) For the purposes of the registration of companies under this Act, there shall be appointed a person known as the Registrar of companies and such other officers as may be necessary to assist the Registrar in the exercise of his or her functions under this Act.

(2) Any functions of the Registrar under this Act may, to the extent authorised by him or her, be exercised by any of his or her officers.

- (3) In this section, “officer” means a person on the staff of the Registrar.

198. Registrar’s seal.

The Minister may direct a seal or seals to be prepared for the authentication of documents required for or in connection with the registration of companies.

199. Registration numbers.

(1) The Registrar shall allocate to every company a number, which shall be known as the company’s registration number.

(2) Companies’ registration numbers shall be in such form, consisting of one or more sequences of figures or letters as the Registrar may from time to time determine.

(3) The Registrar may, upon adopting a new form of registration number, make such changes of existing registration numbers as appear to him or her necessary.

200. Size, durability, etc. of documents delivered to the Registrar.

(1) For the purpose of securing that documents delivered to the Registrar are of standard size, durable and easily legible, the Minister may prescribe requirements (whether as to size, weight, quality or colour of paper, size, type or colouring of lettering, or otherwise) as the Minister may consider appropriate, and different requirements may be prescribed for different documents or classes of documents.

(2) If a document is delivered to the Registrar (whether an original document or a copy) which in the Registrar’s opinion does not comply with the prescribed requirements applicable to it, the Registrar may serve on a person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice stating his or her opinion to that effect and indicating the requirements so prescribed with which in his or her opinion the document does not comply.

(3) Where the Registrar serves a notice under subsection (2), then for the purposes of any enactment which enables a penalty to be imposed in respect of an omission to deliver to the Registrar a document required to be delivered under that

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provision (and, in particular, for the purposes of any such enactment whereby such a penalty may be imposed by reference to each day during which the omission continues)

- (a) a duty imposed by that provision to deliver a document to the Registrar is to be treated as not having been discharged by the delivery of that document; but
- (b) no account is to be taken of days falling within the period beginning with the day on which the document was delivered to the Registrar and ending with the fourteenth day after the date of service of the notice under subsection (2).

201. Form of documents to be delivered to the Registrar.

(1) Where any section of this Act requires a document to be delivered to the Registrar, but the form of the document has not been prescribed, it shall be sufficient compliance with that requirement if

- (a) the document is delivered in a form which is acceptable to the Registrar; or
- (b) the information in question is delivered in material other than a document, being material which is acceptable to the Registrar;

and the document or information, as the case may be, is accompanied by the prescribed fee, if any.

(2) In this section and section 202, any reference to delivering a document includes, in the case of a notice, giving it.

202. Fees and forms.

(1) The Minister may, by Order, require the payment to the Registrar of such fees as may be prescribed in respect of

- (a) the performance by the Registrar of such functions under this Act as may be specified in the Order, including the receipt by him or her of any document under this Act which is required to be delivered to him or her; and
- (b) the inspection of documents or other material held by him or her under this Act.

(2) Where a fee is provided for or charged under this section for the performance of an act or duty by the Registrar, no action need be taken by him or her until the fee is paid, and where the fee is payable on the receipt by him or her of a document required to be delivered to him or her, he or she shall be deemed not to have received it until the fee is paid.

(3) The Minister may prescribe forms to be used for any of the purposes of this Act and the manner in which any document to be delivered to the Registrar is to be authenticated.

(4) Unless otherwise provided by or under this Act, any document delivered to the Registrar by a company pursuant to this Act shall be signed by an officer or the secretary of the company.

(5) Fees paid to the Registrar shall form part of the Consolidated Fund except that for a company brought under this Act by virtue of section 227(4) hereof in which case the fees payable in relation to such company shall be paid into the Nevis Island Consolidated Fund.

203. Inspection and production of documents kept by the Registrar.

- (1) Subject to the provisions of this section, a person may
 - (a) inspect a document delivered to the Registrar under this Act or under the Acts repealed by section 223 and kept by the Registrar or, if the Registrar thinks fit, a copy thereof;
 - (b) require a certificate of the incorporation of a company, or, subject to subsection (4) of section 72, a copy, certified or otherwise, of any other document or part of any other document referred to in paragraph (a);

and a certificate given under paragraph (b) shall be signed by the Registrar and sealed with his or her seal.

(2) A copy of or extract from a record kept by the Registrar, certified in writing by him or her (whose official position it is unnecessary to prove) to be an accurate copy of such record delivered to him or her under this Act, or kept by him or her under the Acts repealed by section 223, shall in all legal proceedings be admissible in evidence as of equal validity with the original record and as evidence of any fact stated therein of which direct oral evidence would be admissible.

(3) In relation to documents delivered to the Registrar with a prospectus pursuant to a requirement of an Order made under section 29, the rights conferred by subsection (1) shall be exercisable only during the period or with the permission specified in the Order.

204. Enforcement of company's duty to make returns.

(1) If a company, having failed to comply with a provision of this Act which requires it to deliver to the Registrar any document, or to give notice to him or her of any matter, does not make good the failure within fourteen days after the service of a notice on the company requiring it to do so, the Court may, on an application made to it by a member or creditor of the company or by the Registrar, make an order directing the company and any officer of the company to make good the failure within a time specified in the order.

(2) The Court's order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the failure.

(3) Nothing in this section prejudices the operation of any section imposing penalties on a company or its officers in respect of a failure mentioned above.

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205. Destruction of old records.

(1) The Registrar may destroy any records delivered under this Act or the Acts repealed by section 223 which have been kept for over thirty years and which were, or were comprised in or annexed or attached to, the accounts or annual returns of a company.

(2) Where a company has been dissolved, whether under this Act or otherwise, the Registrar may, at any time after thirty years from the date of the dissolution, destroy any records relating to that company in his or her possession or under his or her control.

206. Registrar may strike defunct company off register.

(1) If the Registrar has reason to believe that a company is not carrying on business or is not in operation, he or she may send to the company by post a letter inquiring whether the company is carrying on business or is in operation.

(2) If the Registrar receives an answer to the effect that the company is not carrying on business or is not in operation, or does not within one month after sending the letter receive an answer, he or she may publish in the *Gazette*, and send to the company by post, a notice that at the end of three months from the date of that notice the name of the company mentioned in it will, unless reason is shown to the contrary, be struck off the register and the company will be dissolved.

(3) If, where a company is being wound up in a creditors' winding up, the Registrar has reason to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the *Gazette* and send to the company or the liquidator (if any) a notice similar to that provided for in subsection (2).

(4) If the Registrar has reason to believe that a company which is being wound up summarily has, for a period of six months failed to comply with subsection (4) of section 151, he or she shall publish in the *Gazette* and send to the company or the liquidator (if any) a notice similar to that provided for in subsection (2).

(5) At the end of the period mentioned in the notice the Registrar may, unless reason to the contrary is previously shown by the company or a member, creditor or liquidator of the company, strike its name off the register, and shall publish notice of this in the *Gazette*; and on the striking off the company is dissolved, but the liability (if any) of every director and member of the company continues and may be enforced as if the company had not been dissolved.

(6) A notice to be sent under this section to a liquidator may be addressed to him or her at his or her last known place of business.

PART XXVII – TAXES AND STAMP DUTIES

207. Exemption from taxes.

(1) Notwithstanding any provision to the contrary in any enactment, a company which carries on business exclusively with persons who are not resident in the Federation is exempt from all income, capital gains and withholding taxes.

(2) An exempt company shall not lose its exemption under subsection (1) by reason only that it is

- (a) carrying on business with, or buying or selling or otherwise dealing in any shares or other securities issued or created by, or acting as manager or agent for, or consultant or adviser to, any person resident in the Federation who is exempt from all income, capital gains and withholding taxes under any law of the Federation;
- (b) effecting or concluding in the Federation contracts or arrangements (including contracts or arrangements with any person resident in the Federation for employment with, or for the supply of goods and services to, the company) and exercising in the Federation all other powers, so far as may be necessary for the purpose of enabling it to carry on its business;
- (c) administering its internal affairs within the Federation and holding meetings of its directors or members in the Federation;
- (d) owning or leasing property in the Federation for the carrying on of its business or as residence for its directors or employees;
- (e) re-insuring risks undertaken by any person resident in the Federation who is authorised to carry on insurance business under any law of the Federation; or
- (f) transacting banking business with any person resident in the Federation who is authorised to carry on banking business under any law of the Federation.

(3) In addition to any other exemption under the Income Tax Act, Cap. 20.22 in respect of dividends, all income from dividends, interest and royalties derived by an ordinary company out of its ownership of a participating interest in any other body corporate shall be excluded from that company's taxable income for the financial period in which such income is received by it if, but only if,

- (a) the company owns from the beginning of that financial period at least five per cent of the issued share capital of the other body corporate;
- (b) the company
 - (i) actively takes part in the management of the other body corporate, or
 - (ii) supplies the other body corporate with goods produced or services performed within the Federation, or
 - (iii) engages in any combination of the foregoing,if the other body corporate is incorporated outside the Federation and carries on business from an office or other fixed place located elsewhere than in the Federation; and
- (c) the other body corporate is subject
 - (i) to income tax in the Federation; or
 - (ii) to a tax on its profits levied by another country if it is incorporated outside the Federation and carries on business

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from an office or other fixed place located elsewhere than in the Federation.

(4) Notwithstanding any provision to the contrary in any enactment, no estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by any person with regard to any property owned by, or securities issued or created by or in respect of, an exempt company.

(5) In this section,

- (a) “person” includes an individual and any body corporate; and
- (b) “resident in the Federation” means a person who ordinarily resides within the Federation or carries on business from an office or other fixed place within the Federation but does not include an exempt company and “not resident in the Federation” shall be construed accordingly.

208. Exemption from stamp duties.

Notwithstanding any provision to the contrary in any enactment, no stamp duties are payable by any person with regard to any transaction in any securities issued or created by or in respect of a company exempt from taxes under subsection (1) of section 207.

**PART XXVIII – RE-DOMICILIATION OF COMPANY INCORPORATED
OUTSIDE OF SAINT CHRISTOPHER AND NEVIS**

209. Companies to which Part XXVIII applies.

(1) This Part shall apply to a company incorporated outside Saint Christopher and Nevis which opt to re-domicile in Saint Christopher.

(2) The Minister may make regulations

- (a) providing for eligibility of a company to re-domicile in Saint Christopher;
- (b) prescribing the form of application for registration as a company re-domiciled in Saint Christopher;
- (c) providing for the evidence to be submitted in support of an application for registration in accordance with paragraph (b) of this subsection;
- (d) providing for the form and effect of registration as a company re-domiciled in Saint Christopher.

[Inserted by Act 16/1999]

(3) Where a company is to be re-domiciled for the purpose of carrying on finance business then before delivering the application to be re-domiciled to the Registrar the applicant shall obtain the authorisation that is required to carry on such finance business.

[Substituted by Act 14/2001]

PART XXIX – MISCELLANEOUS AND FINAL PROVISIONS**210. Form of company's records.**

(1) The records, which a company is required by this Act to keep, may be kept in the form of a bound or loose-leaf book, or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

(2) A company 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 kept, and a company which fails to comply with the provisions of this subsection commits an offence and liable to a fine not exceeding two thousand five hundred dollars.

211. Examination of records and admissibility of evidence.

(1) If any record referred to in subsection (1) of section 210 is kept otherwise than in intelligible written form, any duty imposed on the company by this Act to allow examination of, or to furnish extracts from, such record shall be treated as a duty to allow examination of, or to furnish a copy of the extract from, the record in intelligible written form.

(2) The records kept by a company in compliance with this Act shall be admissible in the form in which they are made intelligible under subsection (1) as *prima facie* evidence, before and after the dissolution of the company, of all facts stated therein.

212. Production and inspection of records where offence is suspected.

If, on an application by the Attorney-General, there is shown to be reasonable cause to believe that a person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any records of or under the control of the company, the Court may make an order

- (a) authorising a person named in it to inspect the records in question, or any of them, for the purpose of investigating and obtaining evidence of the offence; or
- (b) requiring the secretary of the company or an officer of the company named in the order to produce and make available the records (or any of them) to a person named in the order at a place so named.

213. Legal professional privilege.

Where any proceedings are instituted under this Act against any person, nothing in this Act is to be taken to require any person to disclose any information which he or she is

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entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the Court.

214. Right to refuse to answer questions.

A person may refuse to answer any question put to him or her pursuant to any provision of this Act if his or her answer would tend to expose that person, or the spouse of that person, to proceedings under the law of the Federation for an offence or for the recovery of any penalty.

215. Relief for private companies.

The Minister may, by Order, provide that private companies, or private companies satisfying conditions specified in the Order, shall be exempt from compliance with any provision of this Act so specified or that any such provision shall apply to such companies with such modifications as may be so specified.

216. Power of Court to grant relief in certain cases.

(1) If, in proceedings for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor, it appears to the Court that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he or she has acted honestly and that having regard to all the circumstances of the case (including those connected with his or her appointment) he or she ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court may relieve him or her, either wholly or partly, from his or her liability on such terms as it thinks fit.

(2) If an officer or person mentioned in subsection (1) has reason to apprehend that a claim will or might be made against him or her in respect of negligence, default, breach of duty or breach of trust, he or she may apply to the Court for relief, and the Court on the application has the same power to relieve him or her as it would have had if proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

217. Power of Court to declare dissolution of company void.

(1) Where a company has been dissolved under this Act or the Acts repealed by section 223, the Court may at any time within ten years of the date of the dissolution, on an application made for the purpose by a liquidator of the company or by any other person appearing to the Court to be interested, make an order, on such terms as the Court thinks fit, declaring the dissolution to have been void and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved.

(2) Thereupon such proceedings may be taken which might have been taken if the company had not been dissolved.

(3) The person on whose application the order was made shall within fourteen days after the making of the order (or such further time as the Court may allow), deliver the relevant act of the Court to the Registrar for registration.

(4) A person who fails to comply with subsection (3) commits an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

218. Punishment of offences.

For the purpose of any section of this Act, where under or pursuant to this Act an officer of a company or other body corporate who is in default commits an offence, the expression “officer in default” means any officer of the company or body corporate who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the section.

219. General Penalty.

(1) Where, contrary to the provisions of this Act, a person or company fails, within the specified period, to deliver to or file with the Registrar any document, the Registrar shall impose and collect from the person or company a penalty of one hundred dollars for every month or part thereof that the person or company fails to deliver or file the document, and the penalty collected shall be deposited in the Consolidated Fund.

(2) A company that fails or refuses to comply with the provisions of subsection (1) of this section shall be struck off the register of companies by the Registrar.

[Inserted by Act 16/1999 as section 216A; amended by Act 14/2001]

220. Accessories and abettors.

Any person who knowingly or wilfully aids, abets, counsels, causes, procures or commands the commission of an offence punishable by this Act shall be liable to be dealt with, tried and punished as a principal offender.

221. General powers of the Court.

(1) Where, on the application of the Attorney-General or the Registrar, the Court is satisfied that any person has failed to comply with any requirement made by or pursuant to this Act, or has committed any breach of duty as an officer of the company, it may order that person to comply with that requirement or, so far as the breach of duty is capable of being made good, make good the breach.

(2) The Court shall not make an order against any person under this section unless the Court has given that person the opportunity of adducing evidence and being heard in relation to the matter to which the application relates.

222. Orders.

(1) The Minister may, by Order, make provision for the purpose of carrying this Act into effect and, in particular, but without prejudice to the generality of the foregoing, for prescribing any matter which may be prescribed by this Act.

(2) Except insofar as this Act otherwise provides, any power conferred thereby to make any Order may be exercised

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- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
- (b) so as to make in relation to the cases in relation to which it is exercised
 - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases in relation to which the power is exercised or different provisions for different cases or classes of case, or different provisions as respects the same case or class of case for different purposes of this Act, or
 - (iii) any such provision either unconditionally or subject to any specified conditions.

(3) Without prejudice to any specific provision of this Act, any Order under this Act may contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister to be necessary or expedient for the purposes of the Order.

223. Repeals, amendments and saving.

- (1) The following Acts are repealed:
 - (a) the Companies Act (Cap. 335); and
 - (b) the International Business Companies Act.

(2) Every existing company shall register under this Act within eighteen months from the day subsection (1) comes into force and the provisions of this Act shall apply to such companies accordingly except that no registration fee shall be payable by them for their registration under this Act.

(3) Notwithstanding the provisions of subsection (2) of this section, where any existing company, prior to the commencement of this Act, has not complied with subsection (2), then the provisions of the repealed Acts shall continue to apply to the company until such company complies with subsection (2).

[Inserted by Act 11/1997]

(4) Where on the day subsection (1) comes into force an existing company has been dissolved pursuant to any of the Acts repealed by that subsection but the winding up and liquidation of its affairs have not been completed, the winding up and liquidation shall proceed in the same manner and with the same incidents as if this Act had not been enacted.

(5) Any order or permission in respect of any existing company in force or effect immediately before the commencement of this Act made under any other Act shall be deemed to have been made under the provision of this Act and shall, except to the extent that it is inconsistent with the provisions of this Act, continue in force and effect until amended, repealed or replaced under this Act.

(6) The Minister may, by Order, make provision for any other transitional matter connected with the coming into force of this Act.

(7) The Registrar shall strike off the register of companies the name of an existing company which fails to register under this Act as required under subsection (2) of this section.

[Inserted by Act 13/1998]

(8) Where a name of an existing company is struck off the register in accordance with subsection (6) of this section, then the Registrar shall publish in the official *Gazette* a notice to that effect.

[Inserted by Act 13/1998]

(9) Where an existing company is struck off the register in accordance with the provisions of subsection (6) of this section, then the company shall stand dissolved.

[Inserted by Act 13/1998]

(10) The liability, if any, of every director and member of a company which is dissolved pursuant to subsection (8) of this section shall continue and be enforceable as if the company had not been dissolved.

[Inserted by Act 13/1998]

(11) A person who carries on business in the name of a company which was struck off pursuant to subsection (6) of this section commits an offence, and is liable, upon conviction,

- (a) to a fine not exceeding five thousand four hundred dollars and, in the case of an individual, to imprisonment for a term not exceeding two years, or both; and
- (b) in the case of a continuing offence, under this section, to an additional fine of five hundred and forty dollars for each day on which the offence continues.

[Inserted by Act 13/1998]

224. Registration of dissolved companies.

(1) A company which stood dissolved by virtue of the provisions of section 223(9) of this Act may, upon application to the Registrar, be re-registered under this Act, except that the application shall be submitted to the Registrar not later than the 15th day of December 1999.

(2) Any action done by the Registrar from the 3rd day of October, 1998 up to the day immediately prior to the coming into force of this Act to re-register any company that stood dissolved by virtue of the provisions of section 223(9) of this Act is hereby validated.

(3) Any action done by the Registrar from the 16th day of March 2000 up to the day immediately prior to the coming into force of this subsection to re-register any company that stood dissolved by virtue of section 223(9) of this Act is hereby validated.

(4) Notwithstanding the provisions of this section the Registrar may, if it is equitable or in the public interest to do so and upon application, register, up to the 5th day of October 2001, any company that failed to comply with the provisions of this section, except that the company shall pay a penalty of fifty dollars in respect of each week it was late, that is to say, from the 15th day of March 2001 up to the 5th day of October 2001.

[Inserted by Act 13/1998, as section 220A; amended by Acts 16/1999 and 14/2001]

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225. Use of names.

The Registrar may register the memorandum and articles of association of a company or register special resolution altering the memorandum of association to change the name of a company if the name of the company is identical or similar to the name of the company that has been struck off the register and dissolved under the Acts that were repealed by section 223 of this Act, provided that

- (a) the company has been struck off the register and dissolved for a continuous period of more than three years; and
- (b) no application made to declare the dissolution of the company void under section 217 remains undetermined.

[Inserted by Act 14/2001 as section 220B]

226. Regulation of finance business.

(1) The Minister may, by Order, provide that companies, which intend to carry on or which are carrying on any business specified in the Order as being finance business, shall be subject to such regulations as the Minister may prescribe.

(2) An Order under this section may provide for the payment of annual and other fees and for the imposition of fines and daily default fines for breaches of the matters specified in the Order.

(3) Where a company is to be incorporated for the purpose of carrying on business that falls within the provisions of subsection (1) of this section, then the subscribers to the Memorandum and Articles of Association shall, before delivering the Memorandum and Articles of Association to the Registrar pursuant to subsection (1) of section 5 of this Act, obtain the authorisation that is required to carry on finance business.

[Inserted by Act 13/1998]

(4) An existing company or external company which intends or wishes, as the case may be, to carry on finance business that falls within the provisions of subsection (1) of this section shall, before carrying on such finance business, obtain the authorisation that is required to carry on finance business.

[Inserted by Act 13/1998]

227. Application of this Act.

(1) Subject as otherwise provided in subsections (2) and (3), the provisions of this Act shall not extend or apply to companies formed under or subject to the Nevis Business Corporation Ordinance, the Nevis Limited Liability Company Ordinance or any other Ordinance of the Nevis Island Assembly.

(2) Any company falling within subsection (1) which does business in the Federation shall be subject to and comply with all requirements of this Act in the same manner as a company formed hereunder.

(3) For the purpose of subsection (2) only, a company falling within subsection (1) shall not be considered to do business in the Federation by reason only that it engages in Nevis in one or more of the activities which for tax exemption purposes are not considered to be the doing of business in Nevis under the Ordinance under which it was formed.

(4) The Minister may determine and by Order declare that the provisions of this Act shall as from the date specified in the Order extend and apply to any company or companies falling within subsection (1).

(5) In the exercise of his or her power under subsection (4), the Minister shall take into account any matter which he or she may have discussed with the person who is responsible for the Ministry of Finance within the Nevis Island Administration and such other matters as he or she considers appropriate, but shall, in particular, have regard to

- (a) the protection of the public against financial loss due to dishonesty, incompetence or malpractice by persons carrying on business in or from within the Federation; or
- (b) the protection of the reputation of the Federation as a financial centre.

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FIRST SCHEDULE

(Sections 7 and 222)

Companies (Standard Tables) Order

1. **Citation.**

This Order may be cited as the Companies (Standard Tables) Order.

2. **Standard Tables.**

The regulations set out in the Standard Tables in the Schedule to this Order shall be the model articles for the purposes of section 7 of the Companies Act.

SCHEDULE TO THE ORDER

STANDARD TABLE A

Regulations for the Management of a Company Limited by Shares

INTERPRETATION

1. (1) In these regulations,
- “Act” means the Companies Act including any statutory modification or re-enactment thereof for the time being in force;
 - “articles” means the articles of association of the company;
 - “clear days”, in relation to the period of a notice, means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;
 - “executed” includes any mode of execution;
 - “holder”, in relation to shares, means the member whose name is entered in the register of members as the holder of the shares;
 - “office” means the registered office of the company;
 - “ordinary resolution” means a resolution of the company in general meeting adopted by a simple majority of the votes cast at that meeting;
 - “seal” means the common seal of the company;
 - “secretary” means the secretary of the company or any other person appointed to perform the duties of the secretary of the company, including a joint, assistant or deputy secretary.
- (2) Unless the context otherwise requires, words or expressions contained in these regulations bear the same meaning as in the Act but excluding any statutory modification thereof not in force when these regulations become binding on the company.

