ANGUILLA

BUSINESS COMPANIES ACT, 2022

Published by Authority

BUSINESS COMPANIES ACT, 2022

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I Assent

Dileeni Daniel-Selvaratnam
Governor

19/IV/22.
Date

ANGUILLA

NO. 2/2022

BUSINESS COMPANIES ACT, 2022

[Gazette Dated: , 2022] [Commencement: Section 289]

An Act to repeal and replace the Companies Act, International Business Companies Act, and Protected Cell Companies Act; to establish a new framework for the registration, operation and regulation of companies; and for related matters.

ENACTED by the Legislature of Anguilla

PART 1

INTERPRETATION

Interpretation

1. In this Act, unless the context otherwise requires—

"articles" means—

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

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

"asset" includes money, goods, things in action, land and every description of property wherever situated and obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

"board" means the board of directors or other governing authority of the company;

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

"class" means a class of shares each of which has the rights, privileges, limitations and conditions specified for that class in the articles;

"Commission" means the Financial Services Commission established under the Financial Services Commission Act;

"company" means business company;

"competent authorities" mean the Financial Services Commission, the Comptroller of Inland Revenue and Permanent Secretary, Finance;

"Court" means the High Court unless the context states otherwise;

"day" means an ordinary business day but does not include a Saturday, Sunday or public holiday and in computing time where the day ends on a Saturday, Sunday or public holiday then the next business day must be used;

"director" includes a person occupying or acting in the position of director by whatever name called;

"document" means—

(a) any writing or printing on any material including any notice, court application, and court order;

(b) any record of information or data, however compiled and stored (in paper, electronic, magnetic or any non-paper based form);

(c) books and drawings; and

(d) a photograph, film, tape, negative, facsimile or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced;

"dollar" or "$" means a dollar in the currency of the United States of America;

"F.I.U." means the Anguilla Financial Intelligence Unit;

"former Act" means the former Companies Act, the former International Business Companies Act or the former Protected Cell Companies Act;

"former Act company" means a company incorporated, continued or registered under a former Act, but excludes a company incorporated outside Anguilla registered under Part 9 of the Companies Act;

"member" in relation to a company means a person who is a—

(a) shareholder;

(b) guarantee member; or

(c) member of an unlimited company who is not a shareholder;

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

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

(b) the managing director, general manager or chief executive officer, financial comptroller or manager and company secretary; and

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

"Official Receiver" means the person appointed by the Court under section 247 as liquidator for a company that is struck off the Register;

"records" includes accounting records;

"Registrar" means the Registrar of Companies;

"regulated person" has the meaning specified in the Anti-Money Laundering and Terrorist Financing Regulations;

"restated articles" means a single document that incorporates the articles together with all amendments made to it;

"shareholder" includes—

(a) a member of a company;

(b) the personal representative of a deceased shareholder;

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

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

"smart contract" means a computer program recorded on a distributed ledger system executing pre-defined functions include but are not limited to those intended to facilitate, verify or enforce the negotiation or performance of a digital set of agreed upon terms, or contract.

Meaning of "company" and "foreign company"

2. (1) Unless this Act provides otherwise, "company" means a—

(a) company incorporated under section 6;

(b) company continued under section 202; or

(c) former Act company re-registered under this Act;

but excludes a dissolved company and a company that has continued as a company incorporated under the laws of a jurisdiction outside Anguilla in accordance with section 205.

(2) In this Act, "foreign company" means a body corporate incorporated, registered or formed outside Anguilla but excludes a company within the meaning of subsection (1).

(3) The Regulations may prescribe types of bodies, associations and entities that, although not a body corporate, are to be treated as a body corporate for the purposes of subsection (2).

Meaning of "subsidiary" and "holding company"

3. (1) A company (the first company) is a subsidiary of another company (the second company), if—

(a) the second company—

(i) holds a majority of the voting rights in the first company,

(ii) is a member of the first company and has the right to appoint or remove a majority of its board, or

(iii) is a member of the first company and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in the first company; or

(b) the first company is a subsidiary of a company which is itself a subsidiary of the second company.

(2) A company is the holding company of another company if that other company is its subsidiary.

(3) For the purposes of subsection (1) and (2), "company" includes a foreign company and any other body corporate.

PART 2

INCORPORATION, CAPACITY AND POWERS

Division 1

Incorporation

Types of company

4. A company may be incorporated or continued under this Act as—

(a) a company limited by shares;

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

(c) a company limited by guarantee that is authorised to issue shares;

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

(e) an unlimited company that is authorised to issue shares.

Application to incorporate a company

5. (1) Only the proposed registered agent may apply to the Registrar to incorporate a company by filing articles and submitting any documents as prescribed or as required by the Registrar.

(2) Where the intention is to incorporate a segregated portfolio company, the registered agent must first apply under section 156 to the Commission for permission to do so.

Incorporation of a company

6. (1) Where the Registrar is satisfied that a company should be incorporated the Registrar shall—

(a) register the documents;

(b) allot a unique number to the company; and

(c) issue a certificate of incorporation to the company in the approved form.

(2) A certificate of incorporation is conclusive evidence that—

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

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

Registration of company as restricted purposes company

7. (1) If the articles of a company limited by shares, contains the statements specified in section 9(1) and (2) the—

(a) company shall be registered on incorporation as having restricted purposes; and

(b) certificate of incorporation shall state that the company is a restricted purposes company.

(2) A company that is not registered as a restricted purposes company on its incorporation shall not subsequently be registered as a restricted purposes company.

Division 2

Articles and by-laws

Articles

8. (1) The articles of a company shall state—

(a) the name of the company;

(b) whether the company is—

(i) a company limited by shares,

(ii) a company limited by guarantee that is not authorised to issue shares,

(iii) a company limited by guarantee that is authorised to issue shares,

(iv) an unlimited company that is not authorised to issue shares, or

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

(c) the address of the first registered office of the company;

(d) the name of the first registered agent of the company;

(e) in the case of a company limited by shares or otherwise authorised to issue shares—

(i) the maximum number of shares that the company is authorised to issue or that the company is authorised to issue an unlimited number of shares, and

(ii) the classes of shares that the company is authorised to issue and, if the company is authorised to issue 2 or more classes of shares, the rights, privileges, restrictions and conditions attached to each class of shares,

(iii) a company limited by guarantee that is authorised to issues shares, or

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

(f) in the case of a company limited by guarantee, whether or not it is authorised to issue shares, the amount which each guarantee member of the company is liable to contribute to the company's assets in the event that a voluntary or other liquidator is appointed whilst he is a member; and

(g) in the case of a segregated portfolio company, that the company is a segregated portfolio company.

(2) A company is prohibited from issuing or exchanging bearer shares or bearer share certificates.

(3) The Regulations may require the articles of a company to contain a statement, in the form specified in the Regulations, as to any limitations on the business that the company may carry on.

Articles of restricted purposes company

9. (1) The articles of a company limited by shares may state that the company is a restricted purposes company.

(2) The articles of a restricted purposes company shall state the purposes of the company.

(3) Nothing in this section prevents the articles or by-laws of a company that is not a restricted purposes company from limiting the purposes, capacity, rights, powers or privileges of the company.

Effect of articles and by-laws

10. (1) The articles and by-laws of a company are binding as between—

(a) the company and each member of the company; and

(b) each member of the company.

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

Amendment of articles and by-laws

11. (1) The members of a company may, by resolution, amend the articles or by-laws of the company.

(2) The articles of a company may include the following provisions—

(a) that specified provisions of the articles or by-laws may not be amended;

(b) that a resolution passed by a specified majority of members, greater than 50%, is required to amend the articles or by-laws or specified provisions of the articles or by-laws; and

(c) that the articles or by-laws, or specified provisions of the articles or by-laws, may be amended only if certain specified conditions are met.

(3) Subsection (2) does not apply to any provision in the articles of a company that is not a restricted purposes company that restricts the purposes of that company.

(4) The articles of a company may authorise the directors, by resolution, to amend the articles or by-laws of the company but the directors of a company shall not have the power to amend the articles or by-laws—

(a) to restrict the rights or powers of the members to amend the articles or by-laws;

(b) to change the percentage of members required to pass a resolution to amend the articles or by-laws; or

(c) in circumstances where the articles or by-laws cannot be amended by the members.

Filing of notice of amendment of articles or by-laws

12. (1) Where members pass a resolution to amend the articles or by-laws of a company, the company shall file for registration—

(a) a notice of amendment in the approved form; or

(b) the restated articles or by-laws incorporating the amendment made.

(2) An amendment to the articles or by-laws has effect from the date that the notice of amendment, or restated articles or by-laws incorporating the amendment, is registered by the Registrar or from such other date as may be ordered by the Court under subsection (5).

(3) A company, a member or director of a company or any interested person may apply to the Court for an order that an amendment to the articles or by-laws should have effect from a date no earlier than the date of the resolution to amend the article or by-laws.

(4) An application under subsection (3) may be made—

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

(b) before or after the notice of amendment, or the restated articles or by-laws has been filed for registration.

(5) The Court may make an order on an application made under subsection (3) where it is satisfied that it would be just to do so.

(6) Where the notice of amendment or restated articles or by-laws has not been filed, the Court shall order that this must be done within a period not exceeding 5 days after the date of the order.

Amendment of articles - restricted purposes

13. (1) A restricted purposes company shall not amend its articles to delete or modify the statement specified in section 9(1) and any resolution of the members or directors of a company is void and of no effect to the extent that it contravenes this subsection.

(2) Subject to section 11(2), a restricted purposes company may amend its articles to modify its purposes.

(3) A company that is not a restricted purposes company shall not amend its articles to state that it is a restricted purposes company and any resolution of the members or directors of a company is void and of no effect to the extent that it contravenes this subsection.

Restated articles or by-laws

14. (1) A company may, at any time, file its restated articles or by-laws.

(2) Restated articles or by-laws shall incorporate only such amendments that have been registered under section 12.

(3) Where a company files restated articles or by-laws under subsection (1), the restated articles or by-laws have effect as the articles or by-laws of the company with effect from the date that they are registered by the Registrar.

(4) The Registrar is not required to verify that restated articles or by-laws filed under this section incorporates all the amendments or only those amendments that have been registered under section 12.

Provision of copies of articles and by-laws to members

15. (1) A copy of the articles and a copy of the by-laws shall be sent to any member who requests a copy.

Division 3

Company Names

Required part of company name

16. (1) The name of—

(a) a limited company shall end with—

(i) "Limited" or the abbreviation "ltd",

(ii) "corporation" or the abbreviation "corp",

(iii) "incorporated" or the abbreviation "inc",

(iv) "*Societe Anonyme*" or the abbreviation "s.a.", or

(v) "*Sociedad Anonima*" or the abbreviation "s.a.";

(b) an unlimited company shall end with "Unlimited" or the abbreviation "unltd";

(c) a private limited company shall end with "Private Limited" or the abbreviation "pvt";

(d) a public limited company shall end with "public limited company" or the abbreviation "plc";

(e) a restricted purposes company shall end with "spv limited (or ltd)";

(f) a segregated portfolio company shall include the designation "segregated portfolio company" or "spc" placed immediately before one of the endings in paragraph (a); and

(g) a segregated portfolio company that is a restricted purposes company shall include the designations in paragraphs (e) and (f).

(2) Regulations may provide for the use of additional names of companies.

(3) The name of a company may—

(a) be used in full or abbreviated form;

(b) use capital or lower case letters or any combination of these; and

(c) use a full stop.

Restrictions on company names

17. (1) A company shall not be registered under a name that—

(a) undermines another enactment;

(b) subject to section 23—

(i) is identical to the name under which a company is or has been registered under this Act or a former Act, or

(ii) is so similar to the name under which a company is or has been registered under this Act or a former Act that the use of the name would, in the opinion of the Registrar, be likely to confuse or mislead;

(c) is identical to a name that has been reserved under section 24 or that is so similar to a name that has been reserved under section 24 that the use of both names by different companies would, in the opinion of the Registrar, be likely to confuse or mislead;

(d) contains a restricted word or phrase, unless the Registrar has given its prior written consent to the use of the word or phrase; or

(e) the Registrar considers to be offensive or objectionable.