SHARE CAPITAL

2. Subject to the provisions of the Act,
- (a) without prejudice to any rights attached to any issued shares, any share may be issued with such rights or restrictions as the company may by special resolution determine;
 - (b) the company may
 - (i) issue, or
 - (ii) convert any existing non-redeemable shares, whether issued or not, into, shares which are to be redeemed, or are liable to be redeemed at the option of the company or the shareholder, on such terms and in such manner as may be determined by special resolution;
 - (c) unissued shares shall be at the disposal of the directors who may allot, grant options over or otherwise dispose of them to such persons and on such terms as the directors think fit.
3. The company may exercise the powers of paying commissioners conferred by the Act. Subject to the provisions of the Act, any such commission may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other.
4. Except as required by law, no person shall be recognised by the company as holding any share upon any trust and (except as otherwise provided by the articles or by law) the company shall not be bound by or recognise any interest in any share except an absolute right to the entirety thereof in the holder.
5. Every member, upon becoming the holder of any shares, shall be entitled without payment to one certificate for all the shares of each class held by him or her (and, upon transferring a part of his or her holding of shares of any class, to a certificate for the balance of such holding) or several certificates each for one or more of his or her shares upon payment for every certificate after the first of such reasonable sum as the directors may determine. Every certificate shall be sealed with the seal and shall specify the number, class and distinguishing numbers (if any) of the shares to which it relates. The company shall not be bound to issue more than one certificate for shares held jointly by several persons and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.
6. If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and payment of the expenses reasonably incurred by the company in investigating evidence as the directors may determine but otherwise free of charge, and (in the case of defacement or wearing out) on delivery up of the old certificate.
7. Where the company is authorised under the Act to issue bearer certificates such certificates may be issued by the company upon such terms and subject to such conditions as shall be determined by the directors. The provisions of the articles with respect to transfer and transmission of shares shall not apply in respect of the shares to which a bearer certificate relates.

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LIEN

8. The company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) payable at a fixed time or called in respect of that share. The directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien on a share shall extend to any amount payable in respect of it.

9. The company may sell in such manner as the directors determine any shares on which the company has a lien if a sum in respect of which the lien exists is presently payable and is not paid within fourteen clear days after notice has been given to the holder of the share or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the shares may be sold.

10. To give effect to a sale the directors may authorise some person to execute an instrument of transfer of the shares sold to, or in accordance with the directions of, the purchaser. The title of the transferee to the shares shall not be affected by an irregularity in or invalidity of the proceedings in reference to the sale.

11. The net proceeds of the sale, after payment of the costs, shall be applied in payment of so much of the sum for which the lien exists as is presently payable, and any residue shall (upon surrender to the company for cancellation of the certificate for the shares sold and subject to a like lien for any moneys not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

CALLS ON SHARES AND FORFEITURE

12. Subject to the terms of allotment, the directors may make calls upon the members in respect of any moneys unpaid on their shares (whether in respect of stated value or premium) and each member shall (subject to receiving at least fourteen clear days' notice specifying when and where payment is to be made) pay to the company as required by the notice the amount called on his or her shares. A call may be required to be paid by instalments. A call may, before receipt by the company of any sum due thereunder, be revoked in whole or part and payment of a call may be postponed in whole or part. A person upon whom a call is made shall remain liable for calls made upon him or her notwithstanding the subsequent transfer of the shares in respect whereof the call was made.

13. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed.

14. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

15. If a call remains unpaid after it has become due and payable the person from whom it is due and payable shall pay interest on the amount unpaid from the day it became due and payable until it is paid at the rate fixed by the terms of allotment of the share or in the notice of the call or at such rate not exceeding ten per cent per annum as the directors may determine but the directors may waive payment of the interest wholly or in part.

16. An amount payable in respect of a share on allotment or at any fixed date, whether in respect of stated value or premium or as an instalment of a call, shall be deemed to be a call and if it is not paid the provisions of the articles shall apply as if that amount had

become due and payable by virtue of a call. The company may accept from a member the whole or a part of the amount remaining unpaid on shares held by him or her, although no part of that amount has been called up.

17. Subject to the terms of allotment, the directors may make arrangements on the issue of shares for a difference between the holders in the amounts and times of payment of calls on their shares.

18. If a call remains unpaid after it has become due and payable the directors may give to the person from whom it is due not less than fourteen clear days' notice requiring payment of the amount unpaid together with any interest which may have accrued. The notice shall name the place where payment is to be made and shall state that if the notice is not complied with the shares in respect of which the call was made will be liable to be forfeited.

19. If the notice is not complied with any share in respect of which it was given may, before the payment required by the notice has been made, be forfeited by a resolution of the directors and the forfeiture shall include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.

20. Subject to the provisions of the Act, a forfeited share may be sold, re-allotted or otherwise disposed of on such terms and in such manner as the directors determine either to the person who was before the forfeiture the holder or to any other person and at any time before sale, re-allotment or other disposition, the forfeiture may be cancelled on such terms as the directors think fit. Where for the purposes of its disposal a forfeited share is to be transferred to any person the directors may authorise some person to execute an instrument of transfer of the share to that person.

21. A person any of whose shares have been forfeited shall cease to be a member in respect of them and shall surrender to the company for cancellation the certificate for the shares forfeited but shall remain liable to the company for all moneys which at the date of forfeiture were presently payable by him or her to the company in respect of those shares with interest at the rate at which interest was payable on those moneys before the forfeiture, or at such rate not exceeding ten per cent per annum as the directors may determine, from the date of forfeiture until payment, but the directors may waive payment wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.

22. A declaration under oath by a director or the secretary that a share has been forfeited on a specified date shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share and the declaration shall (subject to the execution of an instrument of transfer if necessary) constitute a good title to the share and the person to whom the share is disposed of shall not be bound to see to the application of the consideration, if any, nor shall his or her title to the share be affected by any irregularity in or invalidity of the proceedings in reference to the forfeiture or disposal of the share.

TRANSFER OF SHARES

23. The instrument of transfer of a share may be in any usual form or in any other form which the directors may approve and shall be executed by or on behalf of the transferor and, unless the shares are fully paid, by or on behalf of the transferee.

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24. (1) The directors may refuse to register the transfer of a share which is not fully paid to a person of whom they do not approve and they may refuse to register the transfer of a share on which the company has a lien.

- (2) They may also refuse to register a transfer unless the instrument of transfer
- (a) is lodged at the office or at such other place as the directors may appoint and is accompanied by the certificate for the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer;
 - (b) is in respect of only one class of shares; and
 - (c) is in favour of not more than four transferees.

25. If the directors refuse to register a transfer of a share, they shall within two months after the date on which the instrument of transfer was lodged with the company sent to the transferor and the transferee notice of the refusal.

26. The registration of transfers of shares or of transfers of any class of shares may be suspended at such times and for such periods (not exceeding thirty days in any year) as the directors may determine.

27. No fee shall be charged for the registration of any instrument of transfer or other document relating to or affecting the title to any share.

28. The company shall be entitled to retain any instrument of transfer which is registered, but any instrument of transfer which the directors refuse to register shall be returned to the person lodging it when notice of the refusal is given.

TRANSMISSION OF SHARES

29. If a member dies, the survivor or survivors where he or she was a joint holder, and his or her personal representatives where he or she was a sole holder or the only survivor of joint holder, shall be the only persons recognised by the company as having any title to his or her interest, but nothing herein contained shall release the estate of a deceased member from any liability in respect of any share which had been jointly held by him or her.

30. (1) A person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as the directors may properly require, elect either to become the holder of the share or to have some person nominated by him or her registered as the transferee.

(2) If he or she elects to become the holder he or she shall give notice to the company to that effect.

(3) If he or she elects to have another person registered he or she shall execute an instrument of transfer of the share to that person.

(4) All the articles relating to the transfer of shares shall apply to the notice or instrument of transfer as if it were an instrument of transfer executed by the member and the death or bankruptcy of the member had not occurred.

31. A person becoming entitled to a share in consequence of the death or bankruptcy of a member shall have the rights to which he or she would be entitled if he or she were the

holder of the share, except that he or she shall not, before being registered as the holder of the share, be entitled in respect of it to attend or vote at any meeting of the company or at any separate meeting of the holders of any class of shares in the company.

CONSOLIDATION OF SHARES

32. (1) Whenever, as a result of a consolidation of shares, any member would become entitled to fractions of a share, the directors may, on behalf of those members, sell the shares representing the fractions for the best price reasonably obtainable to any person (including, subject to the provisions of the Act, the company) and distribute the net proceeds of sale in due proportion among those members, and the directors may authorise some person to execute an instrument of transfer of the shares to, or in accordance with the directions of, the purchaser.

(2) The transferee shall not be bound to see to the application of the purchase money nor shall his or her title to the shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale.

GENERAL MEETINGS

33. All general meetings other than annual general meetings shall be called extraordinary general meetings.

34. (1) The directors may call general meetings and, on the requisition of members pursuant to the provisions of the Act, shall forthwith proceed to call a general meeting for a date not later than two months after the receipt of the requisition.

(2) If there are not sufficient directors to call a general meeting, any director or any member of the company may call such a meeting.

NOTICE OF GENERAL MEETINGS

35. (1) An annual general meeting or a general meeting called for the passing of a special resolution or a resolution appointing a person as a director shall be called by at least twenty-one clear days' notice.

(2) All other meetings shall be called by at least fourteen clear days' notice but a general meeting may be called by shorter notice if it is so agreed,

- (a) in the case of an annual general meeting, by all the members entitled to attend and vote thereat; and
- (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting being a majority together holding not less than ninety-five per cent in stated value of the shares giving that right.

36. The notice shall specify the day, time and place of the meeting and the general nature of the business to be transacted and, in the case of an annual general meeting, shall specify the meeting as such.

37. Subject to the provisions of the articles and to any restrictions imposed on any shares, the notice shall be given to all the members, to all persons entitled to a share in

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consequence of the death or bankruptcy of a member and to the directors and auditors, if any.

38. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.

PROCEEDINGS AT GENERAL MEETINGS

39. (1) In the case where a company has only one member, or where all the issued shares of any class of shares in any company are held by only one member, that member present in person or by proxy shall be deemed to constitute a meeting.

(2) In any other case, no business shall be transacted at any meeting unless a quorum is present and, subject as hereinafter otherwise provided, two persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a body corporate, shall be a quorum.

40. (1) If a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or such day, time and place as the directors may determine.

(2) If at such adjourned meeting, a quorum is not present within half an hour from the time appointed for the meeting, or if during such adjourned meeting a quorum ceases to be present, then any member present in person or by proxy shall be a quorum.

41. The chairperson, if any, of the board of directors or in his or her absence some other director nominated by the directors shall preside as chairperson of the meeting, but if neither the chairperson nor such other director (if any) is present within fifteen minutes after the time appointed for holding the meeting and willing to act, the directors present shall elect one of their number to be chairperson and, if there is only one director present and willing to act, he or she shall be chairperson.

42. If no director is willing to act as chairperson, or if no director is present within fifteen minutes after the time appointed for holding the meeting, those present and entitled to be counted in a quorum shall choose one of their number to be chairperson.

43. A director shall, notwithstanding that he or she is not a member, be entitled to attend and speak at any general meeting and at any separate meeting of the holders of any class of shares in the company.

44. (1) The chairperson may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.

(2) When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the day, time and place of the adjourned meeting and the general nature of the business to be transacted, otherwise it shall not be necessary to give any such notice.

45. (1) A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands a poll is duly demanded.

(2) Subject to the provisions of the Act, a poll may be demanded

- (a) by the chairperson;
- (b) by at least two members having the right to vote on the resolution;
- (c) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote on the resolution; or
- (d) by a member or members holding shares conferring a right to vote on the resolution being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right;

and a demand by a person as proxy for a member shall be the same as a demand by the member.

46. Unless a poll is duly demanded a declaration by the chairperson that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

47. The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairperson and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.

48. A poll shall be taken as the chairperson directs and he or she may appoint scrutineers (who need not be members) and fix a day, time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

49. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson shall be entitled to a casting vote in addition to any other vote he or she may have.

50. A poll demanded on the election of a chairperson or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either forthwith or at such day, time and place as the chairperson directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

51. No notice need be given of a poll not taken forthwith if the day, time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case, at least seven clear days' notice shall be given specifying the day, time and place at which the poll is to be taken.

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VOTES OF MEMBERS

52. Subject to any rights or restrictions attached to any shares, on a show of hands every member who (being an individual) is present in person or (being a body corporate) is present by a duly authorised representative, not being himself or herself a member entitled to vote, shall have one vote and on a poll every member shall have one vote for every share of which he or she is the holder.

53. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and seniority shall be determined by the order in which the names of the holders stand in the register of members.

54. A member in respect of whom an order has been made by any court having jurisdiction (whether in the Federation or elsewhere) in matters concerning mental disorder may vote, whether on a show of hands or on a poll, by his or her curator or other person authorised in that behalf appointed by that court, and any such curator or other person may, on a poll, vote by proxy. Evidence to the satisfaction of the directors of the authority of the person claiming to exercise the right to vote shall be deposited at the office, or at such other place within the Federation as is specified in accordance with the articles for the deposit of instruments of proxy not less than forty-eight hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.

55. No member shall vote at any general meeting or at any separate meeting of the holders of any class of shares in the company, either in person or by proxy, in respect of any share held by him or her unless all moneys presently payable by him or her in respect of that share have been paid.

56. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairperson whose decision shall be final and conclusive.

57. On a poll votes may be given either personally or by proxy. A member may appoint more than one proxy to attend on the same occasion.

58. An instrument appointing a proxy shall be in writing in the usual form, or as approved by the directors, and shall be executed by or on behalf of the appointor.

59. The instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the directors may

- (a) be deposited at the office or at such other place within the Federation as is specified in the notice convening the meeting or in any instrument of proxy sent out by the company in relation to the meeting not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
- (b) in the case of a poll taken more than forty-eight hours after it is demanded, be deposited as aforesaid after the poll has been

demanded and not less than twenty-four hours before the time appointed for the taking of the poll; or

- (c) where the poll is not taken forthwith but is taken not more than forty-eight hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairperson or to the secretary or to any director;

and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

60. A vote given or poll demanded by proxy or by the duly authorised representative of a body corporate shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the company at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

NUMBER OF DIRECTORS

61. Unless otherwise determined by special resolution, the number of directors (other than alternate directors) shall not be subject to any maximum number but shall not be less than the minimum number specified in the Act.

ALTERNATE DIRECTORS

62. Any director (other than an alternate director) may appoint any other director, or any other person approved by resolution of the directors and willing to act, to be an alternate director and may remove from office an alternate director so appointed by him or her.

63. An alternate director shall be entitled to receive the same notice of meetings of directors and of all meetings of committees of directors of which his or her appointor is a member as his or her appointor is entitled to receive, to attend and vote at any such meeting at which the director appointing him or her is not personally present, and generally to perform all the functions of his or her appointor as a director in his or her absence, but shall not be entitled to receive any remuneration from the company for his or her services as an alternate director.

64. An alternate director shall cease to be an alternate director if his or her appointor ceases to be a director, but, if a director is reappointed, any appointment of an alternate director made by him or her which is in force immediately prior to his or her reappointment shall continue after his or her reappointment.

65. Any appointment or removal of an alternate director shall be by notice to the company signed by the director making or revoking the appointment or in any other manner approved by the directors.

66. Save as otherwise provided in the articles, an alternate director shall be deemed for all purposes to be a director and shall alone be responsible for his or her own acts and

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defaults and he or she shall not be deemed to be the agent of the director appointing him or her.

POWERS OF DIRECTORS

67. Subject to the provisions of the Act, the memorandum and the articles and to any directions given by special resolution, the business of the company shall be managed by the directors who may exercise all the powers of the company. No alteration of the memorandum or articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this regulation shall not be limited by any special power given to the directors by the articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.

68. The directors may, by power of attorney or otherwise, appoint any person to be the agent of the company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his or her powers.

DELEGATION OF DIRECTORS' POWERS

69. The directors may delegate any of their powers to any committee consisting of one or more directors and (if thought fit) one or more other persons, but a majority of the members of the committee shall be directors. No resolution of the committee shall be effective unless a majority of those present when it is passed are directors. They may also delegate to any managing director or any director holding any other executive office such of their powers as they consider desirable to be exercised by him or her. Any such delegation may be made subject to any conditions the directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Subject to any such conditions, the proceedings of a committee with two or more members shall be governed by the articles regulating the proceedings of directors so far as they are capable of applying.

APPOINTMENT OF DIRECTORS

70. The first directors of the company shall be appointed in writing by the subscribers of the memorandum or a majority of them.

71. No person shall be appointed a director at any general meeting unless

- (a) he or she is recommended by the directors; or
- (b) not less than fourteen nor more than thirty-five clear days before the date appointed for the meeting, notice executed by a member qualified to vote at the meeting has been given to the company of the intention to propose that person for appointment stating the particulars which would, if he or she were so appointed, be required to be included in the company's register of directors together with notice executed by that person of his or her willingness to be appointed.

72. Not less than seven nor more than twenty-eight clear days before the date appointed for holding a general meeting notice shall be given to all who are entitled to receive notice of the meeting of any person who is recommended by the directors for appointment or

reappointment as a director at the meeting or in respect of whom notice has been duly given to the company of the intention to propose him or her at the meeting for appointment as a director. The notice shall give the particulars of that person which would, if he or she were so appointed, be required to be included in the company's register of directors.

73. Subject as aforesaid, the company may, by ordinary resolution, appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director.

74. The directors may appoint a person who is willing to act as a director, either to fill a vacancy or as an additional director, provided that the appointment does not cause the number of directors to exceed any number fixed by or in accordance with the articles as the maximum number of directors. A director so appointed shall hold office only until the next following annual general meeting but shall be eligible for reappointment. If not reappointed at such annual general meeting, he or she shall vacate office at the conclusion thereof.

DISQUALIFICATION AND REMOVAL OF DIRECTORS

75. The office of a director shall be vacated if

- (a) he or she ceases to be a director by virtue of any provision of the Act or he or she becomes prohibited by law from or disqualified for being a director;
- (b) he or she becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) he or she resigns his or her office by notice to the company;
- (d) he or she shall for more than six consecutive months have been absent without permission of the directors from meetings of directors held during that period and the directors resolve that his or her office be vacated; or
- (e) the company so resolves by ordinary resolution.

REMUNERATION OF DIRECTORS

76. The directors shall be entitled to such remuneration as the company may by ordinary resolution determine and, unless the resolution provides otherwise, the remuneration shall be deemed to accrue from day to day.

DIRECTORS' EXPENSES

77. The directors may be paid all travelling, hotel, and other expenses properly incurred by them in connection with their attendance at meetings of directors or committees of directors or general meetings or separate meetings of the holders of any class of shares or of debentures of the company or otherwise in connection with the discharge of their duties.

DIRECTORS' APPOINTMENTS AND INTERESTS

78. Subject to the provisions of the Act, the directors may appoint one or more of their number to the office of managing director or to any other executive office under the company and may enter into an agreement or arrangement with any director for his or her employment by the company or for the provision by him or her of any services outside the

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scope of the ordinary duties of a director. Any such appointment, agreement or arrangement may be made upon such terms as the directors determine and they may remunerate any such director for his or her services as they think fit. Any appointment of a director to an executive office shall terminate if he or she ceases to be a director but without prejudice to any claim to damages for breach of the contract of service between the director and the company.

79. Subject to the provisions of the Act, and provided that he or she has disclosed to the directors the nature and extent of any material interests of his or her, a director notwithstanding his or her office

- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the company or in which the company is otherwise interested;
- (b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the company or in which the company is otherwise interested; and
- (c) shall not, by reason of his or her office, be accountable to the company for any benefit which he or she derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

80. For the purposes of regulation 79,

- (a) a general notice given to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified; and
- (b) an interest of which a director has no knowledge and of which it is unreasonable to expect him or her to have knowledge shall not be treated as an interest of his or her.

DIRECTORS' GRATUITIES AND PENSIONS

81. The directors may provide benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any person who has held but no longer holds any executive office or employment with the company or with any body corporate which is or has been a subsidiary of the company or a predecessor in business of the company or of any such subsidiary, and for any member of his or her family (including a spouse and a former spouse) or any person who is or who was dependent on him or her, and may (as well before as after he or she ceases to hold such office or employment) contribute to any fund and pay premiums for the purchase or provision of any such benefit and may include rights in respect of any such benefit in the terms of engagement of any such person notwithstanding that he or she may be or may have been a director of the company.

PROCEEDINGS OF DIRECTORS

82. Subject to the provisions of the articles, the directors may regulate their proceedings as they think fit. A director may, and the secretary at the request of a director shall, call a meeting of the directors. Questions arising at a meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairperson shall have a second or casting vote. A director who is also an alternate director shall be entitled in the absence of his or her appointor to a separate vote on behalf of his or her appointor in addition to his or her own vote.

83. Subject to the Act, where the subscribers to the memorandum or a majority of them have appointed only one director or where the company has by special resolution determined that the maximum number of directors shall be one, that director present in person shall constitute a meeting. In any other case, the quorum for the transaction of the business of the directors shall be two or such higher number as may be fixed by the directors. A person who holds office only as an alternate director shall, if his or her appointor is not present, be counted in the quorum.

84. The continuing directors or a sole continuing director may act notwithstanding any vacancies in their number, but, if the number of directors is less than the number fixed as the quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting.

85. The directors may appoint one of their number to be the chairperson of the board of directors and may at any time remove him or her from that office. Unless he or she is unwilling to do so, the director so appointed shall preside at every meeting of directors at which he or she is present. If there is no director holding that office, or if the director holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the directors present shall appoint one of their number to be chairperson of the meeting.

86. All acts done by a meeting of directors, or of a committee of directors, or by a person acting as a director shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any director or that any of them were disqualified for holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote.

87. A resolution in writing signed by all the directors entitled to receive notice of meeting of directors or of a committee of directors shall be valid and effectual as if it had been passed at a meeting of directors or (as the case may be) a committee of directors duly convened and held and may consist of several documents in the like form each signed by one or more directors; but a resolution signed by an alternate director need not also be signed by his or her appointor and, if it is signed by a director who has appointed an alternate director, it need not be signed by the alternate director in that capacity.

88. Save as otherwise provided by the articles, a director shall not vote at a meeting of directors or of a committee of directors on any resolution concerning a matter in which he or she has, directly or indirectly, an interest or duty which is material and which conflicts or may conflict with the interests of the company unless his or her interest or duty arises only because the case falls within one or more of the following paragraphs:

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- (a) the resolution relates to the giving to him or her of a guarantee, security, or indemnity in respect of money lent to, or an obligation incurred by him or her for the benefit of, the company or any of its subsidiaries;
- (b) the resolution relates to the giving to a third part of a guarantee, security or indemnity, in respect of an obligation of the company or any of its subsidiaries for which the director has assumed responsibility in whole or part and whether alone or jointly with others under a guarantee or indemnity or by the giving of security;
- (c) his or her interest arises by virtue of his or her subscribing or agreeing to subscribe for any shares, debentures or other securities of the company or any of its subsidiaries, or by virtue of his or her being, or intending to become, a participant in the underwriting or sub-underwriting of an offer of any such shares, debentures, or other securities by the company or any of its subsidiaries for subscription, purchase or exchange;
- (d) the resolution relates in any way to a retirement benefit scheme which has been approved, or is conditional upon approval, by the Comptroller of Income Tax for taxation purposes;
- (e) the resolution relates to an agreement for the benefit of employees of the company or any of its subsidiaries which does not accord to him or her any privilege or advantage not generally accorded to the employees to whom the arrangement relates.

89. A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he or she is not entitled to vote.

90. The company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provisions of the articles prohibiting a director from voting at a meeting of directors or of a committee of directors.

91. Where proposals are under consideration concerning the appointment of two or more directors to offices or employments with the company or any body corporate in which the company is interested the proposals may be divided and considered in relation to each director separately and (provided he or she is not for another reason precluded from voting) each of the directors concerned shall be entitled to vote and be counted in the quorum in respect of each resolution except that concerning his or her own appointment.