(2) For the purposes of subsection (1)(d), the Registrar, after consultation with the Commission may, by notice published in the *Gazette* specify words or phrases as restricted words or phrases.

Company number as company name

18. The name of a company may comprise the expression "Anguilla Company Number" followed by its company number in figures and the ending required by section 16 that is appropriate for the company.

Foreign character name

19. (1) A company may have additional foreign character names approved by the Registrar.

(2) Regulations may provide for the approval, use and change of foreign character names.

Company may change name

20. (1) A company may apply to the Registrar in the approved form to change its name or its foreign character name.

(2) Where the Registrar is satisfied that a company's name may be changed the Registrar shall—

(a) register the company's change of name; and

(b) issue a certificate of change of name to the company.

Registrar may direct change of name

21. (1) Where the Registrar considers, that the name of a company does not comply with sections 16, 17, 18 or 19, he may by written notice direct the company to apply to change its name on or before a date specified in the notice, which shall be not less than 21 days after the date of the notice.

(2) If a company that has received a notice under subsection (1) fails to file an application to change its name to a name acceptable to the Registrar on or before the date specified in the notice, the Registrar may revoke the name of the company and assign it a new name acceptable to the Registrar.

(3) Where the Registrar assigns a new name to a company under subsection (2), he shall—

(a) register the company's change of name;

(b) issue a certificate of change of name to the company; and

(c) issue notice of the change of name in the *Gazette*.

Effect of change of name

22. (1) A change of the name of a company under section 20 or 21—

(a) takes effect from the date ~~of~~ the certificate of change of name is issued; and

(b) does not affect any rights or obligations of the company or any legal proceedings by or against the company and any legal proceedings that have been commenced against the company under its former name may be continued against it under its new name.

(2) Where the name of the company is changed its articles and by-laws are deemed to be amended to state the new name with effect from the date of the change of name certificate.

Re-use of company names

23. The Regulations may provide for the re-use of names previously used by companies that are, or have been, registered under this Act or by the former Act that have—

(a) changed their name;

(b) been struck off the Register, or off a register maintained under a former Act, but not dissolved; or

(c) been dissolved under this Act or a former Act.

Reservation of name

24. (1) The Registrar may, upon a request made by a registered agent in the approved form, reserve for 90 days a name for future adoption by a company under this Act.

(2) The Registrar may refuse to reserve a name if he is not satisfied that the name complies with this Act.

(3) A request to reserve of a name for a period of more than 10 days shall be accompanied by the prescribed fee.

Use of company name

25. A company shall ensure that its full name and, if it has one, its foreign character name, is clearly stated in—

(a) every written communication sent by, or on behalf of, the company; and

(b) every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company.

Division 4

Capacity and Powers

Separate legal personality

26. A company is a legal entity in its own right, separate from its members and continues in existence until it is dissolved.

Capacity and powers

27. (1) A company has—

(a) full capacity to carry on any business or activity or to do any act or enter into any transactions; and

(b) full rights, powers and privileges of an individual.

(2) The powers of a company include the power to do the following—

(a) unless it is a company limited by guarantee or an unlimited company that is not authorised to issue shares—

(i) issue and cancel shares and hold treasury shares,

(ii) grant options over unissued shares in the company and treasury shares,

(iii) issue securities that are convertible into shares, and

(iv) give financial assistance to any person in connection with the acquisition of its own shares;

(b) issue debt obligations of every kind and grant options, warrants and rights to acquire debt obligations;

(c) guarantee a liability or obligation of any person and secure any of its obligations by mortgage, pledge or other charge, of any of its assets for that purpose; and

(d) protect the assets of the company for the benefit of the company, its creditors and its members and, at the discretion of the directors, for any person having a direct or indirect interest in the company.

(3) For the purposes of subsection (2)(d), the directors may transfer a company's assets in trust to a trustee and may provide that the company its creditors, its members or any person having an interest in the company may be the beneficiaries of the trust.

(4) The rights or interests in any assets of the company by any existing or subsequent creditor of the company are not affected by any transfer under subsection (3), and those rights or interests may be pleaded against any transferee in any such transfer.

Validity of acts of company

28. (1) No act of a company and no transfer of an asset by or to a company is invalid by reason only of the fact that the company did not have the capacity, right or power to perform the act or to transfer or receive the asset.

(2) Subsection (1) does not apply to a restricted purposes company.

Personal liability

29. Subject to section 99, no director, agent or voluntary liquidator of a company is liable for any debt, obligation or default of the company, unless specifically provided in this Act, in any other enactment, the articles and by-laws or agreements made, and except in so far as he may be liable for his own conduct or acts.

Dealings between company and other persons

30. (1) A company or a guarantor of an obligation of a company may not assert against a person dealing with the company or with a person who has acquired assets, rights or interests from the company that—

(a) this Act or the articles or by-laws of the company has not been complied with;

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

(i) is not a director of the company,

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

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

(c) a person held out by the company as director, employee or agent of the company—

(i) has not been duly appointed, or

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

(d) a person held out by the company as a director, employee or agent of the company with authority to exercise a power which a director, employee or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power; or

(e) a document issued on behalf of a company by a director, employee or agent of the company with actual or usual authority to issue the document is not valid or not genuine,

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

(2) Subsection (1) applies even though a person of the kind specified in paragraphs (b) to (e) commits fraud or forgery unless the person dealing with the company or with a person who has acquired assets, rights or interests from the company has actual knowledge of the fraud or forgery.

Constructive notice

31. (1) A person is not deemed to have notice or knowledge of any document relating to a company by reason only of the fact that a document—

(a) is available to the public from the Registrar; or

(b) is available for inspection at the registered office of the company or at the office of its registered agent.

(2) Subsection (1) does not apply—

(a) in relation to a document filed under Part 8; or

(b) to a document relating to a restricted purposes company.

PART 3

SHARES

Division 1

General

Legal nature of shares

32. A share in a company is personal property.

Rights attaching to shares and classes of shares

33. (1) Subject to subsection (2), a share in a company confers on the holder the right to—

(a) one vote at a meeting of the shareholders of the company or on any resolution of the shareholders of the company;

(b) an equal share in any dividend paid in accordance with this Act; and

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

(2) Where expressly authorised by its articles a company may issue—

(a) more than one class of shares; and

(b) shares subject to terms that negate, modify or add to the rights specified in subsection (1).

Series of shares

34. A company may issue a class of shares in one or more series, with each share in the series having the rights, privileges, restrictions and conditions for that series as specified in the articles of the company, provided that each share in the series shall have the same rights, privileges, restrictions and conditions as all other shares in the same class.

Types of shares

35. (1) Without limiting section 33(2)(b), shares in a company may—

(a) be redeemable;

(b) confer no rights or preferential rights to distributions of capital or income;

(c) confer special, limited or conditional rights, including voting rights;

(d) confer no voting rights; and

(e) participate only in certain assets of the company.

(2) A company may issue bonus shares, partly paid shares and nil paid shares.

Par value and no par value shares

36. A share—

(a) may be issued with or without a par value; and

(b) with a par value may be issued in any currency.

Issue and transfer of bearer shares prohibited

37. (1) A company, including a segregated portfolio company, shall not—

(a) issue a bearer share;

(b) convert a registered share to a bearer share; or

(c) exchange a registered share for a bearer share.

(2) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $10,000.

Fractional shares

38. (1) A company may issue fractional shares.

(2) A fractional share in a company has the corresponding fractional rights, obligations and liabilities of a whole share of the same class.

Change in number of shares company authorised to issue

39. (1) Where the articles of a company is amended to change the maximum number of shares that the company is authorised to issue, the company shall, together with the notice of amendment of its articles or the restated articles file a notice in the approved form.

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

Division and combination of shares

40. (1) A company may—

(a) divide its shares, including issued shares, into larger number of shares; or

(b) combine its shares, including issued shares, into a smaller number of shares.

(2) A division or combination of shares, including issued shares, of a class or series shall be for a larger or smaller number, as the case may be, of shares in the same class or series.

(3) A company shall not divide its shares under subsection (1)(a) or (2) if it would cause the maximum number of shares that the company is authorised to issue by its articles to be exceeded.

(4) Where shares are divided or combined under this section, the aggregate par value of the new shares must be equal to the aggregate par value of the original shares.

Register of members

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

(a) full names and most recent address of the persons who hold registered shares in the company;

(b) number of each class and series of registered shares held by each shareholder;

(c) full names and most recent address of the persons who are guarantee members of the company;

(d) full names and most recent address of the persons who are unlimited members;

(e) date on which the name of each member was entered in the register of members; and

(f) date on which any person ceased to be a member.

(2) The register of members may be in such form as the directors may approve but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.

(3) The Regulations may provide for the circumstances in which information relating to persons who are no longer members of a company to be deleted from the register of members.

(4) Notwithstanding subsection (3), information relating to persons who are no longer members of a company shall be retained for at least 6 years after the cessation of membership.

(5) A company that contravenes subsection (1) or (4) commits an offence and is liable on summary conviction to a fine of $5,000.

(6) For the purposes of subsection (1), a reference to a member includes a reference to a shareholder unless the context otherwise requires.

Register of members as evidence of legal title

42. (1) The entry of the name of a person in the register of members as a holder of a share in a company is evidence that legal title in the share vests in that person.

(2) A company may treat the holder of a registered share as the only person entitled to—

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

(b) receive notices;

(c) receive a distribution in respect of the share; and

(d) exercise other rights and powers attaching to the share.

Rectification of register of members

43. (1) A member of the company or an aggrieved person may apply to the court to rectify of the register where it is believed that—

(a) information to be entered in the register of members under section 41 is omitted from or inaccurately entered in the register; or

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

(2) The court may—

(a) refuse the application, with or without costs to be paid by the applicant; or

(b) order the rectification of the register and may direct the company to pay all costs of the application and any damages the applicant may have sustained.

Share certificates

44. (1) A company shall state in its articles or by-laws the circumstances in which share certificates shall be issued.

(2) If a company issues share certificates, the certificates shall be—

(a) signed by at least one director of the company or by another person who may be authorised by the articles or by-laws to sign share certificates; or

(b) under the common seal of the company, with or without the signature of any director of the company.

(3) The articles or by-laws may provide for the signatures or common seal to be prepared electronically.

Division 2

Issue of Shares

Issue of shares

45. In accordance with it articles or by-laws, directors may determine—

(a) that shares in a company should be issued, when those shares should be issued and to whom and the cost of those shares issued;

(b) the amount of shares to be acquired in a company; and

(c) other matters related to paragraphs (a) and (b).

Pre-emptive rights

46. (1) Subsections (2) to (4) apply to a company where the articles or by-laws expressly provide that this section shall apply to the company, but not otherwise.

(2) Before issuing shares that rank, or would rank, as to voting or distribution rights, or both, equally with, or prior to, shares already issued by the company, the directors shall offer the shares to existing shareholders in such a manner that, if the offer was accepted by those shareholders, the existing voting or distribution rights, or both, of those shareholders would be maintained.

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

(4) An offer made under subsection (2) shall remain open for acceptance for a reasonable period of time.

(5) Notwithstanding the requirements of this section, the articles or by-laws of a company may make different provisions with respect to pre-emptive rights other than those set out in this section.

Consideration of shares

47. (1) Subject to subsection (2), a share may be issued for consideration in any form, including money, a promissory note, or other written obligation to contribute money or property, real property, personal property (including goodwill and know-how), services rendered or a contract for future services.

(2) The consideration for a share with par value shall not be less than the par value of the share.

(3) If a share is issued in contravention of subsection (2), the person to whom the share is issued is liable to pay to the company an amount equal to the difference between the issue price and the par value.

Shares issued for consideration other than money

48. Before issuing shares for a consideration other than money, the directors shall pass a resolution stating—

(a) the amount to be credited for the issue of the shares;

(b) their determination of the reasonable present cash value of the non-money consideration for the issue; and

(c) that, in their opinion, the present cash value of the non-money consideration for the issue is not less than the amount to be credited for the issue of the shares.

Consent to issue of shares

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

(a) increases a liability of a person to the company; or

(b) imposes a new liability on a person to the company;

is void if that person or an authorised agent of that person does not agree in writing to becoming the holder of the share.

Time of issue

50. A share is deemed to be issued when the name of the shareholder is entered in the register of members.

Forfeiture of shares

51. (1) The articles or by-laws of a company, may contain provisions for the forfeiture of shares which are not fully paid for on issue.

(2) Any provision in the articles or by-laws, providing for the forfeiture of shares shall contain a requirement that a written notice of call specifying a date for payment to be made shall be served on the member who defaults in making payment in respect of the share.

(3) The written notice of call shall name a further date not earlier than the expiration of 14 days from the date of service of the notice on or before which the payment required by the notice is to be made and shall contain a statement that in the event of non-payment at or before the time named in the notice the shares, or any of them, in respect of which payment is not made will be liable to be forfeited.

(4) Where a written notice of call has been issued under this section and the requirements of the notice have not been complied with, the directors may, at any time before tender of payment, forfeit and cancel the shares to which the notice relates.

(5) The company is under no obligation to refund any moneys to the member whose shares have been cancelled pursuant to subsection (4) and that member shall be discharged from any further obligation to the company.

Division 3

Transfer of Shares

Transferability of shares

52. (1) Subject to any limitations or restrictions on the transfer of shares in the articles or by-laws, a share in a company is transferable.

(2) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of the transfer.

Transfer of shares by operation of law

53. Shares in a company may pass by operation of law, notwithstanding anything to the contrary in the articles or by-laws of the company.

Method of transfer of registered share

54. (1) Registered shares are transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee.

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

(3) The instrument of transfer of a registered share shall be sent to the company for registration.

(4) Subject to subsections (5) and (7), the company shall, on receipt of an instrument of transfer, enter the name of the transferee of the share in the register of members unless the directors resolve to refuse or delay the registration of the transfer for reasons that shall be specified in the resolution.

(5) The directors shall not pass a resolution refusing or delaying the registration of a transfer unless this Act or the articles or by-laws permits them to do so.

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

(7) The directors may refuse or delay the registration of a transfer of shares if the transferor has failed to pay an amount due for those shares.

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

(9) Where the directors of a company are satisfied that an instrument of transfer has been signed but that the instrument has been lost or destroyed, they may resolve—

(a) to accept such evidence of the transfer of the shares as they consider appropriate; and

(b) that the transferee's name should be entered in the register of members, despite the absence of the instrument of transfer.

Division 4

Distribution

Meaning of solvency test and distribution

55. (1) A company satisfies the solvency test if the—

(a) value of the company's assets exceeds its liabilities; and

(b) company is able to pay its debts as they fall due.

(2) Distribution by a company to a member means the direct or indirect transfer of an asset to or for the benefit of the member and includes the incurring of a debt to or for the benefit of a member.

(3) A company shall not distribute its own shares but may distribute a dividend.

(4) A member who is not a shareholder is entitled to distributions.

(5) Distributions may be facilitated by means of the purchase of an asset, the redemption or other acquisition of shares, a distribution of indebtedness or otherwise.

Distributions

56. (1) The directors of a company may, by resolution, authorise a distribution by the company to members at a time and of an amount as it thinks fit where they are satisfied that the company will, immediately after the distribution, satisfy the solvency test.

(2) A resolution of directors under subsection (1) shall contain a statement that, in the opinion of the directors, the company will, immediately after the distribution, satisfy the solvency test.

(3) Where, after a distribution is authorised and before it is made, the directors no longer hold the view that the company will, immediately after the distribution is made, satisfy the solvency test, then any distribution made by the company is deemed not to have been authorised.

Recovery of distribution made when company did not satisfy solvency test

57. (1) A distribution made to a member at a time when the company did not, immediately after the distribution, satisfy the solvency test may be recovered by the company from the member unless—

(a) the member received the distribution in good faith and without knowledge of the company's failure to satisfy the solvency test;

(b) the member altered his position relying on the validity of the distribution; and

(c) it would be unfair to require repayment in full or at all.

(2) If, by virtue of section 56(3), a distribution is deemed not to have been authorised, a director who—

(a) ceased, after authorisation but before the making of the distribution, to be satisfied in believing that the company would satisfy the solvency test immediately after the distribution is made; and

(b) failed to take reasonable steps to prevent the distribution being made;

is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from members.

(3) Where, in an action brought against a director or member under this section, the Court is satisfied that the company could, by making a distribution of a lesser amount, have satisfied the solvency test, the Court may—

(a) permit the member to retain; or

(b) relieve the director from liability;

for an amount equal to the value of any distribution that could properly have been made.

Company may purchase, redeem or otherwise acquire its own shares

58. (1) Subject to section 56, a company may purchase, redeem or otherwise acquire its own shares in accordance with either—

(a) sections 59, 60 and 61; or

(b) provisions for the purchase, redemption or acquisition of its own shares as may be specified in its articles or by-laws.

(2) Sections 59, 60 and 61 do not apply to a company to the extent that they are negated, modified or inconsistent with provisions for the purchase, redemption or acquisition of its own shares specified in the company's articles or by-laws.

(3) Where a company may purchase, redeem or otherwise acquire its own shares otherwise than in accordance with sections 59, 60 and 61, it may not purchase, redeem or otherwise acquire the shares without the consent of the member whose shares are to be purchased, redeemed or otherwise acquired, unless the company is permitted by the articles or by-laws to purchase, redeem or otherwise acquire the shares without that consent.

(4) Unless the shares are held as treasury shares in accordance with section 64, any shares acquired by a company are deemed to be cancelled immediately on purchase, redemption or other acquisition.

Process for purchase, redemption or other acquisition of own shares

59. (1) The directors of a company may make an offer to purchase, redeem or otherwise acquire shares issued by the company, if the offer is—

(a) to all shareholders to purchase, redeem or otherwise acquire shares issued by the company that—

(i) would, if accepted, leave the relative voting and distribution rights of the shareholders unaffected, and

(ii) affords each shareholder a reasonable opportunity to accept the offer; or

(b) to one or more shareholders to purchase, redeem or otherwise acquire shares—

(i) to which all shareholders have consented in writing, or

(ii) that is permitted by the articles or by-laws and is made in accordance with section 60.

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

(a) the offer may also permit the company to purchase, redeem or otherwise acquire additional shares from a shareholder to the extent that another shareholder does not accept the offer or accepts the offer only in part; and

(b) if the number of additional shares exceeds the number of shares that the company is entitled to purchase, redeem or otherwise acquire, the number of additional shares shall be reduced rateably.

Offer to more than one shareholder

60. (1) The directors of a company shall not make an offer to one or more shareholders under section 59(1)(b) unless they have passed a resolution stating that, in their opinion the—

(a) purchase, redemption or other acquisition is to the benefit of the remaining shareholders; and

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

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

(3) The directors shall not make an offer to one or more shareholders under section 59(1)(b) if, after the passing of a resolution under subsection (1) and before the making of the offer, they cease to hold the opinions specified in subsection (1).

(4) A shareholder may apply to the Court for an order restraining the proposed purchase, redemption or other acquisition of shares under section 59(1)(b) on the grounds that the—

(a) purchase, redemption or other acquisition is not in the best interests of the remaining shareholders; or

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

Shares redeemed otherwise than at option of company

61. (1) If a share is redeemable at the option of the shareholder and the shareholder gives the company proper notice of his intention to redeem the share—

(a) the company shall redeem the share on the date specified in the notice, or if no date is specified, on the date of the receipt of the notice;

(b) unless the share is held as a treasury share under section 63, the share is deemed to be cancelled; and

(c) from the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(2) If a share is redeemable on a specified date—

(a) the company shall redeem the share on that date;

(b) unless the share is held as a treasury share under section 63, the share is deemed to be cancelled; and

(c) from the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(3) Where a company redeems a share under subsections (1) and (2), sections 59 and 60 do not apply.

Purchases redemptions or other acquisitions deemed not to be a distribution

62. The purchase, redemption or other acquisition by a company of one or more of its own shares is deemed not to be a distribution where the company redeems—

(a) shares according to section 61;

(b) shares pursuant to a right of a shareholder to have his shares redeemed or to have his shares exchanged for money or other property of the company; or

(c) purchases or otherwise acquires the shares according to section 187.

Treasury shares

63. (1) A company may hold shares that have been purchased, redeemed or otherwise acquired under section 58 as treasury shares if the—

(a) articles or by-laws of the company do not prohibit it from holding treasury shares;

(b) directors resolve that shares to be purchased, redeemed or otherwise acquired shall be held as treasury shares; and

(c) number of shares purchased, redeemed or otherwise acquired, when aggregated with shares of the same class already held by the company as treasury shares, does not exceed 50% of the shares of that class previously issued by the company, excluding shares that have been cancelled.

(2) All the rights and obligations attaching to a treasury share are suspended and shall not be exercised by or against the company while it holds the share as a treasury share.

Transfer of treasury shares

64. Treasury shares may be transferred by the company and the articles and by-laws that apply to the issue of shares apply to the transfer of treasury shares.

Mortgages and charges of shares

65. (1) A mortgage or charge of shares of a company shall be in writing signed by, or with the authority of the registered holder of the registered share to which the mortgage or charge relates.

(2) A mortgage or charge of shares of a company need not be in any specific form but it shall clearly indicate the—

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

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

(3) Where the governing law of a mortgage or charge of shares in a company is not the law of Anguilla the—

(a) mortgage or charge shall be in compliance with the requirements of its governing law in order for the mortgage or charge to be valid and binding on the company; and

(b) remedies available to a mortgagee or chargee shall be governed by the governing law and the instrument creating the mortgage or charge except that the rights between the mortgagor or mortgagee as a member of the company and the company shall continue to be governed by the memorandum and the articles of the company and this Act.

(4) Where the governing law of a mortgage or charge of shares in a company is the law of Anguilla, in the case of a default by the mortgagor or chargor on the terms of the mortgage or charge, the mortgagee or chargee is entitled to the following remedies—

(a) subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, the right to sell the shares; and

(b) the right to appoint a receiver or liquidator who, subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, may—

(i) vote the shares,

(ii) receive distributions in respect of the shares, and

(iii) exercise other rights and powers of the mortgagor or chargor in respect of the shares,

until the time as the mortgage or charge is discharged.

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

(a) firstly, in meeting the costs incurred in enforcing the mortgage or charge;

(b) secondly, in discharging the sums secured by the mortgage or charge; and

(c) thirdly, in paying any balance due to the mortgagor or chargor.

(6) Where the governing law of a mortgage or charge of shares in a company is the law of Anguilla, the remedies referred to in subsection (5) are not exercisable until—

(a) default has occurred and has continued for a period of not less than 30 days, or a shorter period as may be specified in the instrument creating the mortgage or charge; and

(b) the default has not been rectified within 14 days or a shorter period as may be specified in the instrument creating the mortgage or charge from service of the notice specifying the default and requiring rectification thereof.

(7) In the case of a mortgage or charge of registered shares there may be entered in the register of members of the company—

(a) a statement that the shares are mortgaged or charged;

(b) the name of the mortgagee or chargee; and

(c) the date on which the statement and name are entered in the register of members.

Meaning of disabled bearer share

66. A bearer share that is disabled means that the share does not carry any of its usual entitlements such as the right to vote and entitlement to a distribution and any transfer of it is void and of no effect.

PART 4

MEMBERS

Meaning of "shareholder", "guarantee member" and "unlimited member"

67. In this Act—

"guarantee member" means a person whose name is entered in the register of members as a guarantee member;

"shareholder" means a person whose name is entered in the register of members as the holder of one or more shares, or fractional shares, in the company; and

"unlimited member" means a person whose name is entered in the register of members as a member who has unlimited liability for the liabilities of the company.

Company to have one or more members

68. (1) A company shall at all times have one or more members.

(2) In the case of a company limited by guarantee, whether or not authorised to issue shares, at least one of the members of the company shall be a guarantee member and where the company is authorised to issue shares, a guarantee member may also be a shareholder.

(3) In the case of an unlimited company, whether or not authorised to issue shares, at least one of the members of the company shall be an unlimited member and where the company is authorised to issue shares, an unlimited member may also be a shareholder.

Liability of members

69. (1) A member of a limited company has no liability, as a member, for the liabilities of the company.

(2) The liability of a shareholder to the company, as shareholder, is limited to any—

(a) amount unpaid on a share held by the shareholder;

(b) liability expressly provided for in the articles or by-laws of the company; and

(c) liability to repay a distribution under section 57(1).