92. If a question arises at a meeting of directors or of a committee of directors as to the right of a director to vote, the question may, before the conclusion of the meeting, be referred to the chairperson of the meeting and his or her ruling in relation to any director other than himself or herself shall be final and conclusive.

SECRETARY

93. Subject to the provisions of the Act, the secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

MINUTES

94. The directors shall cause minutes to be made in books kept for the purpose in accordance with the Act.

THE SEAL

95. The seal shall only be used by the authority of the directors or of a committee of directors authorised by the directors. The directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by two directors or by a director and the secretary.

DIVIDENDS

96. Subject to the provisions of the Act, the company may by ordinary resolution declare dividends in accordance with the respective rights of the members, but no dividend shall exceed the amount recommended by the directors.

97. Subject to the provisions of the Act, the directors may pay interim dividends if it appears to them that they are justified by the profits of the company available for distribution. If the share capital is divided into different classes, the directors may pay interim dividends on shares which confer deferred or non-preferred rights with regard to dividend as well as on shares which confer preferential rights with regard to dividend, but no interim dividend shall be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear. The directors may also pay at intervals settled by them any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment. Provided the directors act in good faith, they shall not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on any shares having deferred or non-preferred rights.

98. Except as otherwise provided by the rights attached to shares, all dividends shall be declared and paid according to the amounts paid upon shares on which the dividend is paid. All dividends shall be apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid, but, if any share is issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly.

99. A general meeting declaring a dividend may, upon the recommendation of the directors, direct that it shall be satisfied wholly or partly by the distribution of assets and, where any difficulty arises in regard to the distribution, the directors may settle the same and in particular may issue fractional certificates and fix the value for distribution of any assets and may determine that cash shall be paid to any member upon the footing of the value so fixed in order to adjust the rights of members and may vest any assets in trustees.

100. Any dividend or other moneys payable in respect of a share may be paid by cheque or by warrant sent by post to the registered address of the person entitled or, if two or more persons are the holders of the share or are jointly entitled to it by reason of the death or bankruptcy of the holder, to the registered address of one of those persons who is first named in the register of members or to such person and to such address as the person or persons entitled may in writing direct. Every cheque or warrant shall be made payable to the order of the person or persons entitled or to such other person as the person or persons

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entitled may in writing direct and payment of the cheque or warrant shall be a good discharge to the company. Any joint holder or other person jointly entitled to a share as aforesaid may give receipts for any dividend or other moneys payable in respect of the share.

101. No dividend or other moneys payable in respect of a share shall bear interest against the company unless otherwise provided by the rights attached to the share.

102. Any dividend which has remained unclaimed for ten years from the date when it became due for payment shall, if the directors so resolve, be forfeited and cease to remain owing by the company.

103. No member shall (as such) have any right of inspecting any accounting records or other book or document of the company except as conferred by law or authorised by the directors or by ordinary resolution of the company.

104. The company shall appoint auditors to examine the accounts and report thereon in accordance with the Act.

CAPITALISATION OF PROFITS

105. The directors may, with the authority of an ordinary resolution of the company,
- (a) subject as hereinafter provided, resolve to capitalise any undivided profits of the company not required for paying any preferential dividend (whether or not they are available for distribution) or any sum standing to the credit of the company's share premium account or capital redemption reserve;
 - (b) appropriate the sum resolved to be capitalised to the members in proportion to the stated amounts of the shares (whether or not fully paid) held by them respectively which would entitle them to participate in a distribution of that sum if the shares were fully paid and the sum were distributable and were distributed by way of dividend and apply such sum on their behalf either in or towards paying up the amounts, if any, for the time being unpaid on any shares held by them respectively, or in paying up in full unissued shares of the company of a stated amount or debentures of the company of a stated amount equal to that sum, and allot the shares or debentures credited as fully paid to those members, or as they may direct, in those proportions, or partly in one way and partly in the other; but the share premium account, the capital redemption reserve, and any profits which are not available for distribution may, for the purposes of this regulation, only be applied in paying up unissued shares to be allotted to members credited as fully paid up;
 - (c) make such provision by the issue of fractional certificates or by payment in cash or otherwise as they determine in the case of shares or debentures becoming distributable under this regulation in fractions; and
 - (d) authorise any person to enter on behalf of all the members concerned into an agreement with the company providing for the allotment to

them respectively, credited as fully paid, of any shares or debentures to which they are entitled upon such capitalisation, any agreement made under such authority being binding on all such members.

NOTICES

106. Any notice to be given to or by any person pursuant to the articles shall be in writing except that a notice calling a meeting of the directors need not be in writing.

107. A member shall be entitled to receive any notice to be given to him or her pursuant to the articles notwithstanding that his or her registered address is not within the Federation. The company may give notice to a member either personally or by sending it by post in a prepaid envelope addressed to the member at his or her registered address or by leaving it at that address. In the case of joint holders of a share, all notices shall be given to the joint holder whose name stands first in the register of members in respect of the joint holding and notice so given shall be sufficient notice to all the joint holders.

108. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of forty-eight hours after the envelope containing it was posted.

109. Where the company has issued any bearer certificate, the directors shall arrange for any notice to be given by the company pursuant to the articles to be published in one or more newspapers circulated in the Federation (but the directors may also arrange for such notice to be published in one or more newspapers circulated elsewhere than in the Federation) and such notice shall be deemed to be duly given to all holders of bearer certificates issued by the company on the day on which it appears in any such newspaper.

110. A member present, either in person or by proxy, at any meeting of the company or of the holders of any class of shares in the company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

111. Every person who becomes entitled to a share shall be bound by any notice in respect of that share which, before his or her name is entered in the register of members, has been duly given to a person from which he or she derives his or her title.

112. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending or delivering it, in any manner authorised by the articles for the giving of notice to a member, addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt or by any like description at the address supplied for that purpose by the persons claiming to be so entitled. Until such an address has been supplied, a notice may be given in any manner in which it might have been given if the death or bankruptcy had not occurred.

WINDING UP

113. If the company is wound up, the company may, with the sanction of a special resolution and any other sanction required by the Act, divide the whole or any part of the assets of the company among the members in specie and the liquidator or, where there is no liquidator, the directors may, for that purpose, value any assets and determine how the division shall be carried out as between the members or different classes of members, and with the like sanction, vest the whole or any part of the assets in trustees upon such trusts

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for the benefit of the members as he or she with the like sanction determines, but no member shall be compelled to accept any assets upon which there is a liability.

INDEMNITY

114. In so far as the Act allows, every present or former officer of the company shall be indemnified out of the assets of the company against any loss or liability incurred by him or her by reason of being or having been such an officer.

Standard Table B

Regulations for the Management of a Company Limited by Guarantee

INTERPRETATION

1. (1) In these regulations,
 - “Act” means the Companies Act including any statutory modification or re-enactment thereof for the time being in force;
 - “articles” means the articles of association of the company;
 - “clear days”, in relation to the period of a notice, means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;
 - “executed” includes any mode of execution;
 - “office” means the registered office of the company;
 - “ordinary resolution” means a resolution of the company in general meeting adopted by a simple majority of the votes cast at that meeting;
 - “seal” means the common seal of the company;
 - “secretary” means the secretary of the company or any other person appointed to perform the duties of the secretary of the company, including a joint, assistant or deputy secretary.
- (2) Unless the context otherwise requires, words or expressions contained in these regulations bear the same meaning as in the Act but excluding any statutory modification thereof not in force when these regulations become binding on the company.

MEMBERS

2. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

GENERAL MEETINGS

3. All general meetings other than annual general meetings shall be called extraordinary general meetings.
4. The directors may call general meetings and, on the requisition of members pursuant to the provisions of the Act, shall forthwith proceed to call a general meeting for

a date not later than two months after the receipt of the requisition. If there are not sufficient directors to call a general meeting, any director or any member of the company may call such meeting.

NOTICE OF GENERAL MEETINGS

5. An annual general meeting or a general meeting called for the passing of a special resolution or a resolution appointing a person as a director shall be called by at least twenty-one clear days' notice. All other meetings shall be called by at least fourteen clear days' notice but a general meeting may be called by shorter notice if it is so agreed,

- (a) in the case of an annual general meeting, by all the members entitled to attend and vote thereat; and
- (b) in the case of any other meeting by a majority in number of the members having a right to attend and vote at the meeting being a majority together representing not less than ninety-five per cent of the total voting rights at that meeting of all the members.

6. The notice shall specify the day, time and place of the meeting and the general nature of the business to be transacted and, in the case of an annual general meeting, shall specify the meeting as such.

7. Subject to the provisions of the articles, the notice shall be given to all the members, to all persons entitled to receive the notice in consequence of the death or bankruptcy of a member and to the directors and auditors, if any.

8. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.

PROCEEDINGS AT GENERAL MEETINGS

9. In the case where a company has only one member, or where there is only one member of any class of members of the company, that member present in person or by proxy shall be deemed to constitute a meeting. In any other case, no business shall be transacted at any meeting unless a quorum is present and, subject as hereinafter otherwise provided, two persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a proxy for a member or a duly authorised representative of a body corporate, shall be a quorum.

10. If a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or such day, time and place as the directors may determine. If at such adjourned meeting, a quorum is not present within half an hour from the time appointed for the meeting, or if during such adjourned meeting a quorum ceases to be present, then any member present in person or by proxy shall be a quorum.

11. The chairperson, if any, of the board of directors or in his or her absence some other director nominated by the directors shall preside as chairperson of the meeting, but if neither the chairperson nor such other director (if any) is present within fifteen minutes after the time appointed for holding the meeting and willing to act, the directors present

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shall elect one of their number to be chairperson and, if there is only one director present and willing to act, he or she shall be chairperson.

12. If no director is willing to act as chairperson, or if no director is present within fifteen minutes after the time appointed for holding the meeting, those present and entitled to be counted in a quorum shall choose one of their number to be chairperson.

13. A director shall, notwithstanding that he or she is not a member, be entitled to attend and speak at any general meeting and at any separate meeting of any class of members of the company.

14. The chairperson may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the day, time and place of the adjourned meeting and the general nature of the business to be transacted, otherwise it shall not be necessary to give any such notice.

15. A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands a poll is duly demanded. Subject to the provisions of the Act, a poll may be demanded

- (a) by the chairperson;
- (b) by at least two members having the right to vote on the resolution; or
- (c) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote on the resolution;

and a demand by a person as proxy for a member shall be the same as a demand by the member.

16. Unless a poll is duly demanded a declaration by the chairperson that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

17. The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairperson and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.

18. A poll shall be taken as the chairperson directs and he or she may appoint scrutineers (who need not be members) and fix a day, time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

19. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson shall be entitled to a casting vote in addition to any other vote he or she may have.

20. A poll demanded on the election of a chairperson or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either forthwith or at such day, time and place as the chairperson directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

21. No notice need be given of a poll not taken forthwith if the day, time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case, at least seven clear days' notice shall be given specifying the day, time and place at which the poll is to be taken.

VOTES OF MEMBERS

22. On a show of hands or on a poll every member who (being an individual) is present in person or (being a body corporate) is present by a duly authorised representative, not being himself or herself a member entitled to vote, shall have one vote.

23. A member in respect of whom an order has been made by any court having jurisdiction (whether in the Federation or elsewhere) in matters concerning mental disorder may vote, whether on a show of hands or on a poll, by his or her curator or other person authorised in that behalf appointed by that court, and any such curator or other person may, on a poll, vote by proxy. Evidence to the satisfaction of the directors of the authority of the person claiming to exercise the right to vote shall be deposited at the office, or at such other place within the Federation as is specified in accordance with the articles for the deposit of instruments of proxy not less than forty-eight hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.

24. No member shall vote at any general meeting or at any separate meeting of any class of members in the company, either in person or by proxy, unless all moneys presently payable by him or her to the company have been paid.

25. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairperson whose decision shall be final and conclusive.

26. On a poll votes may be given either personally or by proxy. A member may appoint more than one proxy to attend on the same occasion.

27. An instrument appointing a proxy shall be in writing in the usual form, or as approved by the directors, and shall be executed by or on behalf of the appointor.

28. The instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the directors may

- (a) be deposited at the office or at such other place within the Federation as is specified in the notice convening the meeting or in any instrument of proxy sent out by the company in relation to the

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meeting not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or

- (b) in the case of a poll taken more than forty-eight hours after it is demanded, be deposited as aforesaid after the poll has been demanded and not less than twenty-four hours before the time appointed for the taking of the poll; or
- (c) where the poll is not taken forthwith but is taken not more than forty-eight hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairperson or to the secretary or to any director;

and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

29. A vote given or poll demanded by proxy or by the duly authorised representative of a body corporate shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the company at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

NUMBER OF DIRECTORS

30. Unless otherwise determined by special resolution, the number of directors (other than alternate directors) shall not be subject to any maximum number but shall not be less than the minimum number specified in the Act.

ALTERNATE DIRECTORS

31. Any director (other than an alternate director) may appoint any other director, or any other person approved by resolution of the directors and willing to act, to be an alternate director and may remove from office an alternate director so appointed by him or her.

32. An alternate director shall be entitled to receive the same notice of meetings of directors and of all meetings of committees of directors of which his or her appointor is a member as his or her appointor is entitled to receive, to attend and vote at any such meeting at which the director appointing him or her is not personally present, and generally to perform all the functions of his or her appointor as a director in his or her absence, but shall not be entitled to receive any remuneration from the company for his or her services as an alternate director.

33. An alternate director shall cease to be an alternate director if his or her appointor ceases to be a director, but, if a director is reappointed, any appointment of an alternate director made by him or her which is in force immediately prior to his or her reappointment shall continue after his or her reappointment.

34. Any appointment or removal of an alternate director shall be by notice to the company signed by the director making or revoking the appointment or in any other manner approved by the directors.

35. Save as otherwise provided in the articles, an alternate director shall be deemed for all purposes to be a director and shall alone be responsible for his or her own acts and defaults and he or she shall not be deemed to be the agent of the director appointing him or her.

POWERS OF DIRECTORS

36. Subject to the provisions of the Act, the memorandum and the articles and to any directions given by special resolution, the business of the company shall be managed by the directors who may exercise all the powers of the company. No alteration of the memorandum or articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this regulation shall not be limited by any special power given to the directors by the articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.

37. The directors may, by power of attorney or otherwise, appoint any person to be the agent of the company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his or her powers.

DELEGATION OF DIRECTORS' POWERS

38. The directors may delegate any of their powers to any committee consisting of one or more directors and (if thought fit) one or more other persons, but a majority of the members of the committee shall be directors. No resolution of the committee shall be effective unless a majority of those present when it is passed are directors. They may also delegate to any managing director or any director holding any other executive office such of their powers as they consider desirable to be exercised by him or her. Any such delegation may be made subject to any conditions the directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Subject to any such conditions, the proceedings of a committee with two or more members shall be governed by the articles regulating the proceedings of directors so far as they are capable of applying.

APPOINTMENT OF DIRECTORS

39. The first directors of the company shall be appointed in writing by the subscribers of the memorandum or a majority of them.

40. No person shall be appointed a director at any general meeting unless

- (a) he or she is recommended by the directors; or
- (b) not less than fourteen nor more than thirty-five clear days before the date appointed for the meeting, notice executed by a member qualified to vote at the meeting has been given to the company of the intention to propose that person for appointment stating the particulars which would, if he or she were so appointed, be required to be included in the company's register of directors together with

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notice executed by that person of his or her willingness to be appointed.

41. Not less than seven nor more than twenty-eight clear days before the date appointed for holding a general meeting notice shall be given to all who are entitled to receive notice of the meeting of any person who is recommended by the directors for appointment or reappointment as a director at the meeting or in respect of whom notice has been duly given to the company of the intention to propose him or her at the meeting for appointment as a director. The notice shall give the particulars of that person which would, if he or she were so appointed, be required to be included in the company's register of directors.

42. Subject as aforesaid, the company may by ordinary resolution appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director.

43. The directors may appoint a person who is willing to act as a director, either to fill a vacancy or as an additional director, provided that the appointment does not cause the number of directors to exceed any number fixed by or in accordance with the articles as the maximum number of directors. A director so appointed shall hold office only until the next following annual general meeting but shall be eligible for reappointment. If not reappointed at such annual general meeting, he or she shall vacate office at the conclusion thereof.

DISQUALIFICATION AND REMOVAL OF DIRECTORS

44. The office of a director shall be vacated if

- (a) he or she ceases to be a director by virtue of any provision of the Act or he or she becomes prohibited by law from or disqualified for being a director;
- (b) he or she becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) he or she resigns his or her office by notice to the company; or
- (d) he or she shall for more than six consecutive months have been absent without permission of the directors from meetings of directors held during that period and the directors resolve that his or her office be vacated; or
- (e) the company so resolves by ordinary resolution.

REMUNERATION OF DIRECTORS

45. The directors shall be entitled to such remuneration as the company may by ordinary resolution determine and, unless the resolution provides otherwise, the remuneration shall be deemed to accrue from day to day.

DIRECTORS' EXPENSES

46. The directors may be paid all travelling, hotel, and other expenses properly incurred by them in connection with their attendance at meetings of directors or committees of directors or general meetings or separate meetings of the holders of any class of shares or of debentures of the company or otherwise in connection with the discharge of their duties.

DIRECTORS' APPOINTMENTS AND INTERESTS

47. Subject to the provisions of the Act, the directors may appoint one or more of their number to the office of managing director or to any other executive office under the company and may enter into an agreement or arrangement with any director for his or her employment by the company or for the provision by him or her of any services outside the scope of the ordinary duties of a director. Any such appointment, agreement or arrangement may be made upon such terms as the directors determine and they may remunerate any such director for his or her services as they think fit. Any appointment of a director to an executive office shall terminate if he or she ceases to be a director but without prejudice to any claim to damages for breach of the contract of service between the director and the company.

48. Subject to the provisions of the Act, and provided that he or she has disclosed to the directors the nature and extent of any material interests of his or her, a director, notwithstanding his or her office

- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the company or in which the company is otherwise interested;
- (b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the company or in which the company is otherwise interested; and
- (c) shall not, by reason of his or her office, be accountable to the company for any benefit which he or she derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

49. For the purposes of regulation 48,

- (a) a general notice given to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified; and
- (b) an interest of which a director has no knowledge and of which it is unreasonable to expect him or her to have knowledge shall not be treated as an interest of his or hers.

DIRECTORS' GRATUITIES AND PENSIONS

50. The directors may provide benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any person who has held but no longer holds any executive office or employment with the company or with any body corporate which is or has been a subsidiary of the company or a predecessor in business of the company or of any such subsidiary, and for any member of his or her family (including a spouse and a former spouse) or any person who is or who was dependent on him or her, and may (as

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well before as after he or she ceases to hold such office or employment) contribute to any fund and pay premiums for the purchase or provision of any such benefit and may include rights in respect of any such benefit in the terms of engagement of any such person notwithstanding that he or she may be or may have been a director of the company.

PROCEEDINGS OF DIRECTORS

51. Subject to the provisions of the articles, the directors may regulate their proceedings as they think fit. A director may, and the secretary at the request of a director shall, call a meeting of the directors. Questions arising at a meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairperson shall have a second or casting vote. A director who is also an alternate director shall be entitled in the absence of his or her appointor to a separate vote on behalf of his or her appointor in addition to his or her own vote.

52. Subject to the Act, where the subscribers to the memorandum or a majority of them have appointed only one director or where the company has by special resolution determined that the maximum number of directors shall be one, that director present in person shall constitute a meeting. In any other case, the quorum for the transaction of the business of the directors shall be two or such higher number as may be fixed by the directors. A person who holds office only as an alternate director shall, if his or her appointor is not present, be counted in the quorum.

53. The continuing directors or a sole continuing director may act notwithstanding any vacancies in their number, but, if the number of directors is less than the number fixed as the quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting.

54. The directors may appoint one of their number to be the chairperson of the board of directors and may at any time remove him or her from that office. Unless he or she is unwilling to do so, the director so appointed shall preside at every meeting of directors at which he or she is present. If there is no director holding that office, or if the director holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the directors present shall appoint one of their number to be chairperson of the meeting.

55. All acts done by a meeting of directors, or of a committee of directors, or by a person acting as a director shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any director or that any of them were disqualified for holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote.

56. A resolution in writing signed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors shall be valid and effectual as if it had been passed at a meeting of directors or (as the case may be) a committee of directors duly convened and held and may consist of several documents in the like form each signed by one or more directors; but a resolution signed by an alternate director need not also be signed by his or her appointor and, if it is signed by a director who has appointed an alternate director, it need not be signed by the alternate director in that capacity.

57. Save as otherwise provided by the articles, a director shall not vote at a meeting of directors or of a committee of directors on any resolution concerning a matter in which he or she has, directly or indirectly, an interest or duty which is material and which conflicts or may conflict with the interests of the company unless his or her interest or duty arises only because the case falls within one or more of the following paragraphs:

- (a) the resolution relates to the giving to him or her of a guarantee, security, or indemnity in respect of money lent to, or an obligation incurred by him or her for the benefit of, the company or any of its subsidiaries;
- (b) the resolution relates to the giving to a third part of a guarantee, security or indemnity, in respect of an obligation of the company or any of its subsidiaries for which the director has assumed responsibility in whole or part and whether alone or jointly with others under a guarantee or indemnity or by the giving of security;
- (c) his or her interest arises by virtue of his or her subscribing or agreeing to subscribe for any shares, debentures or other securities of the company or any of its subsidiaries, or by virtue of his or her being, or intending to become, a participant in the underwriting or sub-underwriting of an offer of any such shares, debentures, or other securities by the company or any of its subsidiaries for subscription, purchase or exchange;
- (d) the resolution relates in any way to a retirement benefits scheme which has been approved, or is conditional upon approval, by the Comptroller of Income Tax for taxation purposes;
- (e) the resolution relates to an agreement for the benefit of employees of the company or any of its subsidiaries which does not accord to him or her any privilege or advantage not generally accorded to the employees to whom the arrangement relates.

58. A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he or she is not entitled to vote.

59. The company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provisions of the articles prohibiting a director from voting at a meeting of directors or of a committee of directors.

60. Where proposals are under consideration concerning the appointment of two or more directors to offices or employments with the company or any body corporate in which the company is interested the proposals may be divided and considered in relation to each director separately and (provided he or she is not for another reason precluded from voting) each of the directors concerned shall be entitled to vote and be counted in the quorum in respect of each resolution except that concerning his or her own appointment.

61. If a question arises at a meeting of directors or of a committee of directors as to the right of a director to vote, the question may, before the conclusion of the meeting, be referred to the chairperson of the meeting and his or her ruling in relation to any director other than himself or herself shall be final and conclusive.

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SECRETARY

62. Subject to the provisions of the Act, the secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

MINUTES

63. The director shall cause minutes to be made in books kept for the purpose in accordance with the Act.

THE SEAL

64. The seal shall only be used by the authority of the directors or of a committee of directors authorised by the directors. The directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by two directors or by a director and the secretary.

ACCOUNTS AND AUDIT

65. The company shall appoint auditors to examine the accounts and report thereon in accordance with the Act.

66. Any notice to be given to or by any person pursuant to the articles shall be in writing except that a notice calling a meeting of the directors need not be in writing.

67. A member shall be entitled to receive any notice to be given to him or her pursuant to the articles notwithstanding that his or her registered address is not within the Federation. The company may give notice to a member either personally or by sending it by post in a prepaid envelope addressed to the member at his or her registered address or by leaving it at that address.

68. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of forty-eight hours after the envelope containing it was posted.

69. A member present, either in person or by proxy, at any meeting of the company or at any separate meeting of any class of members of the company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

70. A notice may be given by the company to the persons entitled to receive the notice in consequence of the death or bankruptcy of a member by sending or delivering it, in any manner authorised by the articles for the giving of notice to a member, addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt or by any like description at the address supplied for that purpose by the persons claiming to be so entitled. Until such an address has been supplied, a notice may be given in any manner in which it might have been given if the death or bankruptcy had not occurred.

WINDING UP

71. If the company is wound up, the company may, with the sanction of a special resolution and any other sanction required by the Act, divide the whole or any part of the

assets of the company among the members in specie and the liquidator or, where there is no liquidator, the director may, for that purpose, value any assets and determine how the division shall be carried out as between the members or different classes of members, and with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the members as he or she with the like sanction determines, but no member shall be compelled to accept any assets upon which there is a liability.

INDEMNITY

72. In so far as the Act allows, every present or former officer of the company shall be indemnified out of the assets of the company against any loss or liability incurred by him or her by reason of being or having been such an officer.

SECOND SCHEDULE

(Sections 202 and 222)

Companies (Fees) Order

1. Citation.

This Order may be cited as the Companies (Fees) Order.

2. Fees to be paid to the Registrar.

(1) The fees set out in the second column of the Schedule hereto shall be the fees payable in respect of the transactions set out in the first column of that Schedule.

(2) The fees payable to the Registrar under section 136 of the Act for a copy of a report made by inspectors appointed under section 129 of the Act shall be at the rate of 1 dollar per page of the report.

SCHEDULE TO THE ORDER

Fees to be Paid to the Registrar

Matter in respect of which fee is payable	Amount of fee	
	XCD	USD
1. For registration of a company on its formation under the Act:		
(a) in the case of a private company which is		
(i) an ordinary company.....	\$270	\$100
(ii) an exempt company.....	\$540	\$200
(b) in the case of a public company which is		
(i) an ordinary company.....	\$810	\$300
(ii) an exempt company.....	\$1,620	\$600

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Matter in respect of which fee is payable	Amount of fee	
	XCD	USD
2. For entering on the register the name of a company assumed by virtue of the passing of a special resolution under section 14 of the Act.....	\$162	\$60
3. For filing of an annual return of a company pursuant to section 72 of the Act:		
(a) in the case of a private company which is		
(i) an ordinary company	\$270	\$100
(ii) an exempt company	\$540	\$200
(b) in the case of a public company which is		
(i) an ordinary company	\$810	\$300
(ii) an exempt company	\$1,620	\$600
4. For each document not falling within paragraph 1, 2 or 3 of this table which is by virtue of the Act required to be registered or filed with the Registrar	\$81	\$30
5. For each inspection of documents kept by the Registrar in pursuance of the Act except the inspection of the index kept by the Registrar in respect of the names of companies incorporated under the Act.....	\$5	\$1.85
6. For certification by the Registrar of a copy of any document (other than a certificate of incorporation) or part of a document kept by the Registrar in pursuance of the Act.....		
(a) where it is necessary on any occasion for the Registrar to inspect any documents, for each such inspection	\$5	\$1.85
(b) and, in all cases, for each page so certified.....	\$3	\$1.11
7. For a certificate of incorporation of a company certified by the Registrar (supplied otherwise than on the incorporation of the company), or for certification of an extract of any document or part of a document kept by the Registrar in pursuance of the Act		
(a) for the first such certificate of incorporation or the first such certified extract supplied on any occasion.....	\$8	\$2.96
(b) for any subsequent certificate of incorporation or certified extract supplied on the same occasion.....	\$6	\$2.22

XCD = dollars of the Eastern Caribbean Central Bank; USD = dollars of the United States of America)

THIRD SCHEDULE

(Sections 3, 39 and 222)

Companies (Application of Share Premium) Order

1. Citation.

This Order may be cited as the Companies (Application of Share Premium) Order.

2. Definitions.

(1) In this Order, “issuing company” means a company which allots shares in terms of section 39 of the Act.

(2) For the purposes of this Order, the expressions “holding company” and “subsidiary” include any body corporate.

3. Application of Share Premium.

(1) This Order applies where the issuing company

- (a) is a wholly-owned subsidiary of another company (“the holding company”); and
- (b) allots shares to the holding company or to another wholly-owned subsidiary of the holding company in return for the transfer to the issuing company of assets, other than cash, of the holding company or of another subsidiary (whether wholly-owned or not) of the holding company.

(2) Where the shares in the issuing company allotted in return for the transfer are allotted at a premium the issuing company shall not be required by section 39 of the Act to transfer any amount in excess of the minimum premium value to the share premium account.

(3) In sub-paragraph (2) of this paragraph, “the minimum premium value” means the amount (if any) by which the base value of that for which the shares are allotted exceeds the aggregate stated value of those shares.

(4) For the purpose of sub-paragraph (3) of this paragraph, the base value of that for which the shares are allotted is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the holding company or the subsidiary of the holding company transferring them assumed by the issuing company as part of the terms of transfer of the assets.

(5) For the purposes of sub-paragraph (4) of this paragraph,

- (a) the base value of the assets transferred shall be taken as
 - (i) the cost of those assets to the holding company or the subsidiary of the holding company transferring them, or

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- (ii) the amount at which those assets are stated in the accounting records of the holding company or the subsidiary or of the holding company immediately before the transfer, whichever is the less; and
- (b) the base value of the liabilities assumed shall be taken as the amount at which they are stated in the accounting records of the holding company or of the subsidiary of the holding company immediately before the transfer.

FOURTH SCHEDULE

(Section 49 and 222)

Companies (Overseas Branch Register) Order

1. Citation.

This Order may be cited as the Companies (Overseas Branch Register) Order.

2. Application of this Order.

This Order applies only to public companies.

3. Overseas Branch Register.

(1) A company which transacts business in any country, territory or place outside the Federation may cause to be kept in that place a branch register of members resident in that country, territory or place.

(2) A branch register kept pursuant to subsection (1) shall be known as an “overseas branch register”.

(3) An overseas branch register shall be deemed to be part of the company’s register of members (“the principal register”) and shall be kept in the same manner in which the principal register is by the Act required to be kept.

4. Notice to be given to the Registrar.

(1) A company keeping an overseas branch register shall give to the Registrar notice in such form as he or she may require of the situation of the office where any overseas branch register is kept and of any change in its situation, and, if it is discontinued, of its discontinuance.

(2) Any such notice shall be given within fourteen days of the opening of the office or of the change or discontinuance, as the case may be.

5. Duplicate of Overseas Branch Register.

(1) The company shall

- (a) transmit to its registered office a copy of every entry in its overseas branch register as soon as may be after it is made; and
- (b) cause to be kept at the place where the company's principal register is kept a duplicate of its overseas branch register duly entered up from time to time.

(2) Every duplicate of the overseas branch register shall be deemed for all purposes of the Act to be part of the principal register.

6. Miscellaneous.

(1) Subject to the provisions of paragraph 5 with respect to the duplicate register, the shares registered in an overseas branch register shall be distinguished from those registered in the principal register and no transaction with respect to any shares registered in an overseas branch register shall, during the continuance of that register, be registered in any other register.

(2) A company may discontinue to keep an overseas branch register and thereupon all entries in that register shall be transferred to some other overseas branch register kept in the same country, territory or place, or to the principal register.

(3) Subject to the provisions of this Order, any company may, by its articles, make such provisions as it thinks fit respecting the keeping of overseas branch registers.

FIFTH SCHEDULE

(Section 59 and 222)

Companies (Purchase of Own Shares) Order

1. Citation.

This Order may be cited as the Companies (Purchase of Own Shares) Order.

2. Purchase of own Shares.

For the purposes of sub-paragraph (b) of subsection (4) of section 57 of the Act, a resolution authorising a company to purchase its own shares on a stock exchange may determine either or both the maximum and minimum prices for purchase by

- (a) specifying a particular sum; or
- (b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

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SIXTH SCHEDULE

(Section 189 and 222)

Companies (Winding Up Provisions) Order

1. **Citation.**

This Order may be cited as the Companies (Winding Up Provisions) Order.

2. **Qualifications of Liquidator.**

(1) A person is not qualified for appointment as a liquidator of a public company or of a company which is being wound up in accordance with the provisions of Part XXIII of the Act unless he or she is an accountant.

(2) None of the following persons is so qualified:

(a) a secretary or an officer or servant of the company or a partner or employee of such a person;

(b) a person against whom an order under section 79 of the Act is in force.

(3) A person is also not so qualified if he or she is, under sub-paragraph (2), disqualified for appointment as a liquidator of any other body corporate which is that company's subsidiary or holding company or a subsidiary or that company's holding company or would be so disqualified if that body corporate were a company.

3. **Procedure at Creditors' Meeting.**

(1) This section applies to creditors' meetings held pursuant to the provisions of Part XXIII of the Act.

(2) Subject to the provisions of this section, every creditor who has been given notice of a creditors' meeting shall be entitled to vote at the meeting or any adjournment of it.

(3) Votes shall be calculated according to the amount of the creditors' debt at the date of the commencement of the winding up.

(4) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairperson of the meeting agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote.

(5) For any resolution to pass at the creditors' meeting there must be a majority in excess of one-half in value of the creditors present in person or by proxy and voting on the resolution.

(6) A creditors' meeting shall not be competent to act unless there are present in person or by proxy at least three creditors, or all of the creditors if their number does not exceed three, being in either case entitled to vote.

SEVENTH SCHEDULE

(Sections 222 and 226)

Financial Services (Regulations) Order

PART I – PRELIMINARY

1. **Citation.**

This Order may be cited as the Financial Services (Regulations) Order.

2. **Interpretation.**

(1) In this Order, unless the context otherwise requires,

“Act” means the Act under which this Order is made;

“actuary” means a person who is qualified as an actuary by examination conducted by the Institutes of Actuaries in England or the Faculty of Actuaries in Scotland or the Society of Actuaries in the United States of America or Canada, and is a practising member of good standing of one of those professional associations or a person of good standing with some other actuarial qualification who is recognised by the Minister as such for the purpose of this Order;

“associate”, in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, a company, means

- (a) the spouse or children or step-children of that person;
- (b) the trustees of any settlement under which that person has a life interest;
- (c) any company of which that person is a director;
- (d) any person who is an employee or partner of that person;
- (e) if that person is a company,
 - (i) any director of that company;
 - (ii) any subsidiary company of that company; and
 - (iii) any director or employee of any such subsidiary company; and
- (f) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or

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disposal of shares or other interest in that company or under which they undertake to act together in exercising their voting power in relation to it, that other person;

“accountant” means a person who is qualified as an accountant by examination conducted by one of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants and is a practising member in good standing of one of those institutes or is otherwise approved by any supervisory body of the accounting profession recognised under the law of the Federation;

“assurance business” means the carrying on of the business of

- (a) insurance agent;
- (b) insurance broker;
- (c) insurance sub-agent;
- (d) insurance manager, or
- (e) principal insurance representative;

“auditor” means an accountant who is eligible for appointment as auditor under the rules of the institute of chartered or certified accountants of which he or she is a practising member in good standing or is otherwise approved for appointment as auditor by any supervisory body of the accounting profession recognised under the law of the Federation;

“authorisation” means authorisation granted by the Minister under this Order and “authorised” shall be construed accordingly;

“chief executive”, in respect to an authorised person, means a person who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the authorised person and in relation to an authorised person whose principal place of business is in a place outside the Federation, includes a person who, either alone or jointly with one or more other persons, is responsible for the conduct of its business in the Federation;

“close relative”, in relation to any person, means

- (a) his or her spouse;
- (b) his or her children and step-children, his or her parents and step-parents, his or her brothers and sisters and step-brothers and step-sisters; and
- (c) the spouse of any person mentioned in paragraph (b);

“company” means any body corporate wherever and however incorporated, other than a corporation sole;

“contract”, in relation to insurance business, includes policy;

“controller”, in relation to a company, means

- (a) a chief executive of the company;
- (b) a chief executive of any other company of which that company is a subsidiary company;
- (c) a partner in any partnership of which the company is also a partner;
- (d) a person in accordance with whose directions or instructions any director of that company or any other company of which that company is a subsidiary company is accustomed to act;
- (e) a person who, either alone or with any associate or associates, is entitled to exercise or control the exercise of not less than fifteen per cent of the voting power in a general meeting of that company or of any other company of which that company is a subsidiary company;

and in this Order, a person coming within paragraph (d) is referred to as “an indirect controller” and a person coming within paragraph (e) is referred to as a “shareholder controller”;

“corporate business” means the carrying on of, and the provision of services in relation to, the business of

- (a) incorporating or establishing, as may be appropriate, companies or partnerships;
- (b) providing nominee shareholders, directors, chief executives or managers, as may be appropriate, for companies or partnerships;
- (c) maintaining the registered office or the office for service, as may be appropriate, for companies or partnerships;
- (d) managing or administrating, as may be appropriate, companies or partnerships;

“currency” includes foreign currency and any other means of exchange that may be prescribed;

“deposit” has the meaning assigned to it by section 1 of Schedule 1 to this Order;

“deposit-taking business” means the business of engaging in one or more of the activities which fall within section 2 of Schedule 1 to this Order;

“director” includes,

- (a) in the case of a company, a person who occupies the position of a director, by whatever name called;
- (b) in the case of a partnership, a partner;
- (c) in the case of a trust, a trustee;

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“Director General” means the Director General appointed pursuant to section 21;

“documents” include information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“domestic business” means

- (a) deposit-taking business conducted exclusively in dollars and any other deposit-taking business when deposits are taken from, or moneys are lent to, persons resident in the Federation;
- (b) investment business conducted exclusively in dollars and any other investment business when the investment represents a claim on persons resident in the Federation;
- (c) insurance business conducted exclusively in dollars and any other insurance business when the contract is in respect of the life, safety, fidelity or insurable interest (other than in respect of property) of a person who at time of effecting the contract is resident in the Federation, or property that at the time of effecting the contract is in the Federation or, in the case of a vehicle, vessel, aircraft or other movable property, is ordinarily based in the Federation (but does not include re-insurance business);
- (d) assurance business when such business is conducted exclusively on behalf of an insurer who is carrying on domestic business;

“exempt person” means any exempt company, exempt limited partnership or exempt trust;

“excluded person” means a person excluded under subsection (2) of section 4;

“finance business” means any

- (a) deposit-taking business;
- (b) investment business;
- (c) insurance business;
- (d) assurance business;
- (e) trust business; or
- (f) corporate business,

carried on for profit or reward in or from within the Federation;

“financial year”, in relation to an authorised person, means the period not exceeding fifty-three weeks at the end of which the balance of the authorised person’s accounts is struck or, if no such balance is struck

or if a period in excess of fifty-three weeks is employed, then a calendar year;

“general insurance business” means insurance business other than long-term insurance business;

“insurance agent” means a person (not being an insurer) who solicits directly, or through representatives, advertising or other means, insurance business on behalf of not more than one insurer;

“insurance broker” means a person (not being an insurer) who negotiates directly, or through representatives or other means, contracts of insurance or of re-insurance on behalf of more than one insurer, or for placement with insurers or re-insurers;

“insurance business” means the business of effecting and carrying out contracts

(a) protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed; or

(b) to pay a sum of money or other thing of value upon the happening of an event,

and includes re-insurance business and running-off business including the settlement of claims;

“insurance manager” means a person operating in or from within the Federation who provides insurance expertise to or for insurers and which has in its *bona fide* employment a person who

(a) is qualified by examination as a fellow or associate of the Chartered Insurance Institute of London, or who is a member of either the Society of Chartered Property and Casualty Underwriters or the American Society of Chartered Life Underwriters both of the United States of America, and who is either a current member of good standing of the applicable professional body or of some other professional insurance association recognised by the Minister for the purpose of this Order; or

(b) is a person of good standing with such insurance expertise as has been approved by the Minister;

“insurance sub-agent” means a person (not being an insurer, insurance agent or insurance broker) who solicits directly or through advertising or other means, insurance business on behalf of an insurance agent or on behalf of an insurance broker;

“insurer” means a person carrying on insurance business;

“investment” means any asset, right or interest falling within any section in Part I of Schedule 2 to this Order;

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“investment business” means the business of engaging in one or more of the activities which fall within the sections in Part II of Schedule 2 to this Order and are not excluded by Part III or IV of that Schedule;

“long-term insurance business” means insurance business involving the making of contracts of insurance

- (a) on human life or contracts to pay annuities on human life, but excluding contracts for credit life insurance and term life insurance for a period of five years or less other than convertible and renewable term life contracts;
- (b) against risks of the persons insured sustaining injury as the result of an accident or of an accident of a specified class or dying as the result of an accident or of an accident of a specified class or becoming incapacitated in consequence of disease or diseases of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either not expressed to be terminable by the insurer before the expiration of five years from the taking effect thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned; and
- (c) whether by bonds, endowment certificates or otherwise, whereby in return for one or more premiums paid to the insurer a sum or series of sums is to become payable to the person insured in the future, not being contracts falling within paragraphs (a) or (b);

“manager” means a person, by whatever name called, other than a director or chief executive, who is responsible for the overall control and administration or having effective control of the day to day business of an authorised person or an office in the Federation of that authorised person;

“net assets” means the value of all the assets of a business less all its liabilities except its capital and reserves (other than reserves for duties, charges or contingencies) as determined on the basis of such regulations and valuation rules as the Minister may prescribe;

“Order” means this Order as amended, or as extended or applied, by or under any other Order made under this Act;

“partner” includes any general partner of a limited partnership;

“partnership” means any partnership, limited partnership or other unincorporated association wherever and however established;

“person” includes any

- (a) individual;
- (b) company;
- (c) partnership; or

(d) trust;

“principal insurance representative” means a person operating in or from within the Federation who, not being a *bona fide* employee, maintains for an insurer full and proper records of the business activities of that insurer;

“resident in the Federation” means a person who ordinarily resides within the Federation or carries on business from an office or other fixed place within the Federation, but does not include an excluded person or an exempt person;

“restricted business” means deposit-taking business, investment business or trust business undertaken exclusively for persons listed in any undertaking accompanying the application for the relevant authorisation and “unrestricted business” shall be construed accordingly;

“settlement” includes any disposition or arrangement under which property is held in trust;

“shareholder controller” has the meaning given by paragraph (e) of the definition of controller, above, and “minority shareholder controller”, “majority shareholder controller” and “principal shareholder controller” mean, respectively,

- (a) a shareholder controller in whose case the percentage referred to in that paragraph does not exceed fifty;
- (b) a shareholder controller in whose case the percentage exceeds fifty but does not exceed seventy-five;
- (c) a shareholder controller in whose case that percentage exceeds seventy-five;

“trust” means any trust or settlement wherever and however established;

“trust business” means the carrying on of, and the provision of services in relation to, corporate business and the business of

- (a) undertaking or executing trusts;
- (b) providing trustees or protectors for trusts;
- (c) maintaining the office for service of trusts;
- (d) managing or administering trusts.

(2) Subject to subsection (1), any words defined in the Acts shall, if not inconsistent with the subject or context, bear the same meaning in this Order.

(3) A reference in this Order to an enactment is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

(4) A reference to dollars in this Order is a reference to the currency of the Eastern Caribbean Central Bank.

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3. Application of this Order.

The provisions of this Order shall not extend or apply to persons carrying on domestic business.

PART II – AUTHORISATION

4. Prohibition of Unauthorised Finance Business.

(1) Subject to the provisions of this Order, no person shall carry on or hold himself or herself out as carrying on any finance business in or from within the Federation unless that person is for the time being authorised under this Order.

(2) This section shall not apply to the doing of anything by or on behalf of

- (a) the Government;
- (b) the Eastern Caribbean Central Bank;
- (c) the Eastern Caribbean Home Mortgage Bank;
- (d) the Caribbean Development Bank; or
- (e) any other person whom the Minister may, from time to time, prescribe (subject always to such conditions or restrictions as the Minister may think fit to impose in such Order).

(3) This section shall not apply to any transaction prescribed by the Minister for the purposes of this subsection.

(4) An Order under subsection (3)

- (a) may prescribe transactions by reference to any factor appearing to the Minister to be appropriate; and
- (b) may make any exemption for which it provides subject to compliance with specified conditions or requirements.

(5) A person who contravenes this section commits an offence and liable to a fine not exceeding fifty-four thousand dollars or, if that person is an individual, to imprisonment for a term not exceeding two years, or both.

5. Application for and Grant and extent of Authorisation.

(1) Subject to the provisions of this Order, on an application in that behalf made under this section and on payment of the prescribed fee, the Minister shall authorise that person.

(2) Every authorisation shall, unless previously revoked under the provisions of section 7, expire on the anniversary date in the next following year of the date on which it takes effect.

(3) Where an application under this section is made by or on behalf of a person who is not at the time of the application an authorised person the applicant shall deliver to the Director General together with the prescribed fee a statement signed by or on behalf of the applicant setting out:

- (a) the full name and principal business address of any applicant who is not a company, or in the case of a company its full name, the place where it is incorporated and the full address of its registered or principal office;
 - (b) the nature and scale of the finance business which the applicant intends to carry on, any plans of the applicant for the future development of that business and particulars of the applicant's arrangement for the management of that business; and
 - (c) where an application is delivered by a person as agent for any applicant, the statement shall specify that fact and the person's name and address.
- (4) Every statement delivered to the Director General pursuant to subsection (3) shall be accompanied by
- (a) in the case of a company or partnership, a copy of the Act, charter, articles of incorporation, memorandum and articles of association or partnership agreement of the applicant, as may be appropriate, verified by an affidavit sworn by a director and duly authenticated as follows:
 - (i) in the case of a company incorporated or partnership established under the law of the Federation, notarized; and
 - (ii) in the case of a company incorporated or partnership established under the law of any other country or territory, certified and authenticated under the public seal of the country or territory under the laws of which such company or partnership was incorporated or established;
 - (b) a list containing the names, addresses and nationalities of each shareholder controller and indirect controller of the applicant, together with a statement explaining, in respect of each of them, the nature and size of his or her controlling interest in the applicant;
 - (c) a list containing the names, addresses and nationalities of each director, chief executive and manager of the applicant, together with a statement explaining, in respect of each of them, any contractual arrangements that he or she may have with the applicant;
 - (d) in respect of each director, chief executive and manager of the applicant
 - (i) a police affidavit of no criminal record;
 - (ii) two letters of references, one from a recognised bank and one from a reputable lawyer, accountant or other professional; and
 - (iii) a resume with particular emphasis on experience in the finance business for which the application is submitted;
 - (e) the names and addresses
 - (i) of one director, chief executive or manager of the applicant who is the authorised agent in the Federation to accept on behalf of

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- the applicant service of process and any notice required to be served on the applicant; and
- (ii) of another director, chief executive or manager of the applicant who in the absence or inability to act of the person mentioned in sub-paragraph (i) is the authorised agent in the Federation of the applicant for the purposes of that sub-paragraph;
- (f) the names and addresses of lawyers, if any, of the applicant, together with a letter from the lawyers confirming that they act for the applicant;
 - (g) the names and addresses of auditors of the applicant, together with a letter from auditors confirming that they act for the applicant;
 - (h) an undertaking in writing to maintain at all times the relevant minimum financial resources set out in subsection (1) of section 6;
 - (i) the audited accounts of the applicant for the three years immediately preceding the date of the application or, in the case where the applicant has not carried out any business before the date of the application, an audited balance sheet showing the net assets of the applicant as at the end of the month immediately preceding the date of the application;
 - (j) in the case of an application for the authorisation to carry on a deposit-taking business, investment business or insurance business, a detailed business plan for the five years next following the date of the application;
 - (k) in the case of an application for an authorisation to undertake restricted business, an undertaking in writing to undertake business exclusively for the persons whose names, addresses and nationalities are given in the undertaking; and
 - (l) such other information or documents as the Minister may reasonably require for the purpose of determining the application.
- (5) Where an application under this section is made by or on behalf of a person who is at the time of the application an authorised person the applicant shall deliver to the Director General together with the prescribed fee a statement signed by or on behalf of the applicant setting out:
- (a) the full name and principal business address of any applicant who is not a company, or in the case of a company its full name, the place where it is incorporated and the full address of its registered or principal office;
 - (b) the extent to which any information given in any statement, audited accounts or other document delivered in respect of the last application has changed; and
 - (c) where an application is delivered by a person as agent for any applicant, the statement shall specify that fact and the person's name and address.