(3) The liability of a guarantee member to the company, as guarantee member, is limited to—

(a) the amount that the guarantee member is liable to contribute as specified in the articles in accordance with section 8(1)(f); and

(b) any other liability expressly provided for in the articles or by-laws of the company; and

(c) any liability to repay a distribution under section 57(1).

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

Members' resolutions

70. (1) Unless otherwise specified in this Act or in the articles or by-laws of a company, the exercise by the members of a company of a power which is given to them under this Act or the articles shall be by a resolution passed—

(a) at a meeting of members held pursuant to section 71; or

(b) as a written resolution in accordance with section 77.

(2) A resolution is passed if approved by a simple majority or, if a higher majority is required by the memorandum or articles, that higher majority of the votes of those members entitled to vote and voting on the resolution.

(3) For the purposes of subsection (2)—

(a) votes of shareholders shall be counted according to the votes attached to the shares held by the shareholder voting; and

(b) unless the articles or by-laws otherwise provide, a guarantee member and an unlimited member is entitled to one vote on any resolution on which he is entitled to vote.

Meetings of members

71. (1) A meeting of the members of the company may be convened at any time by—

(a) the directors of the company; or

(b) persons as may be authorised by the articles and by-laws to call the meeting.

(2) The directors of a company shall call a meeting of the members of the company if requested in writing to do so by members entitled to exercise at least 30% of the voting rights for the matter which the meeting is requested.

(3) Subject to a company's articles and by-laws, a meeting of the members of the company may be held at such time and in such place, within or outside Anguilla, as the convener of the meeting considers appropriate.

(4) A member of the company shall be deemed to be present at a meeting of members if—

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

(b) all members participating in the meeting are able to hear each other.

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

(6) Where shares are jointly owned—

(a) if 2 or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of members and may speak as a member;

(b) if only one of them is present in person or by proxy, he may vote on behalf of all of them; and

(c) if 2 or more are present in person or by proxy, they must vote as one.

Notice of meetings of members

72. (1) Subject to a requirement in the articles or by-laws to give longer notice, persons convening a meeting of the members of a company shall give at least 7 days' notice of the meeting to those persons whose names, on the date the notice is given, appear as members in the register of members and are entitled to vote at the meeting.

(2) Notwithstanding subsection (1), a meeting of members held in contravention of the requirement to give notice is valid if members holding a 90% majority (or a lesser majority as may be specified in the articles or by-laws) of the total voting rights on all the matters to be considered at the meeting have waived notice of the meeting and, for this purpose, the presence of a member at the meeting shall be deemed to constitute a waiver on his part.

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

(4) The convener of a meeting of members may fix the date notice is given of a meeting or another date as may be specified in the notice as the record date for determining those members that are entitled to vote at the meeting.

Quorum for meetings of members

73. The quorum for a meeting of the members of a company for the purposes of a resolution of members is that fixed by the articles or by-laws but, where no quorum is fixed, a meeting of

members is properly constituted for all purposes if at the commencement of the meeting there are present in person or by proxy, members entitled to exercise at least 50% of the votes.

Voting trusts

74. (1) One or more shareholders of a company may, by agreement in writing, transfer registered shares to any person, authorised to act as trustee for the purpose of vesting in such person, who may be designated voting trustee, the right to vote thereon and the following provisions shall apply—

(a) the agreement may contain any other provisions not inconsistent with the purpose of the agreement;

(b) a copy of the agreement shall be deposited at the registered office of the company and shall be open to the inspection by members of the company in the case of—

(i) any beneficiary of the trust under the agreement, daily during business hours, and

(ii) members of the company, subject to the provisions of section 90;

(c) where certificates for registered shares have been issued for shares that are to be transferred to a trustee pursuant to this section, new certificates shall be issued to the voting trustee to represent the shares so transferred and the certificates formerly representing the shares that have been transferred shall be surrendered and cancelled;

(d) where a certificate is issued to a voting trustee, an endorsement shall be made on the certificate that the shares represented in the case of registered shares are held by the person named pursuant to an agreement;

(e) there shall be noted in the register of members of the company against the record of the shares held by the trustee the fact that such an agreement exists;

(f) the voting trustee may vote the shares issued or transferred during the period specified in the agreement;

(g) shares registered in the name of the voting trustee may be voted either in person or by proxy and, in voting the shares, the voting trustee shall not incur any liability as member or trustee, except in so far as he may be liable for his own conduct or acts;

(h) where 2 or more persons are designated as voting trustees and the right and method of voting any shares registered in their names at any meeting of members or on any resolution of members are not fixed by the agreement appointing the trustees, the right to vote shall be determined by a majority of the trustees, or if they are equally divided as to the right and manner of voting the shares in any particular case, the votes of the shares in such case shall be divided equally among the trustees;

(i) at any time prior to the expiration of any voting trust agreement as originally fixed or as last extended as provided in this subsection, one or more beneficiaries of the trust under the voting trust agreement may, by written agreement and with the

written consent of the voting trustee, extend the duration of the voting trust agreement for such additional period as is stated in the written agreement;

(j) the voting trustee shall, prior to the expiration of a voting trust agreement, as originally fixed or as previously extended, deposit at the registered office of the company a copy of the extension agreement and of his consent and the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement, but no extension agreement shall affect the rights or obligations of persons who are not parties; and

(k) the voting trustee shall have a written agreement filed with the registered agent that is available for inspection.

(2) Two or more members of a company may, notwithstanding subsection (1), by agreement in writing, provide that in exercising any voting rights the shares held by them shall be voted as—

(a) provided by the agreement;

(b) the parties may agree; or

(c) determined according to the procedure agreed upon.

(3) This section shall be deemed not to invalidate any voting or other agreement among members or any irrevocable proxy that is not otherwise illegal.

Court may call meeting of members

75. (1) The Court may order a meeting of members to be held and to be conducted in a manner as the Court orders if it is of the opinion that it is—

(a) impracticable to call or conduct a meeting of the members of a company in the manner specified in this Act or in the articles and by-laws of the company; or

(b) in the interests of the members of the company that a meeting of members is held.

(2) An application for an order under subsection (1) may be made by a member or director of the company.

(3) The Court may make an order under subsection (1) on such terms, including as to costs of conducting the meeting and as to the provision of security for those costs, as it considers appropriate.

Proceedings at meetings of members

76. The Regulations may specify provisions for proceedings of members' meetings which shall apply for a company, except to the extent that the articles or by-laws of the company provide otherwise.

Written resolutions

77. (1) An action that may be taken by members of the company at a meeting of members may also be taken by a resolution of members consented to in writing or by telex, telegram, cable or other written electronic communication without the need for any notice.

(2) A resolution under subsection (1) may consist of several documents, including written electronic communications in like form, each signed or assented to by one or more members.

Service of notice on members

78. Any notice, information or written statement required under this Act to be given by a company to members shall be served in the case of members holding registered shares—

(a) in the manner specified in the articles and by-laws; or

(b) unless the articles and by-laws specify otherwise, by personal service, mail or e-mail or other electronic means addressed to each member at the address indicated in the register of members.

PART 5

COMPANY ADMINISTRATION

Division 1

Registered Office and Registered Agent

Registered office

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

(2) The registered office of a company is—

(a) the place specified as the company's first registered office in the articles filed under section 8(1)(c); or

(b) if one or more notices of change of registered office have been filed under section 82, the place specified in the last such notice to be registered by the Registrar.

(3) The registered office of a company, whether as specified in the articles or in any notice filed under section 82—

(a) shall be a physical address in Anguilla; and

(b) where the registered office of the company is at the office of its registered agent that fact shall be stated in the description of the address in the articles or in the notice.

Registered agent

80. (1) Subject to subsection (4), a company shall at all times have a registered agent in Anguilla.

(2) Unless the last registered agent of the company has resigned according to section 83 or ceased to be the company's registered agent according to section 84(3), the registered agent of a company is—

(a) the person specified as the company's first registered agent in the articles filed under section 8(1)(c); or

(b) where one or more notices of change of registered agent have been filed under section 82, the person specified as the company's registered agent in the last notice to be registered by the Registrar.

(3) No person shall be the registered agent of a company unless that person has a physical address in Anguilla and where the registered office of the company is at the office of its registered agent, that fact shall be stated in the description of the address in the articles or in the notice.

(4) The registered agent of a company shall be a person who holds a relevant licence.

(5) If the registered agent of a company ceases to hold a relevant licence, the company shall, within 90 days of becoming aware that the person concerned has ceased to hold a relevant licence, change its registered agent to a person who holds a licence.

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

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

(8) If a person who acts as the registered agent of a company ceases to hold a relevant licence, he does not commit an offence under subsection (6) if, upon ceasing to hold the licence, he immediately notifies the company that he no longer holds a relevant licence and that the company must change its registered agent in accordance with subsection (4).

Registered agent-prohibition

81. A company that does not have a registered agent in contravention of section 80 commits an offence and is liable on summary conviction to a fine of $10,000.

Change of registered office or registered agent

82. (1) A resolution to change the location of a company's registered office or to change a company's registered agent may be passed—

(a) notwithstanding any provision to the contrary in the articles or by-laws, by the members of the company; or

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

(2) A company that wishes to change its registered office or registered agent shall file a notice in the approved form.

(3) A notice of change of registered agent shall be endorsed by the new registered agent with his agreement to act as registered agent.

(4) A notice of change of registered office or registered agent may be filed only by—

(a) the registered agent of the company; or

(b) a legal practitioner in Anguilla acting on behalf of the company for the purposes of filing the notice.

(5) For the purposes of subsection (4)(a), in the case of a notice of change of registered agent, "registered agent" means the existing registered agent.

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

(7) As soon as reasonably practicable after registering a notice of change of registered agent, the Registrar shall send a copy of the notice endorsed by the Registrar with the time and date of registration—

(a) to the company's new registered agent; and

(b) where the notice was filed by a legal practitioner, to the former registered agent.

(8) A change of registered office or registered agent is deemed not to constitute an amendment of the company's articles.

Registered agent ceasing to act

83. (1) A person may resign as the registered agent of a company only in accordance with this section.

(2) A person wishing to resign as the registered agent of a company shall—

(a) give not less than 90 days written notice of his intention to resign as registered agent of the company on the date specified in the notice to a person specified in subsection (3); and

(b) file with the Registrar a copy of the notice provided under paragraph (a) according to subsection (3).

(3) A notice under subsection (2) shall be sent to a director of the company at the director's last known address or, if the registered agent is not aware of the identity of any director of the company, to the person from whom the registered agent last received instructions concerning the company.

(4) If a company does not change its registered agent in accordance with section 82 on or before the date specified in the notice given under subsection (2), the registered agent may file a notice of resignation as the company's registered agent.

(5) Unless the company has previously changed its registered agent, the resignation of a registered agent is effective the day after the notice of resignation is registered by the Registrar.

Registered agent ceasing to be eligible to act

84. (1) For the purposes of this section, a person ceases to be eligible to act as a registered agent if the—

(a) person ceases to hold a licence under the Company Management Act or the Trust Companies and Offshore Banking Act or any other applicable enactment; or

(b) Commission withdraws its approval for the person to provide registered agent services.

(2) Where a person ceases to be eligible to act as a registered agent, that person shall, with respect to each company of which he was, immediately before ceasing to be eligible to act, the registered agent shall send to the person specified in subsection (3), a notice—

(a) advising the company that he is no longer eligible to be its registered agent;

(b) advising the company that it must appoint a new registered agent within 90 days of the date of the notice; and

(c) specifying that on the expiration of the period specified in paragraph (b), he will cease to be the registered agent of the company, if the company has not previously changed its registered agent.

(3) A notice under subsection (2) shall be sent to a director of the company at the director's last known address or, if the registered agent is not aware of the identity of any director of the company, to the person from whom the registered agent last received instructions concerning the company.

(4) A company that receives a notice under subsection (2) shall, within 90 days of the date of the notice, appoint a new registered agent.

(5) A registered agent who contravenes subsection (2) and a company that contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of $10,000.

(6) A person does not commit an offence under subsection (5) by reason only of the fact that—

(a) he ceases to be eligible to act as a registered agent; and

(b) after ceasing to be eligible to act, he continues to be the registered agent of a company during the period from the date he ceases to be eligible to act to the date that the company appoints a new registered agent.

Register of Approved Registered Agent

85. (1) The Registrar shall maintain a Register of Approved Registered Agents in which the following details shall be recorded in respect of each registered agent—

(a) the full name of the approved registered agent;

(b) the current address of the approved registered agent;

(c) the names of the individuals authorised to sign on behalf of any firm or company that is an approved registered agent;

(d) the date when the registered agent obtained the approval of the Commission to provide registered agent services;

(e) in a case where a person ceases to be an approved registered agent the—

(i) date on which the person ceased to be so approved, and

(ii) reason for his ceasing to be an approved registered agent.

(2) The Regulations may provide for the publication by the Registrar of the names of persons who are approved to provide registered agent services.

(3) An approved registered agent shall immediately send notification to the Registrar in the approved form of any change in the details kept by the Registrar for the registered agent in the Register of Approved Registered Agents and the Registrar shall record the change in the Register.

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

Division 2

Company Records

Documents to be kept at office of registered agent

86. (1) A company shall keep the following documents (copies or originals) at the office of its registered agent—

(a) the articles or by-laws of the company;

(b) the register of members;

(c) the register of directors; and

(d) copies of all notices and other documents filed by the company with the Registrar in the previous 6 years.

(2) Where a company keeps a copy of the register of members or the register of directors at the office of its registered agent, it shall—

(a) within 15 days of any change in the register, notify the registered agent, in writing, of the change; and

(b) provide the registered agent with a written record of the physical address of the place at which the original register of members or the original register of directors is kept.

(3) Where the place at which the original register of members or the original register of directors is changed, the company shall provide the registered agent with the physical address of the new location of the records within 14 days of the change of location.

(4) A company that contravenes subsection (1), (2) or (3) commits an offence and is liable on summary conviction to a fine of $10,000.

Other records to be maintained by company

87. (1) A company shall keep—

(a) minutes of all meetings of—

(i) directors,

(ii) members,

(iii) shareholders,

(iv) committees of directors,

(v) committees of officers, and

(vi) committees of shareholders;

(b) copies of all resolutions consented to by—

(i) directors,

(ii) members,

(iii) shareholders,

(iv) committees of directors,

(v) committees of officers, and

(vi) committees of shareholders; and

(c) the articles and the by-laws and all amendments to them.

(2) A company shall keep the following records at the office of its registered agent or at a place within or outside Anguilla, as the directors may determine—

(a) minutes of meetings and resolutions of members and of classes of members maintained in accordance with section 92; and

(b) minutes of meetings and resolutions of directors and committees of directors maintained in accordance with section 92.

(3) Where any records specified under subsection (2) are kept at a place other than at the office of the company's registered agent, the company shall provide the registered agent with a written record of the physical address of the place at which the records are kept.

(4) Where the place at which any records specified under subsection (2) is changed, the company shall provide the registered agent with the physical address of the new location of the records within 14 days of the change of location.

(5) The registered agent shall keep and maintain a record of the place or places outside Anguilla at which the company keeps its records required under subsection (2) and underlying documents and such record shall comprise—

(a) the name of the company;

(b) the address of the place at which the company's records and underlying documents are kept; and

(c) the name of the person who owns or controls the place at which the company's records and underlying documents are kept.

(6) Whenever required to do so by the Commission or any other competent authority in Anguilla, the registered agent shall request and obtain from the company, the records and underlying documents in respect of the company.

(7) A company shall have a common seal and an imprint of it shall be kept at the registered office of the company.

(8) A company that contravenes this section commits an offence and is liable on summary conviction to a fine of $10,000.

Financial records

88. (1) A company shall keep records that—

(a) are sufficient to show and explain the company's transactions; and

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

(2) If the accounting records of a company are kept outside Anguilla, the company shall ensure that it keeps at its registered office—

(a) accounts and returns adequate to ascertain the financial position of the company with reasonable accuracy on a bi-annual basis; and

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

(3) The period for which all records and underlying documents shall be maintained is 6 years beginning on the date—

(a) on which all activities taking place in the course of the transaction in question were completed;

(b) of the ending of the business relationship for whose formation the record was compiled; or

(c) when the company was struck off the register or dissolved.

(4) For the purposes of this section "business relationship" means a continuing arrangement between a company and one or more persons with whom the company engages in business, whether on a one-off, regular or habitual basis.

(5) The records and underlying documents required to be kept under this section shall be kept by former directors and registered agents and shall be kept at the registered office of the company or at another place inside or outside of Anguilla as the directors may by resolution determine.

(6) Where the records and underlying documents required to be kept under this section are kept at a place other than at the registered office of the company, the company shall provide the registered agent with a written—

(a) record of the physical address of the place at which the records and underlying documents are kept;

(b) record of the name of the person who owns or controls the place at which the records and underlying documents are kept; and

(c) undertaking advising that the registered agent shall, at any time it requests, have access to and be provided with the records and underlying documents without delay.

(7) Where the place at which the records and underlying documents or the name of the person who owns or controls such place changes, the company shall provide its registered agent with the physical address of the new location of the records and underlying documents or the name of the new owner or controller of the new location within 14 days of the change of the place.

(8) A company that contravenes this section commits an offence and is liable on summary conviction to a fine of $10,000.

Form of records

89. The records required to be kept by a company shall be kept—

(a) in paper form; or

(b) either wholly or partly as electronic records complying with the requirements of the Electronic Transactions Act.

Inspection of records

90. (1) A director of a company is entitled, on giving reasonable notice, to inspect the documents and records of the company without charge and at a reasonable time specified by the director and to make copies of or take extracts from the documents and records.

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

(a) the articles or by-laws;

(b) the register of members;

(c) the register of directors; and

(d) minutes of meetings and resolutions of members and of those classes of members of which he is a member;

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

(3) The directors may, if they are satisfied that it would be contrary to the company's interests to allow a member to inspect any document specified in subsection (2)(b), (c) or (d), refuse to permit the member to inspect the document or limit the inspection of the document, including limiting the making of copies or the taking of extracts from the records.

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

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

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

Service of process, etc. on company

91. (1) Service of a document may be effected on a company by addressing the document to the company and leaving it at or sending it by a prescribed method to registered office.

(2) The Regulations may provide for the methods by which service of a document on a company may be proved.

Books, records and common seal

92. (1) A company shall keep—

(a) minutes of all meetings of—

(i) directors,

(ii) members,

(iii) committees of directors,

(iv) committees of members; and

(b) copies of all resolutions consented to by—

(i) directors,

(ii) members,

(iii) committees of directors, and

(iv) committees of members.

(2) A company may have a common seal and an imprint of the seal shall be kept at the office of the registered agent of the company.

Offence for failure to keep proper books and records under section 92

93. A company that contravenes section 92 commits an offence and is liable on summary conviction to a fine of $10,000.

Division 3

General Provisions

Contracts and smart contracts

94. (1) A contract may be entered into by a company where, if entered into by an individual, would be—

(a) required by law to be in writing and under seal, may be entered into by or on behalf of the company in writing under the common seal of the company, and may be varied or discharged in the same manner;

(b) required by law to be in writing and signed, may be entered into by or on behalf of the company in writing and signed by a person acting under the express or implied authority of the company, and may be varied or discharged in the same manner; and

(c) valid although entered into orally, and not reduced to writing, may be entered into orally by or on behalf of the company by a person acting under the express or implied authority of the company, and may be varied or discharged in the same manner.

(2) A contract entered into in accordance with this section is valid and is binding on the company and its successors and all other parties to the contract.

(3) Without affecting subsection (1)(a), a contract, agreement or other instrument executed by or on behalf of a company by a director or an authorised agent of the company is valid notwithstanding the fact that the common seal of the company is not affixed to the contract, agreement or instrument.

(4) Notwithstanding subsection (1)(a), an instrument is validly executed by a company as a deed or an instrument under seal if it is either—

(a) sealed with the common seal of the company and witnessed by a director of the company or another person who is authorised by the articles or by-laws to witness the application of the company's seal; or

(b) it is expressed to be, or is expressed to be executed as, or otherwise makes clear on its face that it is intended to be, a deed and it is signed by a director or by a person acting under the express or implied authority of the company.

(5) The provisions of subsection (3) shall be without prejudice to the validity of any instrument under seal validly executed before, on or after the date on which this section comes into force.

(6) A contract may be entered into by the company by electronic means, which can be self-executing and legally enforceable upon the occurrence of specified conditions and shall have effect as if it were made under subsection (1).

Contracts before incorporation

95. (1) A person who enters into a written contract in the name of or on behalf of a company before the company is incorporated, is personally bound by the contract and is entitled to the benefits of the contract, except where—

(a) the contract specifically provides otherwise; or

(b) subject to any provisions of the contract to the contrary, the company adopts the contract under subsection (2).

(2) A company may, by any action or conduct signifying its intention to be bound by a written contract entered into in its name or on its behalf before it was incorporated, adopt the contract within such period as may be specified in the contract or, if no period is specified, within a reasonable period after the company's incorporation.

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

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

(b) subject to any provisions of the contract to the contrary, the person who acted in the name of or on behalf of the company ceases to be bound by or entitled to the benefits of the contract.

Notes and bills of exchange

96. A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed by a company if it is made, accepted or endorsed in the name of the company by—

(a) or on behalf or on account of the company; or

(b) a person acting under the express or implied authority of the company;

and if so endorsed, the person signing the endorsement is not liable.

Power of attorney

97. (1) A company may, by an instrument in writing, appoint a person as its attorney either generally or in relation to a specific matter.

(2) An act of an attorney done in accordance with the instrument under which he was appointed binds the company.

(3) An instrument appointing an attorney may either be—

(a) executed as a deed; or

(b) signed by a person acting under the express or implied authority of the company.

Authentication or attestation

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

Company without members

99. If at any time there is no member of a company, any person doing business in the name of or on behalf of the company is personally liable for the payment of all debts of the company contracted during the time and the person may be sued for the debts without joinder in the proceedings of any other person.

PART 6

DIRECTORS AND SECRETARY

Division 1

Directors

Companies required to have directors

100. (1) A private company must have at least one director.

(2) A public company must have at least 3 directors, 2 of whom must not be officers or employees of the company or its affiliates.

(3) Where it appears to the Registrar that a company does not have the required amount of directors, the Registrar may order that—

(a) senior managers are temporarily appointed as directors or in the absence of senior managers, that persons with the requisite qualifications be temporarily appointed as directors; and

(b) in keeping with its articles and by-laws, that directors must be appointed.

(4) Any appointment made by the Registrar shall not exceed 3 months.

Appointment of directors

101. (1) The first registered agent of a company shall, upon the date of incorporation of the company, appoint one or more persons as the first directors of the company.

(2) First directors hold office from the issue of the certificate of incorporation of the company until the first meeting of the shareholders.

(3) Subject to the articles or by-laws, subsequent directors may be appointed by members or by directors.

(4) A person must consent in writing to be a director before taking up the office of director.

(5) A director does not have to be a shareholder of the company.

(6) A director is appointed for the term specified in the resolution appointing him.

Election of directors

102. (1) The shareholders of a company shall by ordinary resolution at the first meeting of the company and at each following annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the third annual meeting of the shareholders of the company following the election.

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

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

(4) Notwithstanding subsections (1) and (3), if directors are not elected at a meeting of shareholders or if a meeting of shareholders was not held as specified in the notice, the incumbent directors continue in office until their successors are elected.

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

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

Alternate directors

103. (1) An alternate director is a person appointed by a director or by shareholders to exercise that director's powers and to carry out that director's responsibilities.

(2) An alternate director—

(a) has the same rights as the alternate's appointer;

(b) is personally liable for their own acts and omissions;

(c) is not to be treated as the agent of their appointer; and

(d) can only act when his appointer is not present.

(3) An alternate director's appointment terminates—

(a) when his appointer revokes his appointment by notice to the company in writing specifying when it is to terminate;

(b) on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointer, would result in the termination of the appointer's appointment as director; and

(c) when the appointer dies or the directorship of the appointer ends.