(6) At any time after receiving an application and before determining it the Minister may by written notice require the applicant or any person who is or is to be a controller, director or manager of the applicant to provide additional information or documents.

(7) The Minister may by written notice require the applicant or any other person as it is mentioned in subsection (6) to provide a report by an accountant or other qualified person approved by the Minister on such aspects of any information received by the Minister as he or she may specify in the notice.

(8) The directions and requirements given or imposed under subsection (6) may differ as between different applications.

(9) An application may be withdrawn by written notice to the Minister at any time before it is granted or refused.

6. Conditions of Grant of Authorisation.

(1) Subject to the provisions of this Order, no authorisation shall be granted unless the applicant has the following minimum financial resources:

- (a) in the case of deposit-taking business, net assets in the minimum sum of
 - (i) one million, three hundred and fifty thousand dollars or its equivalent in other currencies for an authorisation to undertake unrestricted business and restricted business;
 - (ii) one hundred and thirty-five thousand dollars or its equivalent in other currencies for an authorisation to undertake restricted business but not unrestricted business;
- (b) in the case of investment business, net assets in the minimum sum of
 - (i) one million, eighty thousand dollars or its equivalent in other currencies for an authorisation to undertake unrestricted business and restricted business;
 - (ii) one hundred and eight thousand dollars or its equivalent in other currencies for an authorisation to undertake restricted business but not unrestricted business;
- (c) in the case of insurance business, net assets in the minimum sum of
 - (i) eight hundred and ten thousand dollars or its equivalent in other currencies for an authorisation to undertake long-term insurance business and general insurance business;
 - (ii) five hundred and forty thousand dollars or its equivalent in other currencies for an authorisation to undertake long-term insurance business but not general insurance business;
 - (iii) two hundred and seventy thousand dollars or its equivalent in other currencies for an authorisation to undertake general insurance business but not long-term insurance business;
- (d) in the case of trust business, net assets in the minimum sum of

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- (i) five hundred and forty thousand dollars or its equivalent in other currencies for an authorisation to undertake unrestricted business and restricted business;
- (ii) fifty-four thousand dollars or its equivalent in other currencies for an authorisation to undertake restricted business but not unrestricted business;
- (e) in the case of any other finance business,
 - (i) net assets in the minimum sum of two hundred and seventy thousand dollars or its equivalent in other currencies;
 - (ii) a professional indemnity insurance in respect of the activities of the applicant and extended to include the activities on behalf of the applicant or of his agents, if any, placed with an insurer approved by the Minister, and for an indemnity in the minimum sum of two hundred and seventy thousand dollars or its equivalent in other currencies for any one loss; or
 - (iii) a guarantee in the minimum sum of two hundred and seventy thousand dollars or its equivalent in other currencies given under seal by a holding company of the applicant approved by the Minister, provided always that any guarantee which may be given under this sub-paragraph shall only be effective if it expressly provides that its formal validity, its essential validity, its interpretation and effect and the rights and obligation of the parties to it are governed exclusively by the law of the Federation and that the Court only shall be the forum for these purposes.

(2) Without prejudice to the generality of subsection (1), the requirement for an applicant to have the minimum financial resources specified in that subsection shall not apply in the case where a lawyer or accountant applies for an authorisation to carry on corporate business.

(3) Every authorisation shall be subject to the conditions that the authorised person

- (a) maintains at all times the minimum financial resources specified in subsection (1);
- (b) informs the Minister by notice in writing delivered to the Director General of any change, or proposed change, in the information contained in, or supplied in connection with, the last application for an authorisation;
- (c) carries on business only in accordance with the information referred to in paragraph (b) and such changes as the Minister may have approved.

(4) Notwithstanding anything in subsections (1), (2) and (3), the Minister may prescribe such conditions as he or she thinks fit applicable either generally to all authorised persons or to a class of authorised persons and may attach conditions to the authorisation of any particular person under that section and may from time to time vary any general

condition, any condition applying to a class of authorised persons or any condition attached to an authorisation or prescribe or attach a new condition.

(5) Without prejudice to the generality of subsection (4), such conditions may include matters which the Minister considers to be desirable in the interests of clients or prospective clients of an authorised person, whether for the purpose of safeguarding the assets of the authorised person or otherwise, and may, in particular,

- (a) require the authorised person to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict its business in a particular way;
- (b) require any authorised person to have higher minimum financial resources than those specified in subsection (1);
- (c) require any authorised person to effect a policy of insurance with a reputable insurance company against
 - (i) the dishonesty of employees of the authorised person; and
 - (ii) loss of documents, in such amount and of such a nature as the Minister may determine to be fit and proper, having due regard to the nature and type of business carried on by the authorised person;
- (d) specify the manner in which an authorised person may hold money for his or her clients;
- (e) impose limitations on the acceptance of deposits, the granting of credit, the effecting of insurance contracts or the making of investments;
- (f) prohibit the authorised person from soliciting business either generally or from persons who are not already clients of that authorised person;
- (g) prohibit an authorised person from entering into any other transaction or class of transactions;
- (h) require the removal of any director, chief executive or manager;
- (i) require the appointment of an auditor for a branch office of the authorised person;
- (j) require the production to the Minister of true and fair view audited accounts; and
- (k) require that the authorised person shall at all times have appointed a director, chief executive or manager approved by the Minister responsible for ensuring compliance with the terms and conditions of the authorisation.

(6) If any person fails to comply with any condition imposed under this section, that person shall for each such contravention be liable to a fine of two hundred and seventy thousand dollars or, if that person is an individual, to imprisonment for a term not exceeding 2 years, or both.

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(7) Where the Minister varies a condition attached to an authorisation or attaches a condition to an authorisation he or she shall give notice in writing to the authorised person concerned.

7. Refusal and Revocation of Authorisation.

(1) The Minister may refuse to grant an authorisation or, where an authorisation has been granted may revoke the authorisation, if

- (a) the applicant or the authorised person has not provided information required under section 5 or (as the case may be) has not provided to the Minister at any other time such information as the Minister may reasonably require;
- (b) it appears to the Minister that circumstances exist which either are likely to lead to the improper conduct of business by, or reflect discredit on, the method of conducting business of the applicant or the authorised person (as the case may be), or any person employed by or associated with the applicant or that authorised person for the purposes of his or her business;
- (c) without prejudice to the generality of paragraph (b), it appears to the Minister that by reason of the applicant or authorised person (as the case may be), or any person employed by or associated with, the applicant or that authorised person for the purposes of his or her business
 - (i) having been convicted of an offence involving dishonesty in any part of the Federation or in any other place; or
 - (ii) having been convicted of an offence against this Order, the applicant or authorised person is not, or as the case may be, is no longer a fit and proper to be authorised;
- (d) it appears to the Minister, as a result of information provided in pursuance of the requirements of section 5 or information otherwise obtained, that it is not in the best interest of clients or prospective clients of the applicant or the authorised person (as the case may be) or in order to protect the integrity of the Federation in financial or commercial matters or that it is not in the best economic interests of the Federation that the applicant or authorised person should be authorised or should continue to be authorised; or
- (e) without prejudice to sub-paragraph (ii) of paragraph (c), if in connection with any application for the grant of an authorisation under this Order, the applicant or authorised person has provided to the Minister information which is untrue or misleading in any material particular.

(2) Where the Minister refuses to grant an authorisation or revokes an authorisation he or she shall give written notice accordingly to the applicant or authorised person, as the case may be.

8. Authorisation Certificate and Publication of names of Authorised Persons.

(1) Whenever the Minister authorises a person he or she shall issue to that person, free of charge, an authorisation certificate.

(2) The Minister shall, from time to time, publish in the *Gazette* the names and addresses of all authorised persons, together with such other information appertaining to such persons as the Minister may think appropriate.

9. Display, Production and Delivery of Authorisation Certificate.

(1) Every authorised person shall

- (a) keep a copy of his or her authorisation certificate displayed in a prominent place and open to public view in every place in or from which he or she carries on a finance business;
- (b) when required by or on behalf of the Minister to do so, produce or deliver his or her authorisation certificate to the Minister or to any person authorised in that behalf.

(2) If any authorised person fails to comply with the provisions of this section, that person commits an offence and liable to a fine not exceeding two thousand seven hundred dollars and to a further fine not exceeding two hundred and seventy dollars for each day during which the offence continues.

*PART III – CONTROL OF TRANSFERABILITY OF SHARES***10. Notification of new or increased Control.**

(1) No person shall become a minority, majority or principal shareholder controller or an indirect controller of an authorised person which is a company incorporated in the Federation unless

- (a) he or she has notified the Minister in writing of his or her intention to become such a controller; and
- (b) the Minister has notified him or her in writing that there is no objection to his or her become such a controller,

(2) Subsection (1) applies also in relation to a person becoming a partner of an authorised person which is a partnership formed under the law of the Federation.

(3) Following receipt of a notice under subsection (1), the Minister may, by giving written notice to the person from whom the notice was received, require him or her to give such additional information or documents as the Minister may require for deciding whether to serve a notice of objection.

11. Objection to New or Increased Control.

(1) The Minister may serve a notice of objection under this section on a person who has given notice under section 10 unless he or she is satisfied

- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the authorised person;

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- (b) that the interest of clients and potential clients of the authorised person would not be in any other manner prejudiced by that person becoming a controller of that description of the authorised person; and
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the authorised person as a controller of the description in question the authorised person would be likely to continue to fulfil the conditions imposed on the authorised person under section 7, or, if any of those conditions is not fulfilled, that the person concerned would be likely to take remedial action.

(2) A notice of objection under this section shall

- (a) specify which of the matters mentioned in subsection (1) the Minister is not satisfied about and, subject to subsection (3), the reasons for which he or she is not satisfied;
- (b) give particulars of the rights of appeal conferred by section 15.

(3) Subsection (2) shall not require the Minister to specify any reason which would in his or her opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

12. Objection to Existing Shareholder Controller.

(1) Where it appears to the Minister that a person who is a shareholder controller of any description of an authorised person which is a company incorporated in the Federation is not or is no longer, a fit person to be such a controller, the Minister may serve on him or her a written notice of objection to his or her being such a controller.

(2) A notice of objection under this section shall

- (a) subject to subsection (3), specify the reasons for which it appears to the Minister that the person in question is no longer a fit and proper person as mentioned in subsection (1); and
- (b) give particulars of the rights of appeal conferred by section 15.

(3) Paragraph (a) of subsection (2) shall not require the Minister to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

13. Contravention by Controller.

(1) Subject to subsection (2), any person who contravenes section 10 by

- (a) failing to give the notice required by paragraph (a) of subsection (1) of that section; or
- (b) becoming a controller of any description to which that section applies before having been served with a notice by the Minister under paragraph (b) of subsection (1) of that section;

commits an offence.

(2) A person shall not be guilty of an offence under subsection (1) if he or she shows that he or she did not know of the acts or circumstances by virtue of which he or she became a controller of the relevant description, but where any person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he or she has become such a controller he or she commits an offence unless he or she gives the Minister written notice of the fact that he or she has become such a controller within fourteen days of becoming aware of the fact.

(3) Any person who

- (a) contravenes section 10 by becoming a controller of any description after being served with a notice of objection to his or her becoming a controller of that description; or
- (b) having become a controller of any description in contravention of that section (whether before or after being served with such a notice of objection) continues to be such a controller after such a notice has been served on him or her;

commits an offence.

(4) A person found guilty of an offence under subsection (1) or (2) shall be liable to a fine not exceeding twenty-seven thousand dollars.

(5) A person found guilty of an offence under subsection (3) shall be liable to a fine not exceeding fifty-four thousand dollars or, if that person is an individual, to imprisonment for a term not exceeding two years, or both and, in the case of an offence under paragraph (b) of the subsection, to a fine not exceeding five thousand four hundred dollars for each day on which the offence has continued.

14. Restrictions on Acquisition and Disposal of Shares.

(1) The powers conferred by this section shall be exercisable where a person

- (a) has contravened section 10 by becoming a shareholder controller of any description after being served with a notice of objection to his or her becoming a controller of that description; or
- (b) having become a shareholder controller of any description in contravention of that section continues to be one after such a notice has been served on him or her; or
- (c) continues to be a shareholder controller of any description after being served under section 12 with a notice of objection to his or her being a controller of that description.

(2) The Minister may, by notice in writing served on the person concerned, direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions:

- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or agreement to transfer the right to be issued with them shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;

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- (c) except in liquidation, no payment shall be made of any sum, due from the authorised person on the shares, whether in respect of capital or otherwise.
- (3) The Court may, on the application of the Minister, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions.
- (4) The Court shall not make any order under subsection (3) in a case where notice of objection was served under section 11 or 12
- (a) until the end of the period within which an appeal can be brought against the notice of objection; and
 - (b) if such an appeal is brought, until it has been determined or withdrawn.
- (5) Where an order has been made under subsection (3) the Court may, on the application of the Minister, make such further order relating to the sale or transfer of the shares as it thinks fit.
- (6) Where shares are sold in pursuance of an order under this section the proceeds of sale, less the costs of the sale, shall be paid into Court for the benefit of the persons beneficially interested in them, and any such person may apply to the Court for an order that the whole or part of the proceeds be paid to him or her.
- (7) This section applies
- (a) to all the shares in an authorised person of which the person in question is a controller of the relevant description which are held by him or her or any associate of his or hers and were not so held immediately before he or she became such a controller of the authorised person; and
 - (b) where the person in question became a controller of the relevant description of an authorised person as a result of the acquisition by him or her or any associate of his or hers of shares in another company, to all the shares in that company which are held by him or her or any associate of his or hers and were not so held before he or she became such a controller of that authorised person.
- (8) A copy of the notice served on the person concerned under subsection (2) shall be served on the authorised person or the company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

PART IV – APPEALS

15. Procedure and Rights of Appeal.

- (1) Where the Minister, acting under section 7, refuses an authorisation or revokes any authorisation or acting under section 6, attaches a condition to a requisition of a particular person or varies any condition so attached, the applicant or the authorised

person, as the case may be, may require the Minister to furnish him or her with a statement in writing of its reasons for that decision.

(2) Any person aggrieved by such refusal or revocation, or by the conditions attached to his or her authorisation or by any variation of such conditions may appeal to the Court, either in term or in vacation, on the ground that the decision of the Minister was unreasonable having regard to all the circumstances of the case.

(3) Where any person appeals against the revocation of his or her authorisation or against the variation of any condition attached to his or her authorisation under section 6, or, where his or her original authorisation was granted without any conditions attached thereto, against any subsequent attaching of conditions, the authorisation shall not be cancelled or the condition varied or attached as the case may be, until the appeal has been determined or withdrawn.

(4) Notwithstanding anything in subsection (3), the Court may, until an appeal is determined or withdrawn, make such order as it thinks fit for protecting the public against financial loss due to the dishonesty, incompetence or malpractice by the person appealing in respect of any of the matters mentioned in that subsection.

(5) Any person on whom a notice of objection has been served under section 11 or 12 may appeal to the Court against the decision of the Minister to serve the notice, but this subsection does not apply to a person in any case in which he or she has failed to give a notice or become or continued to be a controller in circumstances in which his or her doing so constitutes an offence under section 13.

16. Representation to the Court by Minister.

(1) Notwithstanding section 15, where the Minister decides to refuse an authorisation or to revoke any authorisation or to attach or vary any condition or where a person has ceased for any other reason to be an authorised person, he or she may represent to the Court that, in order that the interest of the clients of the applicant, the authorised person or the former authorised person, as the case may be, shall not be prejudicially affected, the business of the applicant or the authorised person or the former authorised person should be subject to such supervision, restraint or conditions from such time and for such periods as the Minister may specify in the representation.

(2) On the presentation of a representation under this section, the Court may make such order as it thinks just.

PART IV – INFORMATION

17. Annual Audited Accounts, Certificate of Compliance and other Documents.

(1) An authorised person shall within 3 months of the end of each of his or her financial years

- (a) prepare annual accounts in accordance with generally accepted accounting principles, audited by an independent auditor;
- (b) deliver to the Director General the annual accounts together with written confirmation from an independent auditor that the annual

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accounts have been prepared as required under paragraph (a) and whether or not the auditor's certificate for such accounts is unqualified and if qualified, the nature of the qualification;

- (c) deliver to the Director General a certificate of compliance issued by an independent auditor that the information set out in the application for an authorisation, as modified by any subsequent application for an authorisation, as modified by any subsequent notification of change in accordance with paragraph (b) of subsection (5) of section 5, remains correct and gives an accurate summary of the business of the authorised person; and
- (d) deliver to the Director General such other documents as are mentioned in section 18 or 19, as the case may require.

(2) The Director General may at any time by written notice sent to an authorised person request that the authorised person shall within one month from the date of such notice deliver to the Director General a certificate of compliance issued by an independent auditor that the information set out in the application for an authorisation, as modified by any subsequent notification of change in accordance with paragraph (b) of subsection (5) of section 5, remains correct and gives an accurate summary of the business of the authorised person.

(3) Where an authorised person changes auditor, the authorised person shall, when required by the Director General, authorise the former auditor to disclose the circumstances that gave rise to the change, and when so authorised, the auditor shall disclose such circumstances.

(4) The period within which any document is required to be submitted under this section may be extended by the Director General where he or she considers that there are circumstances justifying an extension.

(5) If any authorised person fails to comply with the provisions of this section, that person commits an offence and liable to a fine not exceeding five thousand four hundred dollars and to a further fine not exceeding five hundred and forty dollars for each day during which the offence continues.

18. Quarterly Statements and Returns.

(1) An authorised person carrying on deposit-taking business or investment business shall, in relation to his or her operations in or from within the Federation, submit to the Director General within one month of the end of each of his or her financial quarters the undermentioned documents in such form as the Director General may from time to time approve:

- (a) in the case of a deposit taking business,
 - (i) a quarterly statement of the assets and liabilities of its offices and branches in the Federation at the close of the last business day of the quarter to which the statement relates; and
 - (ii) a quarterly return providing an analysis of the liabilities of clients to such authorised person in respect of loans, advances

and other assets of the authorised person at the close of the last day of business of the quarter of which the return relates;

- (b) in the case of an investment business, a quarterly statement of the assets and liabilities of its offices and branches in the Federation at the close of the last business day of the quarter to which the statement relates.

(2) The period within which any document is required to be submitted under this section may be extended by the Director General where he or she considers that there are circumstances justifying an extension.

19. Actuarial Valuations and Written Confirmations.

(1) Every authorised person carrying on insurance business or assurance business shall, in relation to his or her operations in or from within the Federation, submit to the Director General, within three months of the end of each of his or her financial years, the undermentioned documents in such form as the Director General may from time to time approve:

- (a) in the case of an insurer,
 - (i) if he or she carries on long-term insurance business, an actuarial valuation of his or her assets and liabilities;
 - (ii) if he or she has a branch or other subsidiary activity in the Federation which is constituted as a separate legal entity, written confirmation that he or she accepts responsibility for all contracts issued by such branch or subsidiary activity and also for all acts, omissions and liabilities of such branch or subsidiary activity; and
 - (iii) a list of insurance agents and insurance brokers who have his or her authority to effect business on his or her behalf.
- (b) in the case of an insurance agent,
 - (i) a confirmation in writing that the said agent is acting for one insurer only and the name of that insurer;
 - (ii) a list of the sub-agents, if any, authorised by the said agent to solicit insurance business on his or her behalf and on behalf of the insurer whom he or she represents;
- (c) in the case of an insurance broker,
 - (i) a list of all insurers for whom the said insurance broker is authorised to act;
 - (ii) a list of the sub-agents, if any, authorised by the said insurance broker to solicit insurance business on his or her behalf and on behalf of the insurers whom he or she represents;
- (d) in the case of an insurance sub-agent, a confirmation in writing that the said sub-agent is acting for one insurance agent only, or for one insurance broker only, and the name of such insurance agent or insurance broker.

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- (e) in the case of an insurance manager, a list of all insurers for whom the said insurance manager acts.
- (2) The period within which any documents is required to be submitted under this section may be extended by the Director-General where he or she considers that there are circumstances justifying an extension.
- (3) If any authorised person fails to comply with the provisions of this section, that person commits an offence and liable to a fine not exceeding five thousand four hundred dollars and to a further fine not exceeding five hundred and fifty dollars for each day during which the offences continues.

PART VI – ADMINISTRATION

20. Establishment of the Financial Services Department.

(1) For the purpose of administrating this Order, there is established, in accordance with the provisions of this Order, within the Ministry of Finance a department to be known as the Financial Services Department.

[Substituted by SRO 45/1997]

(2) The Financial Services Department consists of the Office of the Director-General, comprising the Director-General and the Assistant to the Director-General, and subordinated thereto, the following organisational units:

- (a) the office of Superintendents, comprising:
 - (i) the superintendent of Deposit-Taking and Investment Business,
 - (ii) the Superintendent of Insurance and Assurance Business, and
 - (iii) the Superintendent of Trust and Corporate Business,
- (b) the Office of Registrars, comprising:
 - (i) the Registrar of Companies,
 - (ii) the Register of Limited Partnerships, and
 - (iii) the Registrar of Trusts,
- (c) the Office of Public Relation Officers, comprising:
 - (i) the Officer of Information and Press Relations,
 - (ii) the Officer of Marketing and Advertising; and
 - (iii) the Officer of Publications and Promotional Activities, and
- (d) the Officer of Administrative Officers, comprising:
 - (i) the Principal Accountant,
 - (ii) the Principal secretary, and
 - (iii) the Assistant Secretary.

21. Appointment of Director-General.

(1) For the purpose of ensuring the proper administration of this Order, there shall be appointed by the Minister an individual to be known as the Director-General of the Financial Services Department.

[Substituted by SRO 45/1997]

- (2) The functions of the Director-General include
- (a) the monitoring of finance business in the Federation;
 - (b) where he or she thinks fit or when required by the Minister, the examination in such manner as he or she considers necessary, the affairs or business of any authorised person for the purpose of satisfying himself or herself that the provisions of this Order are being complied with and the authorised person is in a sound financial position and is carrying on its business in a satisfactory manner;
 - (c) reporting to the Minister regarding the examination of any documents produced to the Director-General in the course of the performance of his or her functions;
 - (d) examining and making recommendations to the Minister with respect to all applications; and
 - (e) the management and supervision of the day-to-day affairs of the Financial Services Department.

22. Appointment of Other Officers.

(1) The Director-General, with the written approval of the Minister, may appoint any person to hold such office within the Financial Service Department as he or she thinks may be required to assist him or her in the performance of his or her functions under this Order.

(2) The Director-General, with the written approval of the Minister, may fix the terms of employment of the persons appointed by him under subsection (1) and define the functions to be performed by them under this Order if they are not set out in the Act.

23. Production of Records and evidence to Director-General.

(1) In the performance of his or her functions under this Order, the Director-General may at any time require an authorised person

- (a) to produce for examination such books, records and other documents; and
- (b) to supply such information or explanation,

as the Director-General may reasonably require for the purpose of enabling him or her to perform his or her functions under this Order.

(2) Notwithstanding subsection (1), the Director-General shall not have access to any document of a client of an authorised person or to any information, matter or thing relating to or concerning the affairs of any such client without first having obtained

- (a) the written consent of that client; or

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- (b) an order of the Court made on the ground that there are no other reasonable means of obtaining such documents, matter or thing.

24. Authority for search.

(1) The Director-General may, for the purpose of enabling him or her to perform his or her functions under this Order apply to the Court *ex parte* for a warrant under this section in relation to specified premises.

(2) If the Court is satisfied that the conditions in subsection (3) are fulfilled it may issue a warrant authorising a police officer and any other person named in the warrant to enter the specified premises (using such force as is reasonably necessary for the purpose) and to search them.

(3) The conditions referred to in subsection (2) are:

- (a) that an authorisation has been revoked under section 7;
- (b) that there are reasonable grounds for believing that an offence under this Order has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the application; or
- (c) that any documents that ought to have been produced under section 23 and have not been produced are to be found at any premises specified in the application.

(4) Where a person has entered premises in the execution of a warrant issued under this section, he or she may seize and retain any material which is likely to be of substantial value (whether by itself or together with other material) in determining whether an offence under this Order has been or is being committed.

(5) In this section, “premises” includes any place and, in particular, includes

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation; and
- (c) any tent or movable structure.

25. Obstruction.

Any person who wilfully obstructs any person acting in the execution of a warrant issued under section 24 commits an offence and liable to imprisonment for a term not exceeding two years or a fine or both.

26. Failure to Co-operate with Director-General.

(1) If any person fails to comply with a requirement under section 23, the Director-General may certify the refusal in writing to the Court.

(2) The Court may thereupon inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement in defence, the Court may punish the offender as if he or she had been guilty of contempt of the Court.

(3) Notwithstanding the generality of the foregoing, no proceedings for an offence or of the recovery of any penalty shall be instituted under this section against any person who refuses to answer any question if such refusal is made pursuant to subsection (4).

(4) A person may refuse to answer any question put to him or her pursuant to any provision of this Order if his or her answer would tend to expose that person, or the purpose of that person, to proceedings under the law of the Federation for an offence or for the recovery of any penalty.

27. Preservation of Secrecy.

(1) Except for the purpose of the performance or exercise of his or her duties or functions under this Order or when lawfully required to do so by the Court or under the provisions of any other law, the Director-General or any person appointed under subsection (1) of section 22 to assist him or her shall not disclose any information relating to any application under the provisions of this Order, or to the affairs of an authorised person of any client of an authorised person which he or she has acquired in the performance or exercise of such duties or functions under this Order.

(2) Subsection (1) shall not apply to the disclosure by the Director-General to a banking supervisory authority or any other like regulatory authority of information about the authorised person.

PART VII – MISCELLANEOUS AND FINAL PROVISIONS

28. Duties of Authorised Persons.

(1) An authorised person shall maintain, in respect of any finance business carried out by him or her,

- (a) such books or records as accurately reflect the finance business carried out by him or her;
- (b) separate accounts in the books or records in respect of each of his or her clients and shall separate the funds and other property of every such client from his or her own; and
- (c) in the case of finance business other than deposit-taking business, one or more separate bank accounts into which shall be deposited all moneys held on behalf of each of his or her clients.

(2) An authorised person shall not change its name or operate outside the Federation as subsidiary, branch, an agency or representative office without the prior written approval of the Minister.

29. Restrictions on use of certain terms.

- (1) No person, other than an authorised person shall,
 - (a) use any word, either in English or in any other language, in the description or title under which he or she carries on business in or

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from within the Federation that, in the opinion of the Minister, suggests that he or she is carrying on any finance business; or

- (b) make any representation in any document or in any other manner that is likely to suggest that he or she is carrying on any finance business.

(2) The Minister may require an authorised person who carries on any finance business under a name which is

- (a) identical to that of any other person, whether within or outside the Federation, or which so nearly resembles that name as to be calculated to deceive;
- (b) calculated to suggest falsely the patronage of or connection with some person whether within or outside the Federation; or
- (c) calculated to suggest falsely that he or she has special status in relation to or derived from the Government or has the official approval of, or acts on behalf of, the Government or of any of its departments or officials,

forthwith to change the name and in the default of compliance may revoke the licence issued to the authorised person.

30. **Exemptions.**

An authorised person shall not be subject to any of the following Acts, that is to say:

- (a) the Banking Act, Cap. 21.01 if he or she is authorised to carry on deposit-taking or investment business under this Order;
- (b) the Insurance Act, Cap. 21.11 if he or she is authorised to carry on insurance or assurance business under this Order; and
- (c) the Licences on Business and Occupation Act, Cap. 18.20 in respect of the finance business which he or she is authorised to carry on under this Order if he or she is resident in the Island of Saint Christopher.

[Substituted by SRO 45/1997]

SCHEDULE 1 TO THE ORDER

(Regulation. 2)

Deposit and Deposit-Taking Business

1. **Deposit.**

(1) In this Order, unless the context otherwise requires, “deposit” means a sum of money denominated in whatever currency paid on terms

- (a) under which it will be repaid, with or without interest or on premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and

- (b) which are not referable to the provision of property or services or to the giving of security;

and reference in this Order to money deposited and to the making of a deposit shall be construed accordingly.

(2) For the purposes of paragraph (b) of subsection (1), money is paid on terms which are referable to the provision of property or services or to the giving of security if, and only if

- (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services and is repayable only in the event that the property or services is not or are not in fact, sold, hired or otherwise provided;
- (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
- (c) without prejudice to paragraph (b), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

(3) Except so far as any provision of this Order otherwise provides, in this Order “deposit” does not include

- (a) a sum paid by an authorised person;
- (b) a sum paid by an excluded person;
- (c) a sum paid by a person, other than a person mentioned in paragraph (a) or (b), in the course of carrying on a business consisting wholly or mainly of lending money;
- (d) a sum which is paid by one company to another at a time when one is a subsidiary of the other or both are subsidiaries of another company or the same individual is a majority or principal shareholder controller of both of them; or
- (e) a sum which is paid by a person who, at the same time when it is paid, is a close relative of the person receiving it or who is, or is a close relative of, a controller, director or manager of that person;
- (f) a sum paid on terms involving the issue of debentures or other securities.

(4) In the application of paragraph (e) of subsection (3) to a sum paid by a partnership that paragraph shall have effect as if the reference to the person paying the sum there were substituted a reference to each of the partners.

2. Activities Constituting Deposit-Taking Business.

- (1) For the purpose of this Order, a person carries on deposit-taking business if
 - (a) in the course of the business money received by way of deposit is lent to others; or

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- (b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.
- (2) Notwithstanding subsection (1), a business is not a deposit-taking business for the purpose of this Order if
 - (a) the person carrying it on does not hold himself or herself out as accepting deposits on a daily basis, and
 - (b) any deposits which are accepted are accepted only on particular occasions.
- (3) For the purpose of subsection (1), all the activities which a person carries on by way of business shall be regarded as a single business carried on by him or her.
- (4) In determining, for the purpose of paragraph (b) of subsection (2), whether deposits are accepted only on particular occasions regard shall be had to the frequency of those occasions and to any characteristics distinguishing them from each other.
- (5) For the purposes of subsection (2), there shall be disregarded any deposit in respect of the acceptance of which the person in question is an excluded person and any money received by way of deposit which is not used in the manner described in subsection (1).

SCHEDULE 2 TO THE ORDER

(Regulation 2)

Investments and Investment Business

PART I – INVESTMENTS

1. Shares.

- (1) Shares and stock in the share capital of a company.
- (2) In this section, “company” does not include an open-ended investment company.

2. Debentures.

- (1) Debentures, including debenture stock, loan stock, bonds, certificates of deposits and other instruments creating or acknowledging indebtedness, not being instruments falling within section 3.
- (2) This section shall not be construed as applying
 - (a) to any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
 - (b) to a cheque or other bill of exchange, a banker’s draft or a letter of credit; or

- (c) to a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property, a heritable security or an insurance policy;

3. Government and public securities.

(1) Loan stock, bonds and other instruments creating or acknowledging indebitures issued by or on behalf of a government, local authority or public authority.

(2) In this section, “government”, local authority or public authority” means

- (a) the government of the Federation or of any country or territory outside the Federation;
- (b) a local authority in the Federation or elsewhere;
- (c) any international organisation the members of which include the Federation or another member state.

(3) Subsection (2) of section 2 shall, so far as applicable, also apply to this section.

4. Instruments entitling to shares or securities.

(1) Warrants or other instruments entitling the holder to subscribe for investments falling within section 1, 2 or 3.

(2) For the purposes of this section, it is immaterial whether the investments are for the time being in existence or identifiable.

(3) An investment falling within this section shall not be regarded as falling within section 7, 8 or 9.

5. Certificates representing securities.

(1) Certificates or other instruments which confer

- (a) property rights in respect of any investment falling within section 1, 2, 3 or 4;
- (b) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder would be entitled if he or she held any such investment to which the certificate or instrument relates; or
- (c) a contractual right (other than an option) to acquire any such investment otherwise than by subscription.

(2) This section does not apply to any instrument which confers rights in respect of two or more investments issued by different persons or in respect of two or more different investments falling within section 3 and issued by the same person.

6. Units in collective investment schemes.

Units in collective investment schemes, including shares in or securities of an open-ended investment company.

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7. Options.

Options to acquire or dispose of

- (a) an investment falling within any other section of this Part of this Schedule;
- (b) currency of any country or territory;
- (c) gold, palladium, platinum or silver; or
- (d) an option to acquire or dispose of an investment falling within this section by virtue of paragraph (a), (b) or (c).

8. Futures.

(1) Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made.

(2) This section does not apply if the contract is made for commercial and not for investment purposes.

(3) A contract shall be regarded as made for investment purposes if it is made or traded on a recognised investment exchange or made otherwise than on a recognised investment exchange but expressed to be as traded on such an exchange or on the terms as those on which an equivalent contract would be made on such an exchange.

(4) A contract not falling within subsection (3) shall be regarded as made for commercial purpose if under the terms of the contract delivery is to be made within seven days.

(5) The following are indications that any other contract is made for a commercial purpose and the absence of any of them is an indication that it is made for investment purposes:

- (a) either or each of the parties is a producer of the commodity or other property or uses it in his or her business;
- (b) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.

(6) It is an indication that a contract is made for commercial purposes that the price, the lot, the delivery date or the other terms are determined by the parties for the purposes of the particular contract and not by reference to regularly published prices, to standard lots or delivery dates or to standard terms.

(7) The following are also indications that a contract is made for investment purposes:

- (a) it is expressed to be as traded on a market or an exchange;
- (b) performance of the contract is ensured by an investment exchange or a clearing house;
- (c) there are arrangements for the payment or provision of margin.

(8) A price shall be taken to have been agreed upon when a contract is

- (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
- (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

9. Contracts for differences.

(1) Rights under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

(2) This section does not apply where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.

10. Long-term insurance contracts.

(1) Rights under a contract the effecting and carrying out of which constitute long-term insurance business.

- (2) This section does not apply to rights under a contract of insurance if
 - (a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
 - (b) no benefits are payable under the contract on a death (other than a death due to accident) unless it occurs within ten years of the date on which the life of the person in question was first insured under the contract or before that person attains a specified age not exceeding seventeen years;
 - (c) the contract has no surrender value or the consideration consists of a single premium and the surrender value does not exceed the premium; and
 - (d) the contract does not make provision for its conversion or extension in a manner that would result in its ceasing to comply with subparagraphs (a), (b) and (c).

(3) This section does not apply to rights under a re-insurance contract.

(4) Rights falling within this section shall not be regarded as falling within section 9.

11. Rights and interests in investments.

(1) Rights to and interests in anything which is an investment falling within any other section of this Part of this Schedule.

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(2) This section does not apply to interests under the trusts of an occupational pension scheme.

(3) This section does not apply to rights or interests which are investments by virtue of any other section of this Part of this Schedule.

PART II – ACTIVITIES CONSTITUTING INVESTMENT BUSINESS

12. Dealing in investments.

(1) Buying, selling, subscribing for or underwriting investments or offering or agreeing to do so, either as principal or as an agent.

(2) This section does not apply to a person by reason of his accepting, or offering or agreeing to accept, whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has made, granted or provided or which he or his principal has offered or agreed to make, grant or provide.

(3) The references in subsection (2) to a person accepting, or offering or agreeing to accept, an instrument include references to a person becoming, or offering or agreeing to become, a party to an instrument otherwise than as debtor or a surety.

13. Arranging deals in investments.

(1) Making or offering or agreeing to make

- (a) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment; or
- (b) arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

(2) This section does not apply to a person by reason of his or her making, or offering or agreeing to make, arrangements with a view to a transaction to which he or she will himself or herself be a party as principal or which will be entered into by him or her as agent for one of the parties.

(3) The arrangements in paragraph (a) of subsection (1) are arrangements which bring about or would bring about the transaction in question.

(4) This section does not apply to a person (“the relevant person”) whose ordinary business includes the making of loans or the giving of guarantees in connection with loans by reason of the relevant person making, or offering or agreeing to make, arrangements with a view to an authorised person who carries on insurance business which is investment business selling an investment which falls within section 10 or, so far as relevant to that section, section 11 if the arrangements are either

- (a) that the authorised person or a person on his or her behalf will introduce persons to whom the authorised person has sold or proposes to sell an investment of the kind described above, or will advise such persons to approach, the relevant person with a view to the relevant person lending money on the security of that investment; or

- (b) that the authorised person gives an assurance to the relevant person as to the amount which will or may be received by the relevant person, should that person lend money to a person to whom the authorised person has sold or proposes to sell an investment of the kind described above, on the surrender or maturity of that investment if it is taken as security for a loan.

(5) This section does not apply to a person by reason of his or her making, or offering or agreeing to make, arrangements with a view to a person accepting, whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or she or his or her principal has made, granted or provided or which he or she or his or her principal has offered or agreed to make, grant or provide.

(6) Arrangements do all fall within paragraph (b) of subsection (4) by reason of their having as their purpose the provision of finance to enable a person to buy, sell, subscribe for or underwrite investments.

(7) This section does not apply to arrangements for the introduction of persons to another person if

- (a) the person to whom the introduction is made is an authorised person or excluded person or is a person whose ordinary business involves him or her in engaging in activities which fall within this Part of this Schedule or would do apart from the provisions of Part III or Part IV and who is not unlawfully carrying on investment business in the Federation; and
- (b) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion either
 - (i) in relation to investments generally; or
 - (ii) in relation to any class of investments if the transaction or advice is or is to be with respect to an investment within that class.

(8) The references in subsection (4) above to a person accepting an investment include references to a person becoming a party to an instrument otherwise than as a debtor or a surety.

14. Managing Investments.

Managing, or offering or agreeing to manage, assets, belonging to another person if

- (a) those assets consist of or include investment; or
- (b) the arrangement for their management are such that those assets may consist of or include investments at the discretion of the person managing or offering or agreeing to manage them and either they have at any time since the date of the coming into force of this Order done so or the arrangements have at any time (whether before or after that date) been held out as arrangements under which they would so be.

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15. Investment advice.

Giving, or offering or agreeing to give, to persons in their capacity as investors or potential investors advice on the merits of their purchasing, selling, subscribing for or underwriting an investment, or exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.

16. Establishing etc. collective investment schemes.

Establishing, operating or winding up collective investment schemes, including acting as trustee of unit trusts.

PART III – EXCLUDED ACTIVITIES

17. Dealings as principals.

(1) Section 12 applies to a transaction which is or is to be entered into by a person as principal only if

- (a) he or she holds himself or herself out as willing to enter into transactions of that kind at prices determined by him or her generally and continuously rather than in respect of each particular transaction;
- (b) he or she holds himself or herself out as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
- (c) he or she regularly solicits members of the public for the purpose of inducing them to enter as principals or agents into transactions to which that paragraph applies and the transaction is or is to be entered as a result of his or her having solicited members of the public in that manner.

(2) In subsection (1), “buying” and “selling” means buying and selling by transactions to which section 12 applies and “member of the public”, in relation to the person soliciting them (“the relevant person”), means any other person except

- (a) authorised persons, excluded persons, or persons holding a permission under section 23;
- (b) members of the same group as the relevant person;
- (c) persons who are, or propose to become, participators with the relevant person in a joint enterprise;
- (d) any person who is solicited by the relevant person with a view to
 - (i) the acquisition by the relevant person of fifteen per cent or more of the voting shares in a company (that is to say, shares carrying not less than that percentage of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the body),
 - (ii) if the relevant person (either alone or with other members of the same group as himself or herself) holds fifteen per cent or more

of the voting shares in a company, the acquisition by him or her of further shares in the body or the disposal by him or her of shares in that body to the person solicited or to a member of the same group as that person, or

- (iii) if the person solicited (either alone or with other members of the same group as himself or herself) holds 15 per cent or more of the voting shares in a company, the disposal by the relevant person of further shares in that body to the person solicited or to a member of the same group as that person;
 - (e) any person whose head office is outside the Federation, who is solicited by an approach made or directed to him or her at a place outside the Federation and whose ordinary business involves him or her in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part or Part IV.
- (3) Subsection (1) applies only
- (a) if the investment to which the transaction relates or will relate falls within any of sections 1 to 6 or, so far as relevant to any of those sections, section 11; or
 - (b) if the transaction is the assignment of an investment falling within section 10 or is the assignment of any investment falling within section 11 which confers rights to or interests in an investment falling within section 10.
- (4) Section 12 does not apply to any transaction which relates or is to relate to an investment which falls within section 10 or, so far as relevant to that section, section 11 nor does it apply to a transaction which relates or is to relate to an investment which falls within any of sections 7 to 9 or, so far as relevant to any of those sections, section 11 being a transaction which, in either case, is or is to be entered into by a person as principal if he or she is not an authorised person and the transaction is or is to be entered into by him or her
- (a) with or through an authorised person, an excluded person or a person holding a permission under section 23; or
 - (b) through an office outside the Federation, maintained by a party to the transaction, and with or through a person whose head office is situated outside the Federation and whose ordinary business is such as is mentioned in paragraph (e) of subsection (2).

18. Groups and joint enterprises.

- (1) Section 12 does not apply to any transaction which is to be entered into by a person as principal with another person if
- (a) they are companies in the same group; or
 - (b) they are, or propose to become, participators in a joint enterprise and the transaction is or to be entered into for the purposes of, or in connection with, that enterprise.

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(2) Section 12 does not apply to any transaction which is or is to be entered into by any person as agent for another person in the circumstances mentioned in paragraph (a), or (b) or subsection (1) if,

- (a) where the investment falls within any of sections 1 to 6 or, so far as relevant to any of those sections, section 11, the agent does not
 - (i) hold himself or herself out (otherwise than to other companies in the same group or persons who are or propose to become participators with him or her in a joint enterprise) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
 - (ii) regularly solicit members of the public for the purpose of including them to enter as principals or agents into transactions to which section 12 applies;

and the transaction is not or is not to be entered into as a result of his or her having solicited members of the public in that manner,

- (b) where the investment is not as mentioned in paragraph (a),
 - (i) the agent enters into the transaction with or through an authorised person, an excluded person or a person holding a permission under section 23; or
 - (ii) the transaction is effected through an office outside the Federation, maintained by a party to the transaction, and with or through a person whose head office is situated outside the Federation and whose ordinary business involves him or her in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part and Part IV.

(3) Section 13 does not apply to arrangements which a person makes or offers or agrees to make if

- (a) that person is a company and the arrangements are with a view to another company in the same group entering into a transaction of the kind mentioned in that section; or
- (b) that person is or proposes to become a participator in a joint enterprise and the arrangements are with a view to another person who is or proposes to become a participator in the enterprise entering into such a transaction for the purposes of or in connection with that enterprise.

(4) Section 14 does not apply to a person by reason of his or her managing or offering or agreeing to manage the investments of another person if

- (a) they are companies in the same group; or
- (b) they are, or propose to become, participators in a joint enterprise and the investments are or to be managed for the purpose of, or in connection with, that enterprise.

(5) Section 15 does not apply to advice given by a person to another person if

- (a) they are companies in the same group; or
- (b) they are, or propose to become, participators in a joint enterprise and the advice is given for the purposes of, or in connection with, that enterprise.

(6) The definitions in subsection (2) of section 17 shall apply also for the purposes of paragraph (a) of subsection (2) except that the relevant person referred to in paragraph (d) of subsection (2) of section 17 shall be the person for whom the agent is acting.

19. Sale of goods and supply of services.

(1) Subject to subsection (9), this section has effect where a person (“the supplier”) sells or offers or agrees to sell goods to another person (“the customer”) or supplies or offers or agrees to supply him or her with services and the supplier’s main business is to supply goods or services and not to engage in activities falling within Part II of this Schedule.

(2) Section 12 does not apply to any transaction which is or is to be entered into by the supplier as principal if it is or is to be entered into by him or her with the customer for the purposes of or in connection with the sale or supply or a related sale or supply (that is to say, a sale or supply to the customer otherwise than by the supplier but for or in connection with the same purpose as the first-mentioned sale or supply).

(3) Section 12 does not apply to any transaction which is or is to be entered into by the supplier as agent for the customer if it is or is to be entered into for the purposes of or in connection with the sale or supply or a related sale or supply and

- (a) where the investment falls within any of sections 1 to 6 or, so far as relevant to any of those sections, section 11, the supplier does not
 - (i) hold himself or herself out (otherwise than to the customer) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
 - (ii) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which section 12 applies;

and the transaction is not or is not to be entered into as a result of his or her having solicited members of the public in that manner;

- (b) where the investment is not or is not as mentioned in paragraph (a), the supplier enters into the transaction
 - (i) with or through an authorised person, an excluded person or a person holding a permission under section 23; or
 - (ii) through an office outside the Federation, maintained by a party to the transaction, and with or through a person whose head office is situated outside the Federation and whose ordinary business involves him or her in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part and Part IV.

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(4) Section 13 does not apply to arrangements which the supplier makes or offers or agrees to make with a view to the customer entering into a transaction for the purposes of or in connection with the sale or supply or a related sale or supply.

(5) Section 14 does not apply to the supplier by reason of his or her managing or offering or agreeing to manage the investments of the customers if they are or are to be managed for the purposes of or in connection with the sale or supply or a related sale or supply.

(6) Section 15 does not apply to advice given by the supplier to the customer for the purposes of or in connection with the sale or supply or a related sale or supply or to a person with whom the customer proposes to enter into a transaction for the purposes of or in connection with the sale or supply or a related sale or supply.

(7) Where the supplier is a company and a member of a group subsections (2) to (6) shall apply to any other member of the group as they apply to the supplier, and where the customer is a company and a member of a group reference in those subsections to the customer include references to any other member of the group.

(8) The definitions in subsection (2) of section 17 shall apply also for the purposes of paragraph (a) of subsection (3).

(9) This section does not have effect where either

- (a) the customer is an individual;
- (b) the transaction in question is the purchase or sale of an investment which falls within section 6 or 10 or, so far as relevant to either of those sections, section 11;
- (c) the investments which the supplier manages or offers or agrees to manage consist of investments falling within section 6 or 10 or, so far as relevant to either of those sections, section 11; or
- (d) the advice which the supplier gives is advice on an investment falling within section 6 or 10 or, so far as relevant to either of those sections; section 11.

20. **Employees' share scheme.**

(1) Sections 12 and 13 do not apply to anything done by a company, a company connected with it or a relevant trustee for the purpose of enabling or facilitating transactions in shares in or debentures of the first-mentioned body between or for the benefit of any of the persons mentioned in subsection (2) or the holding of such shares or debentures by or for the benefit of any such person.