Disqualifications for directors

104. (1) A person is disqualified from being a director of a company if that person—

(a) has not attained the age of 18 years;

(b) has been convicted of offences involving fraud or dishonesty in connection with the promotion, incorporation or management of any body corporate;

(c) by order of a court has been declared to be of unsound mind;

(d) is an undischarged bankrupt;

(e) is disqualified from being a director under this or any other enactment; or

(f) is disqualified by the articles and by-laws from being a director of the company.

(2) Where a person acts as a director whilst disqualified under subsection (1), that person is deemed to be a director for the purposes of any provision of this Act that imposes a duty or obligation on a director.

Director's disqualification order

105. (1) Where the Registrar is satisfied that the conduct of a director warrants disqualification from being a director, the Registrar may apply to the court for a director's disqualification order.

(2) Before applying to the Court, the Registrar shall give the director at least 10 days notice of his intention to apply to the court.

(3) In determining the application, the Court shall consider the relevant circumstances including any convictions of the director for offences involving fraud or dishonesty in connection with the promotion, incorporation or management of any body corporate.

(4) Where it appears to the Court that a director is unfit to hold that office, the Court may order that, without the prior leave of the court, the director is disqualified to hold the office for a

period not exceeding 5 years and the Court may include any condition necessary to satisfy the justice of the case.

(5) The Registrar shall register the order made in a Register of Disqualified Directors.

Committee of directors

106. (1) The directors may—

(a) set up a committee of directors and each committee must comprise of at least one director; and

(b) delegate powers, including the power to affix the common seal of the company, to the committee.

(2) Notwithstanding subsection (1), the directors shall not delegate to a committee of directors the powers to—

(a) amend the articles or by-laws;

(b) set up a committee of directors;

(c) delegate powers to a committee of directors;

(d) appoint or remove directors;

(e) appoint or remove an agent;

(f) approve any plan or arrangement, merger or consolidation;

(g) make a declaration of solvency for the purposes of section 228(1)(a) or approve a liquidation plan; or

(h) make a determination under section 56(1) that the company will, immediately after a proposed distribution, satisfy the solvency test.

(3) Subsections (2)(b) and (c) do not prevent a committee of directors, where authorised by the directors, from appointing a sub-committee and delegating powers exercisable by the committee to the sub-committee.

(4) Where the directors of a company delegate their powers to a committee of directors, they remain responsible for the exercise of that power by the committee, unless they believed on reasonable grounds that at all times before the exercise of the power that the committee would exercise the power in conformity with the duties imposed on directors of the company by this Act.

(5) The Regulations may amend subsection (2) by adding to the powers that the directors have no power to delegate to a committee of directors.

Register of directors

107. (1) A company shall keep a register of directors containing—

(a) the names and addresses of the persons who are directors of the company or who have been nominated as reserve directors of the company;

(b) the date on which each person whose name is entered in the register was appointed as a director, or nominated as a reserve director, of the company;

(c) the date on which each person named as a director ceased to be a director of the company;

(d) the date on which the nomination of any person nominated as a reserve director ceased to have effect; and

(e) any other information as may be prescribed.

(2) The register of directors may be in a form as the directors approve, but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.

(3) The register of directors is evidence of any matters directed or authorised by this Act to be contained in it.

Division 2

Vacated Directorship, Removal and Resignation of Directors, etc.

Vacated office of director

108. (1) The office of director shall be vacated if—

(a) the director dies or ceases to be a director under this Act or becomes prohibited by law from being a director;

(b) becomes bankrupt;

(c) a registered medical practitioner in or outside of Anguilla who is treating that person gives a written opinion to the company stating that the person is physically or mentally incapable of acting as a director and may remain so for more than 6 months and the board resolves that the office be vacated;

(d) he resigns office or his directorship is terminated;

(e) he was absent from office for at least 3 months without permission of the board and the board resolves that the office be vacated; or

(f) the company's articles and by-laws provide that on the occurrence of a specified event the office is vacated.

(2) Unless the articles or by-laws of a company provide otherwise, the directors of a company may appoint one or more directors to fill a vacancy on the board but any appointment shall be for the unexpired term of the director who vacated office.

Reserve directors

109. (1) Where a company has one member who is an individual and that member is also the sole director that sole director may nominate a person as a reserve director.

(2) The appointment of a reserve director must be done in accordance with the articles and by-laws for the appointment of a director.

(3) A reserve director takes up office on the death of the sole director.

(4) A reserve director has the powers and duties of a director.

(5) The nomination of a person as a reserve director terminates where—

(a) before the death of the sole director who nominated him he resigns as reserve director;

(b) the sole director revokes the nomination in writing; or

(c) the sole director who nominated him ceases to be the sole director of the company for any reason other than his death.

Removal of directors

110. (1) Notwithstanding anything in any agreement between the director and the company, a director of a company may be removed from office by ordinary resolution of the members of the company.

(2) Special notice (indicating that a director is to be removed) is required of a resolution to remove a director and the resolution may only be passed by at least 75% of the members of the company entitled to vote.

(3) The director is entitled to be heard on the resolution at the meeting or by previous written representations which, if received in time, may be circulated to members.

(4) Notwithstanding subsection (3), articles or by-laws may provide for the removal of a director without providing him with a right to be heard.

(5) Where a person is appointed director to replace the director so removed, for the purpose of determining the time at which he or any other director is to retire he shall be treated as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.

Resignation of director

111. (1) A director of a company may resign his office by giving written notice of his resignation to the company and the resignation has effect from the date the notice is received by the company or from such later date as may be specified in the notice.

(2) A director of a company shall resign immediately if he becomes disqualified to act as a director.

Liability of former directors

112. A director who vacates office remains liable under this Act for any acts or omissions or decisions made whilst he was a director.

Validity of acts of director

113. The acts of a person as a director are valid notwithstanding that the—

(a) person's appointment as a director was defective; or

(b) person is disqualified to act as a director.

Annual return for unlimited company not authorised to issue shares

114. (1) An unlimited company that is not authorised to issue shares shall file within the calendar quarter of its registration but not later than the last day of the calendar quarter, an annual return of its directors in the approved form.

(2) An annual return filed under subsection (1) shall be certified as correct by a director of the company or by its registered agent.

Emoluments of directors

115. Subject to the articles or by-laws of a company, the directors of the company may fix the emoluments of directors for services to be rendered in any capacity to the company.

Division 3

Duties of Directors and Conflicts

Fiduciary position of a director

116. A director occupies a fiduciary position in relation to a company and is therefore obligated to perform duties with loyalty, fidelity and honesty and at all times to act in good faith.

General duties of a director

117. (1) A director has a general duty to—

(a) act within powers;

(b) promote the success of the company;

(c) exercise independent judgement;

(d) exercise reasonable care, skill and diligence;

(e) avoid conflicts of interest;

(f) not to accept benefits from third parties; and

(g) declare an interest in a proposed transaction or arrangement.

(2) The general duties specified in subsection (1) are owed by a director of the company to the company.

(3) The general duties of a director to a company are based on certain common law rules and equitable principles and as such, shall be interpreted and applied in the same way as the corresponding common law rules and equitable principles.

(4) Subsection (3) does not abrogate or hinder the development of statutory rules governing the duties of directors.

Duty to act within powers

118. A director must—

(a) act in accordance with the company's articles and by-laws; and

(b) only exercise powers for the purposes for which they are conferred.

Duty to promote the success of the company

119. (1) A director must act in a manner that would most likely promote the success of the company.

(2) In fulfilling the responsibilities under subsection (1), a director must consider the—

(a) likely consequences of any decision in the long term;

(b) interests of employees;

(c) need to foster (relevant) business relationships with suppliers, customers and others;

(d) impact of operations on the community and the environment;

(e) desirability of maintaining a reputation for high standards of business conduct; and

(f) need to act fairly as between members of the company.

(3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors.

Duty to exercise independent judgment

120. (1) A director must exercise independent judgment.

(2) This duty is not infringed by his acting in—

(a) accordance with a binding agreement that restricts the future exercise of discretion by its directors;

(b) a way authorised by the articles and by-laws of the company, or

(c) accordance with the professional advice of managerial staff or other professional persons hired to provide advice to the board.

Duty to exercise reasonable care, skill and diligence

121. (1) A director must exercise reasonable care, skill and diligence.

(2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with the general knowledge, skill and experience that—

(a) may reasonably be expected of a person performing the functions carried out by the director in relation to the company; and

(b) the director has.

Duty to avoid conflicts of interest

122. (1) A director must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

(2) This applies in particular to the exploitation of any property, information or opportunity and it is immaterial whether the company could take advantage of the property, information or opportunity.

(3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.

(4) This duty is not infringed if the—

(a) situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(b) matter has been authorised by the directors.

(5) Authorisation may be given by the directors where the company is a—

(a) private company and nothing in the company's articles and by-laws invalidates such authorisation, by the matter being proposed to and authorised by the directors; or

(b) public company and its articles and by-laws include a provision enabling the directors to authorise the matter.

(6) The authorisation is effective only if—

(a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director; and

(b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.

(7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

Duty not to accept benefits from third parties

123. (1) A director must not accept a benefit from a third party conferred by reason of his—

(a) being a director; or

(b) doing (or not doing) anything as director.

(2) A "third party" means a person other than the company, an associated body corporate or a person acting on behalf of the company or an associated body corporate.

(3) Benefits received by a director from a person by whom his services (as a director or otherwise) are provided to the company are not regarded as conferred by a third party.

(4) This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

(5) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

Duty to declare interest in proposed transaction or arrangement

124. (1) If a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors.

(2) The declaration may be made—

(a) at a meeting of the directors; or

(b) by notice in writing to the directors.

(3) If a declaration of interest under this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

(4) Any declaration required by this section must be made before entering into the transaction or arrangement.

(5) This section does not require a declaration of an interest where the director is not aware of the transaction or arrangement in question.

(6) A director is treated as being aware of matters of which he ought reasonably to be aware.

(7) A director need not declare an interest if—

(a) it cannot reasonably be regarded as likely to give rise to a conflict of interest;

(b) or to the extent that, the other directors are already aware of it (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware); or

(c) or to the extent that, it concerns terms of his service contract that have been or are to be considered by a meeting or committee of directors.

(8) A transaction entered into by a company where a director has an interest is not voidable by the company where—

(a) in accordance with the by-laws and articles, the transaction is ratified by resolution of members or directors; or

(b) the company received fair value for the transaction.

Directors duties in relation to subsidiaries and joint ventures

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

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

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

Reliance on records and reports

126. (1) A director is entitled to rely upon the register of members, books, records, financial statements, professional advice and other information prepared by a—

(a) senior or managerial employee of the company who is competent in relation to the matters concerned;

(b) professional adviser or expert in relation to matters which the director believes to be within the person's professional expertise; or

(c) committee of directors upon which the director did not serve, in relation to matters within the director's or committee's designated authority.

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

(a) makes proper inquiry where the need for the inquiry is indicated by the circumstances; and

(b) has no knowledge that his reliance on the register of members, books, records, financial statements, professional advice and other information is not warranted.

Division 4

Proceedings of Directors and Miscellaneous Provisions

Meetings of directors

127. (1) The directors of a company may have meetings at a time, place and in a manner either within or outside Anguilla as the articles or by-laws may determine.

(2) Any one or more directors may convene a meeting of directors.

(3) A director shall be deemed to be present at a meeting of directors if—

(a) he participates by telephone or any electronic audio or audio visual means; and

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

Notice of meetings of directors

128. (1) Subject to any requirements as to notice in the articles or by-laws, a director shall be given not less than one day's notice of a meeting of directors.

(2) Where a meeting is held not in keeping with its articles and by-laws, the majority of directors entitled to vote at that meeting may waive the notice of the meeting and the presence of a director at the meeting shall be deemed to constitute waiver except when the director attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

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

Quorum for meetings of directors

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

Consents of directors

130. (1) Subject to the articles or by-laws, an action that may be taken by the directors or a committee of directors at a meeting may also be taken by a resolution of directors or a committee of directors consented to in writing including any electronic communication.

(2) A resolution under subsection (1) may consist of several documents, including written electronic communications, in like form each signed or assented to by one or more directors.

(3) Notwithstanding subsections (1) and (2), Regulations may prescribe alternative means of the communication in relation to recording the consent of directors under this section.