(2) The persons referred to in subsection (1) are:

- (a) the *bona fide* employees or former employees of the company or of another company in the same group; or
- (b) the wives, husbands, widows, widowers, or children or step-children under the age of eighteen of such employees or former employees.

(3) In this section, “a relevant trustee” means a person holding shares in or debentures of a company as trustee in pursuance of arrangements made for the purpose mentioned in subsection (1) by, or by a company connected with, that company.

(4) In this section, “shares” and “debenture” include any investment falling within section 1 or 2 and also include any investment falling within section 4 or 5 so far as relating to those sections or any investment falling within section 11 so far as relating to section 1, 2, 4 or 5.

(5) For the purposes of this section, a company is connected with another company if

- (a) they are in same group; or
- (b) one is entitled, either alone or with any other company in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other company or of its holding company.

21. Sale of company.

(1) Sections 12 and 13 do not apply to the acquisition or disposal of, or to anything done for the purpose of the acquisition or disposal of, shares in a company other than an open-ended investment company, and section 15 does not apply to advice given in connection with the acquisition or disposal of such shares if

- (a) the shares consist of or include shares carrying 75 per cent or more of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the company; or
- (b) the shares, together with any already held by the person acquiring them, carry not less than that percentage of those voting rights; and
- (c) in either case, the acquisition and disposal is, or is to be between parties each of whom is a company, a partnership, a single individual or a group of connected individuals.

(2) For the purposes of paragraph (c) of subsection (1), “a group of connected individuals”, in relation to the party disposing of the shares, means persons each of whom is, or a close relative of, a controller, director or manager of the company and, in relation to the party acquiring the shares, means persons each of whom is, or is a close relative of, a person who is a controller, director or manager of the company.

22. Trustees and personal representatives.

(1) Section 12 does not apply to a person by reason of his or her buying, selling or subscribing for an investment or offering or agreeing to do so if

- (a) the investment is or, as the case maybe, is to be held by him or her as bare trustee or nominee for another person;
- (b) he or she is acting on that person’s instructions; and
- (c) he or she does not hold himself or herself out as providing a service of buying and selling investments.

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(2) Section 13 does not apply to anything done by a person as trustee or personal representative with a view to

- (a) a fellow trustee or personal representative and himself or herself engaging in their capacity as such in an activity falling within section 12; or
- (b) a beneficiary under the trust, will or intestacy engaging in any such activity;

unless that person is remunerated for what he or she does in addition to any remuneration he or she receives for discharging his or her duties as trustee or personal representative.

(3) Section 14 does not apply to anything done by a person as trustee or personal representative unless he or she holds himself or herself out as offering investment management services or is remunerated for providing such services in addition to any remuneration he or she receives for discharging his or her duties as trustee or personal representative.

(4) Section 15 does not apply to advice given by a person as trustee or personal representative to

- (a) a fellow trustee or personal representative for the purposes of the trust or estate; or
- (b) a beneficiary under the trust, will or intestacy concerning his or her interest in the trust fund or estate;

unless that person is remunerated for doing so in addition to any remuneration he or she receives for discharging his or her duties as trustee or personal representative.

(5) Subsection (1) has effect to the exclusion of section 17 as respects any transaction in respect of which the conditions in paragraphs (a) and (b) of subsection (1) are satisfied.

(6) For the purposes of paragraph (a) of subsection (1), “bare trustee”, in relation to an investment, means a person holding the investment on trust for another person who has the exclusive right to direct how it shall be dealt with subject only to satisfying any outstanding charge, lien or other right of the trustee to resort to it for the payment of duty, taxes, costs or other outgoings.

23. Dealings in course of non-investment business.

(1) Section 12 does not apply to anything done by a person

- (a) as principal;
- (b) if that person is a company in group, as agent for another member of the group; or
- (c) as agent for a person who is or proposes to become a participator with him or her in a joint enterprise and for the purposes of or in connection with that enterprise;

if it is done in accordance with the terms and conditions of a permission granted to him or her by the Minister under this section.

(2) Any application for permission under this section shall be accompanied or supported by such information as the Minister may require and shall not be regarded as duly made unless accompanied by the prescribed fee.

(3) The Minister may grant a permission under this section if it appears to him or her

- (a) that the applicant's main business, or if he or she is a member of a group the main business of the group, does not consist of activities for which a person is required to be authorised under this Order;
- (b) that the applicant's business is likely to involve such activities which fall within section 12; and
- (c) that, having regard to the nature of the applicant's main business and, if he or she is a member of a group, the main business of the group taken as a whole, the manner in which, the persons with whom and the purposes for which the applicant proposes to engage in activities that would require him or her to be an authorised person and to any other relevant matters, it is inappropriate to require him or her to be subject to regulation as an authorised person.

(4) Any permission under this section shall be granted by a notice in writing, and the Minister may by a further notice in writing withdraw any such permission if for any reason it appears to him or her that it is not appropriate for it to continue in force.

(5) The Minister may prescribe regulations, requiring persons holding permissions under this section to furnish him or her with information for the purpose of enabling him or her to determine whether those permissions should continue in force, and such regulations may, in particular, require such persons

- (a) to give him or her notice forthwith of the occurrence of such events as are specified in the regulations with such information in respect of those events as is so specified;
- (b) to furnish him or her at such times or in respect of such periods as are specified in the regulations with such information as is so specified.

(6) Part V of this Order shall apply to a person holding a permission under this section as if he or she were an authorised person carrying on investment business.

24. Advice given or arrangements made in course of professional or non-investment business.

- (1) Section 13 does not apply to arrangements
 - (a) which are made in the course of the carrying on of any profession or of a business not otherwise constituting investment business; and
 - (b) the making of which is a necessary part of other services provided in the course of carrying on that profession or business.
- (2) Section 15 does not apply to advice
 - (a) which is given in the course of the carrying on of any profession or of a business not otherwise constituting investment business; and

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(b) the giving of which is a necessary part of other advice or services given in the course of carrying on that profession or business.

(3) The making of arrangements shall not be regarded as falling within paragraph (b) of subsection (1) and advice shall not be regarded as falling within paragraph (b) of subsection (2) if the giving of advice or the making of arrangements is remunerated separately from the other advice or services.

25. Newspapers.

(1) Section 15 does not apply to advice given in a newspaper, journal, magazine or other periodical publication if the principal purposes of the publication, taken as a whole and including any advertisements contained in it, is not to lead persons to invest in any particular investment.

(2) The Minister may, on the application of the proprietor of any periodical publication, certify that it is of the nature described in subsection (1) and revoke any such certificate if he or she considers that it is no longer justified.

(3) A certificate given under subsection (2) and not revoke shall be conclusive evidence of the matters certified.

26. Advice given to television, sound or teletext services.

(1) Section 15 does not apply to any advice given in any programme included, or made for inclusion, in

- (a) any television broadcasting service or other television programme service;
- (b) any sound broadcasting service or licensable sound programme service; or
- (c) any teletext service.

(2) For the purpose of this section, “programme”, in relation to a service mentioned in subsection (1), includes any advertisement and any other item included in the service.

27. International self-regulating organisations.

(1) An activity within section 13 engaged in for the purposes of carrying out the functions of a body or association which is approved under this section as an international securities self-relating organisation, whether by the organisation or by any person acting on its behalf, shall not constitute the carrying on of investment business in the Federation for the purpose of this Order.

(2) In this section,

- (a) “international securities business” means the business of buying, selling, subscribing for or underwriting investments (or offering or agreeing to do so, either as principal or agent) which fall within any of the sections in Part I of this Schedule other than section 10 and, so far as relevant to section 10, section 11 and which, by their nature, and the manner in which the business is conducted, may be expected

normally to be bought or dealt in by persons sufficiently expert to understand any risks involved, where either the transaction is international or each of the parties may be expected to be indifferent to the location of the other, and, for the purpose of this definition, the fact that the investments may ultimately be bought otherwise than in the course of international securities business by persons not so expert shall be disregarded; and

- (b) “international securities self-regulating organisation” means an organisation which
- (i) does not have its head office in the Federation;
 - (ii) has a membership composed of persons falling within any of the following categories, that is to say, authorised persons, excluded persons, persons holding a permission under section 23 and persons whose head offices are outside the Federation and whose ordinary business is such as is mentioned in paragraph (e) of subsection (2) of section 17; and
 - (iii) facilitates and regulates the activity of its members in the conduct of international securities business.

(3) The Minister may approve as an international securities self-regulating organisation any body or association appearing to him or her to fall within subsection (2) if, having regard to such matter affecting international trade, overseas earnings and the balance of payments or otherwise as he or she considers relevant, it appears to him or her that to do so would be desirable and not result in any undue risk to investors.

(4) Any approval under this section shall be given by notice in writing; and the Minister may by further notice in writing withdraw any such approval if for any reason it appears to him or her that it is not appropriate for it to continue in force.

*PART IV – ADDITIONAL EXCLUSIONS FOR PERSONS WITHOUT PERMANENT
PLACE OF BUSINESS IN THE FEDERATION*

28. Transaction with or through authorised or excluded persons.

(1) Section 12 does not apply to any transaction by a person who does not carry on investment business from a permanent place of business maintained by him or her in the Federation (“an overseas person”) with or through

- (a) an authorised person; or
- (b) an excluded person.

(2) Section 13 does not apply if

- (a) the arrangements are made by an overseas person with, or the offer or agreement to make them is made by him or her to or with, an authorised person, or an excluded person; or
- (b) the transactions with a view to which the arrangements are made are, as respects transactions in the Federation, confined to transactions by authorised persons and transactions by excluded persons.

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29. Unsolicited or legitimately solicited transactions etc. with or for other persons.

(1) Section 12 does not apply to any transaction entered into by an overseas person as principal with, or as agent for, a person in the Federation; sections 13, 14 and 15 do not apply to any offer made by an overseas person to or arrangement made by him or her with a person in the Federation, and section 15 does not apply to any advice given by an overseas person to a person in the Federation if the transaction, offer, agreement or advice is the result of

- (a) an approach made to the overseas person by or on behalf of the person in the Federation which either has been in any way solicited by the overseas person or has been solicited by him or her in any way which has not contravened any provision which the Minister may by Order make to regulate unsolicited calls and investment advertisements; or
- (b) an approach made by an overseas person which has not contravened any of those provisions.

(2) Where the transactions is entered into by the overseas person as agent for a person in the Federation, subsection (1) applies only if

- (a) the other party is outside the Federation; or
- (b) the other party is in the Federation and the transaction is the result of such an approach by the other party as is mentioned in paragraph (a) of subsection (1) or of such an approach as is mentioned in paragraph (b) of subsection (1).

PART V – INTERPRETATION

30. Meaning of “entering into a transaction”.

For the purposes of this Schedule, a transaction is entered into through a person if he or she enters into it as agent or arranges for it to be entered into by another person as principal or agent.

31. Meaning of “group” and “joint enterprise”.

(1) For the purpose of this Schedule, “a group” shall be treated as including any company in which a member of the group is a shareholder controller.

(2) In this Schedule, “a joint enterprise” means an enterprise into which two or more persons (in this Schedule referred to as “participators”) enter for commercial reasons related to a business or business (other than investment business) carried on by them, and where a participator is a company and a member of a group each other member of the group shall also be regarded as a participator in the enterprise.

32. Meaning of “collective investment scheme”.

(1) In this Schedule, “a collective investment scheme” means, subject to the provisions of this section, any arrangement with respect to property the purpose or effect of which is to enable persons taking part in the arrangement (whether by becoming owners

of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements must be such that the persons who are to participate as mentioned in subsection (1) (in this Schedule referred to as “participants”) do not have day to day control over the management of the property in question whether or not they have the right to be consulted or to give directions, and the arrangements must also have either or both of the following characteristics:

- (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
- (b) the property in question is managed as a whole by or on behalf of the operator of the scheme.

(3) Where any arrangements provide for such pooling as is mentioned in paragraph (a) of subsection (2) in relation to separate parts of the property in question, the arrangements shall not be regarded as constituting single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

(4) For the purposes of this Schedule, arrangements are not a collective investment scheme if

- (a) the property to which the arrangements relate (other than cash awaiting investment) consists of investments falling within any of section 1 to 6 and 10;
- (b) each participant is the owner of a part of that property and entitled to withdraw it at any time; and
- (c) the arrangements do not have the characteristics mentioned in paragraph (a) of subsection (2) and have those mentioned on paragraph (b) of that subsection only because the parts of the property belonging to different participants are not bought and sold separately except where a person becomes or ceases to be a participant.

(5) For the purposes of this Schedule, the following are not collective investment schemes:

- (a) arrangements operated by a person otherwise than by way of business;
- (b) arrangements where each of the participants carries on a business other than investment business and enters into arrangements for commercial purposes related to that business;
- (c) arrangements where each of the participants is a company in the same group as the operator;
- (d) arrangements where
 - (i) each of the participants is a *bona fide* employee or former employee (or the wife, husband, widow, widower, child or step-child under the age of eighteen of such employee or former employee) of a company in the same group as the operator; and

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- (ii) the property to which the arrangements relate consists of shares or debentures (as defined in subsection (4) of section 20) in or of a member of that company;
- (e) franchise arrangements, that is to say, arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the good-will attached to it;
- (f) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;
- (g) arrangements under which the rights or interests of the participants are investments falling within section 5;
- (h) arrangements the purpose of which is the provision of clearing services and which are operated by an authorised person, a recognised clearing house or a recognised investment exchange;
- (i) contracts of insurance;
- (j) occupational pension schemes;
- (k) arrangements where the entire contribution of each participant is a deposit within the meaning of section 1 of Schedule 1 of this Order;
- (l) arrangements under which the rights or interests of the participants are represented by the following:
 - (i) investments falling within section 2 which are issued by a single company which is not an open-ended investment company or which are issued by a single issuer which is not a company and are guaranteed by the government of the Federation, or of any country or territory outside the Federation;
 - (ii) investments falling within sub-paragraph (i) which are convertible into or exchangeable for investments falling within section 1 provided that those latter investments are issued by the same person who issued the investment falling within sub-paragraph (i) or issued by a single other issuer; or
 - (iii) investments falling within section 3 issued by the same government, local authority or public authority; or
 - (iv) investments falling within section 4 which are issued otherwise than by an open-ended investment company and which confer rights in respect of investments, issued by the same issuer, falling within section 1 or within sub-paragraph (i), (ii) or (iii);
- (m) arrangements which would fall within paragraph (b) were it not for the fact that the rights or interests of a participant (“the counterparty”) whose ordinary business involves him or her in engaging in activities which fall within Part II of this Schedule or would do so apart from Part III or IV are or include rights or interests under a swap arrangement, that is to say, an arrangement the purpose of which is to

facilitate the making of payments to participants whether in a particular amount or currency or at a particular time or rate of interest or all or any combination of those things, being an arrangement under which

- (i) the counterparty is entitled to receive amounts (whether representing principal or interest) payable in respect of any property subject to the scheme or sums determined by reference to such amounts; and
 - (ii) the counterparty makes payments (whether or not of the same amount and whether or not in the same currency as those referred to in sub-paragraph (i) which are calculated in accordance with an agreed formula by reference to the amounts or sums referred to in that sub-paragraph;
- (n) arrangements under which the rights or interests of the participants are rights to or interests in money held in a common account in circumstances in which the money so held is held on the understanding that an amount representing the contribution of each participant is to be applied either in making payments to him or her or in satisfaction of sums owned by him or her or in acquisition of property or the provision of services for him or her.

33. **Miscellaneous Definitions.**

- (1) In this Schedule, unless the context otherwise requires,
- “buying and selling” includes any acquisition or disposal for valuable consideration;
 - “instrument” includes any record whether or not in the form of a document;
 - “investment advertisement” means any advertisement inviting persons to enter or offers to enter into an investment agreement or the exercise of any rights conferred by an investment to acquire, dispose of or, underwrite or convert an investment or containing information calculated to lead directly or indirectly to persons doing so;
 - “investment agreement” means any agreement the making or performance of which by either party constitutes an activity which falls within any section of Part II of this Schedule or would do so apart from Part III and IV;
 - “occupational pension scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category;
 - “offer” includes any invitation to trade;

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“open-ended investment company” means a collective investment scheme under which

- (a) the property in question belongs beneficially to, and is managed by or on behalf of, a company having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of the company, and
- (b) the rights of the participants are represented by shares in or securities of that company which
 - (i) the participants are entitled to have redeemed or repurchased, or which are redeemed or repurchased from them by, or out of funds provided by, that company; or
 - (ii) the company ensures can be sold by the participants on an investment exchange at a price related to the value of the property to which they relate;

“operator”, in relation to a unit trust with a separate trustee, means the manager and, in relation to an open-ended investment company, means that company;

“participant” has the meaning given in subsection (2) of section 32;

“participator” has the meaning given in subsection (2) of section 31;

“property” includes property of any description, including money denominated in the currency of any country or territory;

“recognised clearing house” means a body declared by an Order of the Minister for the time being in force to be a recognised clearing house for the purposes of this Schedule;

“recognised investment exchange” means a body declared by an Order of the Minister for the time being in force to be a recognised investment exchange for the purposes of this Schedule;

“trustee”, in relation to a unit trust, means the person holding the property in question on trust for the participants and, in relation to a collective investment scheme constituted under the law of a country or territory outside the Federation, means any person who (whether or not under a trust) is entrusted with the custody of the property in question;

“units” means the rights or interests (however described) of the participants in a collective investment scheme;

“units trust” means a collective investment scheme under which the property in question is held on trust for the participants.

(2) In the definition for “buying and selling” given in subsection (1) “disposal” includes,

- (a) in the case of an investment consisting of rights under a contract or other arrangements, assuming the corresponding liabilities under the contract or arrangement;
- (b) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;
- (c) in the case of an investment consisting of rights under a contract, surrendering, assigning or converting those rights.

(3) A company shall not by reason of issuing its own shares or share warrants, and a person shall not by reason of issuing his or her own debentures or debenture warrants, be regarded for the purposes of this Schedule as disposing of them or, by reason of anything done for the purpose of issuing them, be regarded as making arrangements with a view to a person subscribing for otherwise acquiring them or underwriting them.

- (4) In subsection (3),
- (a) “company” has the same meaning as in section 1;
 - (b) “shares” and “debentures” include any investments falling within section 1 or 2; and
 - (c) “shares warrants” and “debenture warrants” means any investment which falls within section 4 and relates to shares in the company concerned or, as the case may be, to debentures issued by the person concerned.

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EIGHTH SCHEDULE

Financial Services (Fees) Order.

1. Citation.

This Order may be cited as the Financial Services (Fees) Order.

2. Interpretation.

(1) In this Order, unless the context otherwise requires,

“Act” means the Act under which this Order is made;

“Order” means this Order as amended, or as extended or applied, by or under any other Order made under the Act;

“principal Order” means the Financial Services (Regulations) Order, as amended, or as extended or applied, by or under any other Order made under the Acts.

(2) Subject to subsection (1), any words defined in the Act and in the principal order shall, if not inconsistent with the subject or context, bear the same meaning in this order.

(3) A reference in this Order to an enactment is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

3. Fees to be paid to the Director-General.

The fees set out in the second column of the Schedule hereto shall be the fees payable in respect of the transactions set out in the first column of that Schedule.

SCHEDULE TO THE ORDER

(Section 3)

Fees to be Paid to the Director-General

Matter in respect of which fee is payable	Amount of fee	
	XCD	USD
1. For the first authorisation to carry on		
(a) a deposit-taking business		
(i) on filing of application (not refundable)		
for all applications	\$ 2,700	\$1,000
(ii) on granting of authorisation for		
an unrestricted business	\$21,600	\$8,000
a restricted business	\$10,800	\$4,000

continued

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Matter in respect of which fee is payable	Amount of fee	
	XCD	USD
(b) an investment business		
(i) on filing of application (not refundable) for all applications.....	\$ 2,160	\$ 800
(ii) on granting of authorisation for an unrestricted business	\$16,200	\$6,000
a restricted business	\$ 8,100	\$3,000
(c) an insurance business		
(i) on filing of application (not refundable) for all applications.....	\$ 1,620	\$ 600
(ii) on granting of authorisation for an unrestricted business	\$10,800	\$4,000
a restricted business	\$ 5,400	\$2,000
(d) an assurance business		
(i) on filing of application (not refundable) for all applications.....	\$ 1,080	\$ 400
(ii) on granting of authorisation to an insurance agent.....	\$ 270	\$ 100
an insurance broker	\$ 2,700	\$1,000
an insurance sub-agent.....	\$ 135	\$ 50
an insurance manager.....	\$ 8,100	\$3,000
a principal insurance representative	\$ 810	\$ 300
(e) a trust business		
(i) on filing of application (not refundable) for all applications.....	\$ 540	\$ 200
(ii) on granting of authorisation for an unrestricted business	\$ 5,400	\$2,000
a restricted business	\$ 2,700	\$1,000
(f) a corporate business		
(i) on filing of application (not refundable).....	\$ 135	\$ 50
(ii) on granting of authorisation	\$ 1,350	\$ 500
2. For the renewal of an authorisation to carry on		
(a) a deposit-taking business as		
an unrestricted business	\$21,600	\$8,000
a restricted business	\$10,800	\$4,000
(b) an investment business as		
an unrestricted business	\$16,200	\$6,000
a restricted business	\$ 8,100	\$3,000

continued

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Matter in respect of which fee is payable	Amount of fee	
	XCD	USD
(c) an insurance business as		
an unrestricted business	\$10,800	\$4,000
a restricted business	\$ 5,400	\$2,000
(d) an assurance business as		
an insurance agent	\$ 270	\$ 100
an insurance broker	\$ 2,700	\$1,000
an insurance sub-agent	\$ 135	\$ 50
an insurance manager	\$ 8,100	\$ 3,000
a principal insurance representative.....	\$ 810	\$ 300
(e) a trust business as		
an unrestricted business	\$ 5,400	\$2,000
restricted business.....	\$ 2,700	\$1,000
(f) a corporate business	\$ 1,350	\$ 500

(XCD = dollars of the Eastern Caribbean Central Bank; USD = of the United States of America)

NINTH SCHEDULE

Financial Services (Business Names) Order.

1. Citation.

This Order may be cited as the Financial Services (Business Names) Order.

2. Interpretation.

(1) In this Order, unless the context otherwise requires,

“Act” means the Act under which this Order is made;

“existing institution” means an institution incorporated or established before the date on which this Order comes into force;

“institution” means any

- (a) company;
- (b) partnership; or
- (c) trust,

incorporated or established under the laws of the Federation or, if incorporated or established under the law of any other country or territory, carrying on business in the Federation or having an address

in the Federation which is used regularly for the purpose of its business;

“Order” means this Order as amended, or is extended or applied, by or under any other Order made under the Act;

“principal Order” means the Financial Services (Regulations) Order as amended, or as extended or applied, by or under any other Order made under the Acts.

(2) Subject to subsection (1), any words defined in the Acts and in the principal Order shall, if not inconsistent with the subject or context, bear the same meaning in this Order.

(3) A reference in this Order to an enactment is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

3. Restriction on use of certain words in Business Names.

(1) The words specified in the Schedule hereto or any word, however spelled and whether in the singular or plural form or in the masculine, feminine or neutral gender, or any abbreviation thereof, which may reasonably be understood to convey a similar meaning whether in English or any other language are hereby specified as words for the use of which as, or as part of, an institution’s name the permission of the Minister shall be obtained.

(2) Any word in a language other than English (“foreign word”) is a word for the use of which as, or as part of, an institution’s name the permission of the Minister shall be obtained.

(3) Words in English or in any other language which are used as, or form part of, an institution’s name shall be in Roman characters when reproduced in writing or in any substitute for writing.

4. Restrictions on the use of initials in Business Names.

(1) Any initial is an initial for the use of which as, or as part of, an institution’s name the permission of the Minister shall be obtained.