Agents

131. (1) Subject to the articles or by-laws of a company and the resolution of directors, the directors may appoint any person to be an agent of the company and the agent has the powers and authority assigned to him including the power and authority to affix the common seal of the company.

(2) Notwithstanding subsection (1), no agent has any power or authority with respect to the following—

(a) to amend the articles or by-laws;

(b) to change the registered office or agent;

(c) to designate committees of directors;

(d) to delegate powers to a committee of directors;

(e) to appoint or remove directors;

(f) to appoint or remove an agent;

(g) to fix emoluments of directors;

(h) to approve a plan of merger, consolidation or arrangement;

(i) to make a declaration of solvency for the purposes of section 228(1)(a) or to approve a liquidation plan;

(j) to make a determination under section 56(1) that the company will, immediately after a proposed distribution, satisfy the solvency test; or

(k) to authorise the company to continue as a company incorporated under the laws of a jurisdiction outside Anguilla.

(3) Where the directors appoint any person to be an agent of the company, they may authorise the agent to appoint one or more substitutes or delegates to exercise some or all of the powers conferred on the agent by the company.

(4) The directors may remove an agent, appointed under subsection (1) and may revoke or vary a power conferred on him under subsection (2).

Indemnification

132. (1) In connection with any legal, administrative or investigative proceedings a company may indemnify a—

(a) director or officer of the company;

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

(c) person who acts or acted at the company's request as a director or officer of a body corporate of which the company is or was associated with as a shareholder, partner, creditor or some other arrangement;

and his legal representatives, against all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment) incurred by him by reason of being, or having been, a director or officer of that company or body corporate.

(2) Subsection (1) does not apply unless the director or officer—

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

(b) in the case of a criminal or administrative proceedings, had reasonable grounds for believing that his conduct was lawful.

(3) The termination of any proceedings by any judgement, order, settlement, conviction or the entering of a *nolle prosequi* does not, by itself, create a presumption that the person did not act honestly and in good faith and with a view to the best interests of the company or that the person had reasonable cause to believe that his conduct was unlawful.

(4) A person in subsection (1) has the right to be indemnified in respect of all costs, charges and expenses incurred in any legal, administrative or investigative proceedings where—

(a) the defence raised was mostly successful on the merits; or

(b) it is fair and reasonable given all the circumstances of the proceedings that the person should be indemnified.

(5) All expenses incurred by a person under subsection (1) in defending any proceedings may be paid by the company in advance of the final disposition of such proceedings upon receipt of an undertaking to repay the amount if it should ultimately be determined that indemnification should not have occurred.

(6) The indemnification provided by this section is not exclusive of any other rights to which the person seeking indemnification or advancement of expenses may be entitled under any agreement, resolution of members, resolution of disinterested directors or otherwise, both as to acting in the person's official capacity and as to acting in another capacity while serving as a director of the company.

Insurance of officers, etc.

133. A company may purchase and maintain insurance for the benefit of any officer, director and employee and against any liability that may be incurred.

Division 5

Company Secretary

Public company must have secretary

134. A public company must have a secretary.

Qualifications of secretaries of companies

135. It is the duty of the directors of a public company to take all reasonable steps to secure that the secretary of the company—

(a) is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company, and

(b) has one or more of the following qualifications—

(i) that he has held the office of secretary of a public company for at least 3 of the 5 years immediately preceding his appointment as secretary,

(ii) that he is a member in good standing of a recognised accounting body approved by the Registrar,

(iii) that he is admitted as a barrister or solicitor of the Court,

(iv) that he is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors and the Registrar to be capable of discharging the functions of Secretary of the company.

Private company and secretary

136. (1) A private company is not required to but is encouraged to have a secretary.

(2) In the case of a private company without a secretary—

(a) anything authorised or required to be given or sent to, or served on, the company by being sent to its secretary—

(i) may be given or sent to, or served on, the company itself, and

(ii) if addressed to the secretary shall be treated as addressed to the company; and

(b) anything else required or authorised to be done by or to the secretary of the company may be done by or to—

(i) a director, or

(ii) a person authorised generally or specifically in that behalf by the directors.

Direction requiring company to appoint secretary

137. (1) Where it appears to the Registrar that a public company has not appointed a secretary, the Registrar shall direct the public company to appoint a secretary within one month or face a fine of $1,000 for each month that the secretary's position remains vacant.

(2) Notwithstanding section 136, where it appears to the Registrar that given the purpose, operation and financial value of a private company that it is prudent to have a secretary appointed the Registrar may direct the private company—

(a) in the first instance to appoint a secretary within a specified time; and

(b) in the second instance to appoint a secretary or face a fine of $1,000 for each month that the secretary's position remains vacant.

PART 7

EXEMPTED COMPANIES

Companies that may apply to be registered as exempted companies

138. Any proposed company applying for registration under this Act, the objects of which are to be carried out mainly outside the jurisdiction or pursuant to a licence to carry on business in the jurisdiction to which section 147 refers, may apply to be registered as an exempted company.

Registration of exempted companies

139. On being satisfied that the requirements of this Part have been complied with, the Registrar shall register the company as an exempted company.

Declaration by proposed company

140. A proposed exempted company applying for registration as an exempted company shall submit to the Registrar a declaration signed by a subscriber to the effect that the operation of the proposed exempted company will be conducted mainly outside the jurisdiction or pursuant to a licence to carry on business in the jurisdiction to which section 147 refers.

Shares shall be non-negotiable

141. The shares of an exempted company shall be non-negotiable and shall be transferred only on the books of the company.

Annual return

142. Not later than the last day of the calendar quarter of its registration, each exempted company that does not hold a licence to carry on business in the jurisdiction to which section 147(1), (2) and (3) refers shall furnish to the Registrar a return which shall be in the form of a declaration that—

(a) since the previous return or since registration, as the case may be, there has been no alteration in the articles of association, other than an alteration in the name of the company in keeping with this Act;

(b) the operations of the exempted company since the last return or since registration of the exempted company, as the case may be, have been mainly outside the jurisdiction; and

(c) section 147(1), (2) and (3) has been and is being complied with.

Annual fee

143. (1) Every exempted company shall pay its annual fee not later than the last day of the calendar quarter of its registration.

(2) Each such annual fee shall be tendered with the annual return required under this Part.

(3) An exempted company who defaults in submitting its annual return under this Part of the fee referred to in subsection (1) shall incur a penalty of—

(a) 33.33% of the annual fee specified in subsection (1) if the return is submitted or the fee and penalty are paid after its calendar quarter but before the end of the first subsequent quarter;

(b) 66.67% of the annual fee specified in subsection (1) if the return is submitted or the fee and penalty are paid after its first subsequent quarter following its calendar quarter but before the end of the second subsequent quarter; and

(c) 100% of the annual fee specified in subsection (1) if the annual return is submitted or the fee and penalty are paid after its second subsequent quarter.

Failure to submit annual fee or annual return

144. (1) Any exempted company which fails to comply with section 241 shall be deemed to be a defunct company and shall thereupon be dealt with as such but without prejudice to its being registered again as though it were being registered for the first time.

(2) Before taking action under subsection (1), the Registrar shall give one month's notice to the defaulting company and, if the default is made good before the expiry of such notice, sections 241 shall be deemed to have been complied with.

False statement in declaration and penalty for false declaration

145. (1) If any declaration contains any wilful false statement or misrepresentation the company shall, on proof thereof, be liable to be immediately dissolved and removed from the register and in such case any fee tendered shall be forfeited to the Minister charged with responsibility for Finance for credit to the Consolidated Fund.

(2) Every director and officer of a company who knowingly makes or permits the making of any such declaration knowing it to be false commits an offence and is liable on summary conviction to a fine of $5,000 and to imprisonment for a term of one year, or to both.

Non-payment of stamp duties by exempted company

146. (1) An exempted company shall not pay Stamp Duties on an instrument relating to—

(a) a transfer of property to or by the exempted company; and

(b) transactions for the shares, debt obligations or other securities of the exempted company incorporated under this Act.

(2) Subsection (1) does not apply to an instrument relating to a transfer of property situated in Anguilla including any interest in land in Anguilla and in shares in a company incorporated under this Act which is not an exempted company.

Prohibited and non-prohibited activities

147. (1) An exempted company shall not carry on a trade or business in the jurisdiction with any person, except in furtherance of the business of the exempted company carried on outside of the jurisdiction, unless that exempted company holds a licence to carry on business in the jurisdiction under any applicable law.

(2) Nothing in this section shall be construed so as to prevent an exempted company effecting and concluding contracts in the jurisdiction and exercising in the jurisdiction all its powers necessary for the carrying on of its business outside the jurisdiction.

(3) An exempted company that holds a licence to carry on business in the jurisdiction under any applicable law, shall from the date of issue of such licence, continue for all purposes as if incorporated and registered as an ordinary resident company under and subject to this Act the provisions of which shall apply to the company and to persons and matters associated with the company as if the company were incorporated and registered under this Act except as otherwise provided in this Act.

(4) An exempted company shall not be prohibited from doing the following in Anguilla—

(a) maintaining bank accounts;

(b) holding meetings of directors or shareholder;

(c) maintaining corporate or financial records; and

(d) maintaining an administrative or managerial office which carries on activities outside of Anguilla.

Prohibited sale of securities

148. An exempted company that is not listed on the national or regional Stock Exchange is prohibited from making any invitation to the public in the jurisdiction to subscribe for any of its securities.

Penalty for carrying on business contrary to this Part

149. If an exempted company carries on any business in the jurisdiction in contravention of this Part then, without prejudice to any other proceedings that may be taken in respect of the contravention, the exempted company and every director, provisional director and officer of the exempted company who is responsible for the contravention commits an offence and is liable on summary conviction to a fine of $100 for every day during which the contravention occurs or continues, and the exempted company shall be liable to be immediately dissolved and removed from the register.

Electronic business by exempted companies

150. Nothing in this Act shall prohibit an exempted company from offering, by electronic means, and subsequently supplying, real or personal property, services or information from a place of

business in the jurisdiction or through an internet service provider or other electronic service provider located in the jurisdiction.

PART 8

PRIVATE TRUST COMPANIES

Interpretation for this Part

151. (1) For the purposes of this Part—

"connected trust business" means trust business in respect of trusts of which there is one or more than one contributor to the funds of which are all, in relation to each other, connected persons; and a person is a "connected person", in relation to another person, where—

(a) they are in a relationship prescribed by regulations made under this Part;

(b) one is contributing to the funds of a trust as the trustee of a trust of which the other is a contributor;

(c) each is in a group of companies; or

(d) one is a company and the other is a beneficial owner of shares or other ownership interests of that company or of any other company in the same group of companies;

"private trust company" or "PTC" means a trust company which—

(a) is incorporated in Anguilla; and

(b) conducts no trust business other than connected trust business or unremunerated trust business; and

(2) For the purposes of this Part "unremunerated trust business'' requires that—

(a) payments made to the PTC are only in respect of costs and expenses incurred in acting as trustee (or protector) of a trust, where the PTC is not permitted to make a profit;

(b) only "professional directors" are remunerated for providing director services and such directors may not own shares in the PTC; and

(c) no person "associated" with the PTC is remunerated in consideration of services provided by the PTC which constitute "related trust business" and "associated" means that the person has a legal or beneficial interest in the PTC, is a director or former director of the PTC (excluding professional directors) or is an employee or former employee of the PTC.

No requirement for licence for private trust companies

152. A private trust company does not require a licence to carry on connected trust business or unremunerated trust business.

Regulations to prescribe matters for private trust companies

153. The Regulations may prescribe matters, information, particulars, and requirements for the registering and maintenance of private trust companies.

PART 9

SEGREGATED PORTFOLIO COMPANIES

Interpretation for this Part

154. (1) In this Part—

"general assets" of a segregated portfolio company has the meaning specified in section 163(3);

"portfolio liquidator" means the person appointed as portfolio liquidator under a portfolio liquidation order;

"portfolio liquidation order" means an order made under section 172;

"segregated portfolio" means a segregated portfolio created by a segregated portfolio company under section 155 for the purpose of segregating the assets and liabilities of the company in accordance with this Part;

"segregated portfolio assets" has the meaning specified in section 163(2); and

"segregated portfolio distribution" means a distribution made in respect of segregated portfolio shares and "segregated portfolio dividend" shall be construed accordingly.