(2) Initials which are used as, or form part of, an institution’s name shall be in Roman characters or numerals or in Arabic numerals (as may be desired) when reproduced in writing or in any substitute for writing.

(3) References to “initial” in this Order are references to any character or numeral, whether or not preceded or followed by a space or punctuation mark, which can neither by itself nor in combination with any adjacent characters or numerals be reasonably understood to form a word which conveys any meaning in English.

5. Application for Permission.

Any institution desirous of obtaining the permission of the Minister under this Order may make application in that behalf by delivering to the Director-General a statement signed by or on behalf of a director of the institution setting out:

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- (a) any name currently used by it;
- (b) the name for which the permission of the Minister is being sought together with
 - (i) a certified translation of any foreign word; and
 - (ii) a statement explaining the meaning of any initial, used as, or forming part of, its name;
- (c) the intended or, in the case of an existing institution, the current address of its registered office or office for service (as the case may be);
- (d) a summary description of the nature of each business intended to be carried out by it or, in the case of an existing institution, currently being carried out by it; and
- (e) where a statement is delivered by a person as agent for any director of the institution, the statement shall specify that fact and the person's name and address.

6. Grant of Permission.

Subject to section 7, the Minister shall grant permission under this Order and whenever the Minister grants such permission he or she shall by notice in writing inform the applicant accordingly.

7. Refusal to grant Permission.

- (1) The Minister may refuse to grant permission under this Order
 - (a) if the applicant has not provided information required under section 5;
 - (b) if it appears to him or her, as a result of information provided in pursuance of the requirements of section 6 or information otherwise obtained, that the name of the institution for which the application is made would be misleading or otherwise undesirable;
 - (c) if in connection with any application made under this Order, the applicant has provided information which is untrue or misleading in any material particular; or
 - (d) if the name of the institution:
 - (i) contains one or more initials that have no meaning; or
 - (ii) consists of solely one or more initials.

[Substituted by SRO 46/1997]

(2) Whenever the Minister refuses to grant permission under this Order he or she shall by notice in writing inform the applicant accordingly.

8. Procedure and Rights of Appeal.

(1) Where the Minister, acting under section 7, refuses to grant permission under this Order to an institution, the applicant may require the Minister to furnish him or her with a statement in writing of the Minister's reasons for that decision.

(2) Any person aggrieved by such refusal may appeal to the Court, either in term or in vacation, on the ground that the decision of the Minister was unreasonable having regard to all the circumstances of the case.

9. Punishment of Offences.

An institution which fails to comply with any provision of this Order which applies to it commits an offence and liable to a fine not exceeding two thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day on which the offence so continues.

SCHEDULE TO THE ORDER

(Section 3)

Specification of Restricted Words

A Agency	D Deposit	Insurance	Registrar
Association	Divine	Insurer	Reinsurance
Assurance	Divinity	Investigation	Reinsurer
Assurer	Duchess	K King	Resident
Authority	Duke	Kittitian(5)	Royal
B Bank	E Exchange	L Licensed	Royale
Banker	F Federation	Licensee	Royalty
Banking	Firm(2) (3)	Licentiate	S Saint Christopher (5)
Beneficial	Finance	Limited (1) (2)	Saint Kitts (5)
Benevolent	Financial	M Majesty	Security
Board	Foundation	Municipal	Secured
Broker	Fund	Mutual	Scheme
Brokerage	G Gambling	N National	School
C Casino	Gaming	Nevis (5)	Society
Casualty	Giro	Nevisian (5)	Sovereign
Chamber	God	Nursing	State
Charitable	Government	O Offshore	Stockbroker
Charity	Governor	Onshore	Subsidiary
Charter	Group	P Parliament	Surety
Chartered	Guarantee	Partnership (2) (3)	T Trust (4)
Clinic	Guaranteed	Patent	Trustee
Club	H Health	Patentee	U Underwriter
Collective	Highness	Police	Union
College	Holding	Polytechnic	Unit
Commission	Holy	Prince	University
Committee	Holiness	Princess	Unlimited
Company (1) (2) (3)	Hospital	Protection	
Consolidated	I Imperial	Q Queen	
Co-operative	Incorporated(1)	R Reassurance	
Corporate (1)	Indemnity	Reassurer	
Corporation (1)	Institute	Register	
Council	Institution	Registered	

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Notes:

Restricted only if the institution (1) is not a company; (2) is not a limited partnership; (3) is not a partnership; (4) is not a trust; or (5) has not majority or principal shareholder controller or no indirect controller who is resident in the Federation.

TENTH SCHEDULE

Financial Services (Prospectuses) Order.

1. **Citation.**

This Order may be cited as the Financial Services (Prospectuses) Order.

2. **Interpretation.**

(1) In this Order, unless the context otherwise requires,

“Act” means the Act under which this Order is made;

“institution” means any

- (a) company;
- (b) partnership; or
- (c) trust;

incorporated or established under the law of the Federation or, if incorporated or established under the law of any other country or territory, carrying on business in the Federation or having an address in the Federation which is used regularly for the purpose of its business;

“Order” means this Order as amended, or as extended or applied, by or under any other Order made under the Act;

“principal Order” means the Financial Services (Regulations) Order, as amended, or as extended or applied, by or under any other Order made under the Act.

(2) Subject to subsection (1), any words defined in the Acts and in the principal Order shall, if not inconsistent with the subject or context, bear the same meaning in this Order.

(3) A reference in this Order to an enactment is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

3. **Circulation of Prospectus.**

(1) Subject to subsection (2), no prospectus offering securities in an institution shall be circulated in the Federation or elsewhere unless

- (a) it contains the information specified in Part I of the Schedule to this Order;
- (b) it includes the statements specified in Part II of that Schedule;
- (c) there has been delivered to the Director-General
 - (i) a copy of the prospectus, signed by or on behalf of all the directors of the institution,
 - (ii) a signed copy of any report included in, or attached to, the prospectus, and
 - (iii) such other particulars as the Director-General may require; and
- (d) the Minister has given his or her consent to the circulation of the prospectus.

(2) The Minister may give his or her consent to the circulation of a prospectus which does not comply in every respect with the requirements of subsection (1) if he or she is satisfied that the deviation from those requirements does not affect the substance of the prospectus or is not calculated to mislead.

SCHEDULE TO THE ORDER

(Section 3)

PART I – INFORMATION TO BE SPECIFIED IN PROSPECTUSES

1. Details relating to the Offer.

The following shall be stated:

- (a) the names, occupations and addresses of
 - (i) the offerors or vendors; and
 - (ii) any promoter of the securities;
- (b) the offer price for the securities, including the method, time and place of payment;
- (c) the opening and closing dates and times of the offer;
- (d) the minimum amount required to be raised by the offer;
- (e) when and how moneys will be returned in the event of the offer not being completed or any securities applied for not being allotted;
- (f) general particulars of any property which is to be acquired with the proceeds of the offer;
- (g) in the case of any business which is to be acquired with the proceeds of the offer, the length of time during which that business has been carried on;
- (h) If dividends or interests are payable on the securities, then the terms and conditions under which such dividends or interests are to be paid;
- (i) If the securities are redeemable, then the terms and conditions under which they are to be redeemed.

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2. Capital.

There shall be stated particulars of

- (a) the paid-in capital of the institution; and
- (b) the securities which are the subject of the offer, together with details of any existing issued securities which are not part of the offer.

3. Goodwill, Preliminary Expenses etc.

There shall be stated particulars of any amounts to be written off or provided for in respect of goodwill or preliminary expenses, or of any benefit given to a promoter.

4. Contracts.

There shall be stated the dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on, or intended to be carried on, by the institution or a contract entered into more than two years before the date of issue of the prospectus.

5. Interest of Directors.

There shall be stated:

- (a) full particulars of the nature and extent of the interest, if any, of every director in the promotion of or in the property proposed to be acquired by, the institution, or where the interest of such a director consists of being a partner in a partnership or a trustee of a trust, the nature and extent of the interest of the partnership or trust (as the case may be); and
- (b) details of all sums paid or agreed to be paid to him or her or to the partnership or trust (as the case may be) in cash or shares or otherwise by any person to induce him or her to become, or to qualify him or her as, a director, or otherwise for services rendered by him or her or by the partnership or trust (as the case may be) in connection with the promotion or formation of the institution.

6. Debentures and Loans.

There shall be stated details of any subscriptions, allotments or options to be given, or already existing, in respect of any other securities of the institution, including any which have a prior right over the securities covered by the offer to a distribution of the institution's profits.

7. Accounts and Reports.

The following shall be included in the prospectus:

- (a) a copy of the institution's latest accounts accompanied by a report thereon by the institution's auditors;

- (b) any other reports of a specialist nature by any person who could be described as an expert on any aspect of the institution's business, identifying any unusual element of risk to the investor.

8. Registered Office or Office for Service.

There shall be stated the address of the institution's registered office or office for service (as the case may be) and if the institution is not keeping its register of members at that office, the address of the office at which such register is kept.

9. Principal Establishments.

The location and nature of the institution's principal operating establishments shall be stated.

10. Directors and other Officers.

The following shall be stated in respect of each director, chief executive and manager of the institution:

- (a) his or her forenames and surname;
- (b) his or her business or usual residential address;
- (c) his or her business occupation (if any); and
- (d) his or her qualifications (if any).

11. Advisers.

The following shall be stated:

- (a) the name and address of the institution's auditors;
- (b) the name and address of the institution's legal advisers;
- (c) the name and address of the institution's principal bankers.

12. Additional Information.

There shall be included any other material information which an investor (including a person who cannot be expected to have any special knowledge of investments of the nature being offered) would reasonably require to enable him or her to make an informed judgment about the merits of investing in the securities offered in the prospectus.

13. Date of Issue.

The date of issue of the prospectus shall be stated.

PART II – STATEMENTS TO BE INCLUDED IN THE PROSPECTUS

The following statements shall be included:

- (a) "A copy of this document has been delivered to the Minister of Finance of the Federation of Saint Christopher and Nevis in accordance with section 3 of The Financial Services (Prospectus)

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- Order, and he or she has given, and has not withdrawn, his or her consent to its circulation.”;
- (b) “It must be distinctly understood that, in giving these consents, the Minister of Finance of the Federation of Saint Christopher and Nevis takes no responsibility whatsoever for the financial soundness of the institution or for the correctness of any statements made, or opinions expressed, with regard to it.”;
 - (c) “The persons responsible for this document have taken all reasonable care to ensure that the facts stated in this document are true and accurate in all material respects, and that there are no other facts the omission of which would make misleading any statement in the document, whether of facts or of opinion. All these persons accept responsibility accordingly.”;
 - (d) “If you are in any doubt about the contents of this document you should consult your stockbroker, bank manager, solicitor, accountant or other financial adviser.”;
 - (e) “It should be remembered that the price of securities and the income from them can go down as well as up.”

ELEVENTH SCHEDULE

Financial Services (Professional Bodies) Order

1. **Citation.**

This Order may be cited as the Financial Services (Professional Bodies) Order.

2. **Interpretation.**

(1) In this Order, unless the context otherwise requires,

“Act” means the Act under which this Order is made;

“authorised person” means a person authorised to carry on finance business under the principal Order;

“Order” means this Order as amended, or as extended or applied, by or under any other Order made under the Act;

“principal Order” means the Financial Services (Regulations) Order, as amended, or as extended or applied, by or under any other Order made under the Acts.

(2) Subject to subsection (1), any words defined in the Act and in the principal Order shall, if not inconsistent with the subject or context, bear the same meaning in this Order.

(3) A reference in this Order to an enactment is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

3. Authorisation by Certification.

(1) Notwithstanding any provision to the contrary in the principal Order, a person holding an authorisation certificate issued for the purpose of this Order by a recognised professional body is an authorised person and the provisions of the principal Order shall, *mutatis mutandis*, apply to such person as if he or she is an authorised person otherwise than by virtue of the certification.

(2) An authorisation certificate may be issued by a recognised professional body to an individual, a company or a partnership.

- (3) An authorisation certificate issued to a partnership
- (a) shall be issued in the name of the partnership; and
 - (b) shall authorise the carrying on of finance business in that name by the partnership to which the authorisation certificate is issued, by any partnership which succeeds to that business or by any person who succeeds to that business having previously carried it on in partnership;

and, in relation to an authorisation certificate issued to a partnership constituted under the law of any country or territory under which a partnership is not a legal person, references in this Order to the person who holds the authorisation certificate or is certified shall be construed as references to the persons or person for the time being authorised by the authorisation certificate to carry on finance business as mentioned in paragraph (b).

4. Professional Bodies.

(1) In this Order, a “professional body” means a body which regulates the practice of a profession and references to the practise of a profession do not include references to carrying on a business consisting wholly or mainly of finance business.

(2) In this Order, references to the members of a professional body are references to the individuals who, whether or not members of the body, are entitled to practice the profession in question and, in practising it, are subject to the rules of that body.

(3) In this Order, references to the rules of a professional body are references to the rules (whether or not laid down by the body itself) which the body has power to enforce in relation to the practice of the profession in question and the carrying on of finance business by persons practising that profession or which relate to the grant, suspension or withdrawal of authorisation certificates under section 3, the admission and expulsion of members or otherwise to the constitution of the body.

(4) In this Order, references to guidance issued by a professional body are references to guidance issued or any recommendation made by it to all or any class of its members or persons seeking to become members, or to persons or any class of persons who are or are seeking to be certified by the body, and which would, if it were a rule, fall within subsection (3).

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5. Application for Recognition.

(1) A professional body may apply to the Financial Secretary for an order declaring it to be a recognised professional body for the purpose of this Order.

(2) Any such application

- (a) shall be delivered to the Director-General;
- (b) shall be in such form as the Financial Secretary may direct; and
- (c) shall be accompanied by such information as the Financial Secretary may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it the Financial Secretary may require that applicant to provide additional information.

(4) The directions and requirements given or imposed under subsections (2) and (3) may differ as between different applications.

(5) Any information to be provided under this section shall, if the Financial Secretary so requires, be in such form or verified in such manner as he or she may specify.

(6) Every application shall be accompanied by a copy of the applicant's rules and of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form.

6. Grant and Refusal of Recognition.

(1) The Financial Secretary may, on an application duly made in accordance with section 5 and after being furnished with all such information as he or she may require under that section, make or refuse to make an order ("a recognition order") declaring the applicant to be a recognised professional body.

(2) The Financial Secretary may make a recognition order if it appears to him or her from the information furnished by the body making the application and having regard to any other information in his or her possession that the requirements of subsection (3) and of the Schedule to this Order are satisfied as respect that body.

(3) The body must have rules which impose acceptable limits on the kinds of finance business which may be carried on by persons certified by it and the circumstances in which they may carry on such business and which preclude a person certified by that body from carrying on any finance business outside those limits unless that person is an authorised person otherwise than by virtue of the certification.

(4) Where the Financial Secretary refuses an application for a recognition order he or she shall give the applicant a written notice to that effect, stating the reasons for the refusal.

(5) A recognition order shall state the date on which it takes effect.

7. Revocation of Recognition.

(1) A recognition order under section 6 may be revoked by a further order made by the Financial Secretary if at any time it appears to him or her

- (a) that subsection (3) of section 6 or any requirements of the Schedule to this Order is not satisfied in the case of the body to which the recognition order relates; or
- (b) that the body has failed to comply with any obligation to which it is subject by virtue of this Order.

(2) An Order revoking a recognition order shall state the date on which it takes effect and that date shall not be earlier than three months after the day on which the revocation order is made.

(3) Before revoking a recognition order the Financial Secretary shall give written notice of his or her intention to do so to the recognised professional body, take such steps as he or she considers reasonably practicable for bringing the notice to the attention of members of the body and publish it in such manner as he or she thinks appropriate for bringing it to the attention of any other persons who are in his or her opinion likely to be affected.

(4) A notice under subsection (3) shall state the reasons for which the Financial Secretary proposes to act and give particulars of the rights conferred by subsection (5)

(5) A body on which a notice is served under subsection (3), any member of the body and any other person who appears to the Financial Secretary to be affected may, within three months after the date of service or publication, or within such longer time as the Financial Secretary may allow, make written representations to the Financial Secretary and, if desired, oral representations to a person appointed for that purpose by the Financial Secretary, and the Financial Secretary shall have regard to any representations made in accordance with this subsection in determining whether to revoke the recognition order.

(6) If in any case the Financial Secretary considers it essential to do so in the interest of the public, he or she may revoke a recognition order without regard to the restrictions imposed by subsection (2) and notwithstanding that no notice has been given or published under subsection (3) or that the time for making representations in pursuance of such a notice has not expired.

(7) An order revoking a recognition order may contain such transitional provisions as the Financial Secretary thinks necessary or expedient.

(8) A recognition order may be revoked at the request or with the consent of the recognised professional body and any such revocation shall not be subject to the restrictions imposed by subsections (1) and (2) or the requirements of subsections (3) to (5).

(9) On making an order revoking a recognition order the Financial Secretary shall give the body written notice of the making of the order, take such steps as he or she considers reasonably practicable for bringing the making of the order to the attention of members of the body and publish a notice of the making of the order in such manner as he or she thinks appropriate for bringing it to the attention of any other persons who are in his or her opinion likely to be affected.

8. Compliance Order.

- (1) If at any time it appears to the Financial Secretary

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- (a) that subsection (3) of section 6 or any requirements of the Schedule to this Order is not satisfied in the case of a recognised professional body; or
- (b) that such body has failed to comply with any obligation to which it is subject by virtue of this Order, he or she may, instead of revoking the recognition order under section 7, make an application to the Court under this section.

(2) If on any such application the Court decides that subsection (3) of section 6 or the requirement in question is not satisfied or, as the case may be, that the body has failed to comply with the obligation in question it may order the body to take such steps as it directs for securing that that subsection or requirement is satisfied or that that obligation is complied with.

9. Notification Requirements.

(1) The Financial Secretary may make regulations requiring a recognised professional body to give forthwith notice to the Director-General of the occurrence of such events relating to the body, its members or persons certified by it as are specified in the regulations and such information in respect of those events as is so specified.

(2) The Financial Secretary may make regulations requiring a recognised professional body to furnish to the Director-General at such times or in respect of such period as are specified in the regulations with such information relating to the body, its members and persons certified by it as is so specified.

(3) The notices and information required to be given or furnished under the foregoing provisions of this section shall be such as the Financial Secretary may reasonably require for the exercise of the functions of the Director-General under this Order.

(4) Regulations under the foregoing provisions of this section may require information to be given in a specified form and to be verified in a specified manner.

(5) Any notice or information required to be given or furnished under the foregoing provisions of this section shall be given in writing or in such other manner as the Financial Secretary may approve.

(6) Where a recognised professional body amends, revokes or adds to its rules or guidance it shall within seven days give written notice to the Director-General of the amendment, revocation or addition, but

- (a) notice need not be given of the revocation of guidance other than such as is mentioned in subsection (6) of section 5 or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned; and
- (b) notice need not be given in respect of any rule or guidance, or rules or guidance of any description, in the case of which the Financial Secretary has waived compliance with this subsection by notice in writing to the body concerned;

and any such waiver may be varied or revoked by a further notice in writing.

(7) Contravention of, or of regulations under, this section shall not be an offence.

10. Temporary Recognition Order.

(1) The St. Kitts and Nevis Bar Association and the St. Kitts-Nevis Association of Chartered Accountants shall be granted a temporary recognition order under this section.

(2) An order issued under subsection (1) shall expire on the earlier of the day on which it is replaced by a recognition order made under section 6 or on which the period of twelve months from the day on which this Order takes effect expires.

(3) An order issued under subsection (1) which is not replaced by a recognition order made under section 6 shall for the purpose of this Order be deemed to have been revoked by an order made under subsection (6) of section 7 on the relevant expiration day referred to in subsection (2).

11. Functions of the Director-General.

In addition to his or her functions under the principal Order, the Director-General shall also examine and make recommendations to the Financial Secretary with respect to all applications for recognition, revocations of recognition and compliance orders made under this Order.

SCHEDULE TO THE ORDER

Requirements for Recognition of Professional Bodies

1. Statutory Status.

The body must

- (a) regulate the practice of a profession in the exercise of statutory powers;
- (b) be recognised (otherwise than under this Order) for a statutory purpose by a Minister of the Federal Government; or
- (c) be specified in a provision contained in or made under an enactment as a body whose members are qualified to exercise functions or hold offices specified in that provision.

2. Certification.

(1) The body must have rules, practices and arrangements for securing that no person can be certified by the body for the purpose of this Order unless the conditions set out in subsections (2) and (3) are satisfied.

(2) The certified person must be either

- (a) an individual who is a member of the body; or

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- (b) a person managed and controlled by one or more individuals each of whom is a member of a recognised professional body and at least one of whom is a member of the certifying body.

(3) Where the certified person is an individual his or her main business must be the practise of the profession regulated by the certifying body and he or she must be practising that profession otherwise than in partnership, and where the certified person is not an individual that person's main business must be the practice of the profession or professions regulated by the recognised professional body or bodies of which the individual or individuals mentioned in paragraph (b) of subsection (2) are members.

(4) In the application of subsections (2) and (3) to an authorisation certificate which is to be or has been issued to a partnership constituted under the law of any country or territory under which a partnership is not a legal person, references to the certified person shall be construed as references to the partnership.

3. Safeguards for Clients.

(1) The body must have rules regulating the carrying on of finance business by persons certified by it which, together with the statements of principle, rules, regulations and codes of practice to which those persons are subject afford an adequate level of protection for clients.

(2) In determining in any case whether an adequate level of protection is afforded for clients of any description, regard shall be had to the nature of the finance business carried on by persons certified by the body, the kinds of clients involved and the effectiveness of the body's arrangement for enforcing compliance.

4. Taking Account of Costs of Compliance.

The body must have satisfactory arrangements for taking account, in framing its rules, of the cost to those to whom the rules would apply of complying with those rules and any other controls to which they are subject.

5. Monitoring and Enforcement.

(1) The body must have adequate arrangements and resources for the effective monitoring of the continued compliance by persons certified by it with the conditions mentioned in section 2 and rules, practices and arrangements for the withdrawal or suspension of certification (subject to appropriate transitional provisions) in the event of any of those conditions ceasing to be satisfied.

(2) The body must have adequate arrangements and resources for the effective monitoring and enforcement of compliance by persons certified by it with the rules of the body relating to the carrying on of finance business and with any statements of principles, rules, regulations or codes of practice to which those persons are subject in respect of business of a kind regulated by the body.

(3) The arrangements for enforcement must include provision for the withdrawal or suspension of certification and may include provision for disciplining members of the body who manage or control a certified person.

(4) The arrangements for enforcement may make provision for the whole or part of that function to be performed by and to be the responsibility of a body or person independent of the professional body.

(5) The arrangements for enforcement must be such as to secure a proper balance between the interests of persons certified by the body and the interest of the public, and the arrangements shall not be regarded as satisfying that requirement unless the persons responsible for enforcement include a sufficient number of persons who are independent of the body and its members and of persons certified by it.

(6) The arrangements for monitoring may make provision for that function to be performed on behalf of the body (and without affecting its responsibility) by any other body or person who is able and willing to perform it.

6. Investigation of Complaints.

(1) The body must have effective arrangements for the investigation of complaints relating to

- (a) the carrying on by persons certified by it of finance business in respect of which they are subject to its rules; and
- (b) its regulation of investment business.

(2) Subsection (4) of section 4 applies also to arrangements made pursuant to this section.

7. Promotion and Maintenance of Standards.

The body must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of finance business and to co-operate, by the sharing of information and otherwise, with the Director-General and any other authority, body or person having responsibility for the supervision or regulation of finance business.