(2) This Act applies to a segregated portfolio company subject to the provisions of this Part and to such modifications as are necessary.

Division 1

Approval and Registration

Incorporation or registration as segregated portfolio company

155. (1) A company limited by shares may, with the written approval of the Commission given under subsection (2)—

(a) be incorporated as a segregated portfolio company; or

(b) if it has already been incorporated, be registered by the Registrar as a segregated portfolio company.

(2) The Commission may give its written approval to the incorporation of a company, or the registration of an existing company, as a segregated portfolio company only if the company—

(a) is, or on its incorporation will be, recognised as a professional or private fund or registered as a public fund under the Mutual Funds Act and the Insurance Act; or

(b) is, or on its incorporation will be, of such class or description as may be prescribed by the Regulations.

(3) The Registrar shall not incorporate or register a company as a segregated portfolio company unless the Commission has given its written approval under subsection (1).

Application for approval of Commission

156. (1) An application for approval to incorporate or register a company as a segregated portfolio company shall be made to the Commission in the approved form and shall be accompanied by such documentation as may be prescribed or notified by the Commission.

(2) The Commission may require an applicant under subsection (1) to furnish it with such other documentation and information as it considers necessary to determine the application.

Commission may approve application

157. (1) On receipt of an application under section 156, if it is satisfied that the company has, or has available to it, the knowledge and expertise necessary for the proper management of segregated portfolios, the Commission may give its approval to the incorporation or registration of a company as a segregated portfolio company subject to such conditions as it considers appropriate.

(2) The Commission may, at any time—

(a) vary or revoke any condition subject to which an approval under subsection (1) was given; and

(b) impose any condition in respect of any such approval.

Division 2

Attributes and Requirements of Segregated Portfolio Companies

Segregated portfolios

158. (1) Subject to subsection (4), a segregated portfolio company may create one or more segregated portfolios for the purpose of segregating the assets and liabilities of the company held within, or on behalf, of a segregated portfolio from the assets and liabilities of the company held within, or on behalf of, any other segregated portfolio of the company or the assets and liabilities of the company which are not held within, or on behalf of, any segregated portfolio of the company.

(2) A segregated portfolio company is a single legal entity and a segregated portfolio of or within a segregated portfolio company does not constitute a legal entity separate from the company.

(3) Each segregated portfolio shall be separately identified or designated and shall include in such identification or designation the words "Segregated Portfolio".

(4) Where, pursuant to the Regulations, a segregated portfolio company is required to obtain the approval of the Commission for the creation of a segregated portfolio, the company shall not create a segregated portfolio unless it has obtained the prior written approval of the Commission.

(5) A segregated portfolio company that contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of $10,000.

Segregated portfolio shares

159. (1) A segregated portfolio company may, in respect of a segregated portfolio, issue shares, the proceeds of which shall be included in the segregated portfolio assets of the segregated portfolio in respect of which the segregated portfolio shares are issued.

(2) Segregated portfolio shares may be issued in one or more classes and a class of segregated portfolio shares may be issued in one or more series.

(3) Notwithstanding section 8(1)(e), the articles of a segregated portfolio company is not required to state the classes of segregated portfolio shares that a segregated portfolio company is authorised to issue.

(4) Unless the context otherwise requires, references in Part 3 to shares include references to segregated portfolio shares.

General shares

160. The proceeds of the issue of shares in a segregated portfolio company, other than segregated portfolio shares, shall be included in the company's general assets.

Segregated portfolio distributions and dividends

161. (1) Subject to this section, a segregated portfolio company may pay a dividend or otherwise make a distribution in respect of segregated portfolio shares.

(2) Segregated portfolio dividends may be paid, and segregated portfolio distributions made, by reference only to the segregated portfolio assets and liabilities attributable to the segregated portfolio in respect of which the segregated portfolio shares were issued.

(3) In determining whether a segregated portfolio company satisfies the solvency test for the purposes of section 57, in respect of a segregated portfolio distribution, no account shall be taken of—

(a) the assets and liabilities of or attributable to any other segregated portfolio of the company; or

(b) the company's general assets and liabilities.

(4) The Regulations may prescribe restrictions on the power of a segregated portfolio company to make distributions, including segregated portfolio distributions, where the company or any segregated portfolio of or within the company does not satisfy the solvency test.

Company to act on behalf of portfolios

162. Any act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement which is to be binding on, or to ensure to the benefit of, a segregated portfolio or portfolios shall be executed by the segregated portfolio company for, and on behalf of, such segregated portfolio or portfolios which shall be identified or specified and, where in writing, it shall be indicated that such execution is in the name of, or by, or for the account of, such segregated portfolio or portfolios.

Assets

163. (1) The assets of a segregated portfolio company shall be either segregated portfolio assets or general assets.

(2) The segregated portfolio assets comprise the assets of the segregated portfolio company held within or on behalf of the segregated portfolios of the company.

(3) The general assets of a segregated portfolio company comprise the assets of the company which are not segregated portfolio assets.

(4) The assets of a segregated portfolio comprise—

(a) assets representing the consideration paid or payable for the issue of segregated portfolio shares and reserves attributable to the segregated portfolio; and

(b) all other assets attributable to, or held within, the segregated portfolio.

(5) It shall be the duty of the directors of a segregated portfolio company to establish and maintain (or cause to be established and maintained) procedures—

(a) to segregate, and keep segregated, segregated portfolio assets separate and separately identifiable from general assets;

(b) to segregate, and keep segregated, segregated portfolio assets of each segregated portfolio separate and separately identifiable from segregated portfolio assets of any other segregated portfolio; and

(6) Notwithstanding subsection (5), the directors of a segregated portfolio company may cause or permit segregated portfolio assets and general assets to be held—

(a) by or through a nominee; or

(b) by a company, the shares and capital interests of which may be segregated portfolio assets or general assets or a combination of both.

(7) The directors of a segregated portfolio company do not breach the duties imposed on them under subsection (5) by reason only that they cause or permit segregated portfolio assets or general assets, or a combination of both, to be collectively invested, or collectively managed by an investment manager, provided that the assets remain separately identifiable in accordance with subsection (5).

Creditors of a segregated portfolio company

164. (1) The rights of creditors of a segregated portfolio company shall correspond with the liabilities provided for in section 167 and no creditor of a segregated portfolio company shall have any rights other than the rights specified in this section and in sections 166 and 167.

(2) Subject to subsection (3), the following terms shall be implied in every transaction entered into by a segregated portfolio company—

(a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wheresoever, to make or attempt to make liable any segregated portfolio assets attributable to any segregated portfolio of the company in respect of a liability not attributable to that segregated portfolio;

(b) that if any party shall succeed by any means whatsoever or wheresoever in making liable any segregated portfolio assets attributable to any segregated portfolio of the company in respect of a liability not attributable to that segregated portfolio, that party shall be liable to the company to pay a sum equal to the value of the benefit thereby obtained by him; and

(c) that if any party shall succeed in seizing or attaching by any means or otherwise levying execution against any segregated portfolio assets attributable to any segregated portfolio of the company in respect of a liability not attributable to that segregated portfolio, that party shall hold those assets or their proceeds on trust for the company and shall keep those assets or proceeds separate and identifiable as such trust property.

(3) Subsection (2) does not apply to the extent that it is excluded in writing.

(4) All sums recovered by a segregated portfolio company as a result of any trust referred to in subsection (2)(c) shall be credited against any concurrent liability imposed pursuant to the implied term set out in subsection (2)(b).

(5) Any asset or sum recovered by a segregated portfolio company pursuant to the implied term set out in subsection (2)(b) or (2)(c) or by any other means whatsoever or wheresoever in the events referred to in those subsections shall, after the deduction or payment of any costs of recovery, be applied by the company so as to compensate the segregated portfolio affected.

(6) In the event of any segregated portfolio assets attributable to a segregated portfolio of a segregated portfolio company being taken in execution in respect of a liability not attributable to that segregated portfolio, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the segregated portfolio affected, the company shall—

(a) cause or procure its auditor, acting as expert and not as arbitrator, to certify the value of the assets lost to the segregated portfolio affected; and

(b) transfer or pay, from the segregated portfolio assets or general assets to which the liability was attributable to the segregated portfolio affected, assets or sums sufficient to restore to the segregated portfolio affected the value of the assets lost.

(7) Where under subsection (6)(b) a segregated portfolio company is obliged to make a transfer or payment from segregated portfolio assets attributable to a segregated portfolio of the company, and those assets are insufficient, the company shall so far as possible make up the deficiency from its general assets.

(8) This section shall have extra-territorial application.

Segregation of assets

165. Segregated portfolio assets—

(a) shall only be available and used to meet liabilities to the creditors of the segregated portfolio company who are creditors in respect of that segregated portfolio and who shall thereby be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio for such purposes; and

(b) shall not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the segregated portfolio company who are not creditors in respect of that segregated portfolio, and who accordingly shall not be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio.

Segregation of liabilities

166. (1) Where a liability of a segregated portfolio company to a person arises from a matter, or is otherwise imposed, in respect of or attributable to a particular segregated portfolio—

(a) such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to—

(i) firstly the segregated portfolio assets attributable to such segregated portfolio,

(ii) secondly the segregated portfolio company's general assets, to the extent that the segregated portfolio assets attributable to such segregated portfolio are insufficient to satisfy the liability and to the extent that the assets attributable to such segregated portfolio company's general assets exceed any minimum capital amounts lawfully required by the Commission; and

(b) such liability shall not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to, the segregated portfolio assets attributable to any other segregated portfolio.

(2) Where a liability of a segregated portfolio company to a person—

(a) arises otherwise than from a matter in respect of a particular segregated portfolio or particular segregated portfolios; or

(b) is imposed otherwise than in respect of a particular segregated portfolio or particular segregated portfolios;

such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the company's general assets.

General liabilities and assets

167. (1) Liabilities of a segregated portfolio company not attributable to any of its segregated portfolios shall be discharged from the company's general assets.

(2) Income, receipts and other assets or rights of, or acquired by, a segregated portfolio company not otherwise attributable to any segregated portfolio shall be applied to and comprised in the company's general assets.

Financial statements

168. The financial statements of a segregated portfolio company shall take into account the segregated nature of the company and shall include an explanation of—

(a) the nature of the company;

(b) how the segregation of the assets and liabilities of the company impacts upon members of the company and persons with whom the company transacts; and

(c) the effect that any existing deficit in the assets of one or more segregated portfolios of the company has on the general assets of the company.

Limitation on transfer of segregated portfolio assets from segregated portfolio company

169. (1) The segregated portfolio assets attributable to any segregated portfolio of a segregated portfolio company may only be transferred to another person in accordance with, or as permitted by, this section.

(2) A transfer, pursuant to subsection (1), of segregated portfolio assets attributable to a segregated portfolio of a segregated portfolio company shall not, of itself, entitle creditors of that company to have recourse to the assets of the person to whom the segregated portfolio assets were transferred.

(3) The Court shall not make a segregated portfolio transfer order in relation to a segregated portfolio of a segregated portfolio company—

(a) unless it is satisfied—

(i) that the creditors of the company entitled to have recourse to the segregated portfolio assets attributable to the segregated portfolio consent to the transfer, or

(ii) that those creditors would not be unfairly prejudiced by the transfer; and

(b) without hearing the representations of the Commission on the matter.

(4) The Court, on hearing an application for a segregated portfolio transfer order, may—

(a) make an interim order or adjourn the hearing, conditionally or unconditionally; or

(b) dispense with any of the requirements of subsection (3)(a).

(5) The Court may attach such conditions as it thinks fit to a segregated portfolio transfer order, including conditions as to the discharging of claims of creditors entitled to have recourse to the segregated portfolio assets attributable to the segregated portfolio in relation to which the order is sought.

(6) The Court may make a segregated portfolio transfer order in relation to a segregated portfolio of a segregated portfolio company notwithstanding that—

(a) a voluntary liquidator has been appointed in respect of the company; or

(b) a portfolio liquidation order has been made in respect of the segregated portfolio or any other segregated portfolio of the company.

(7) The provisions of this section are without prejudice to any power of a segregated portfolio company lawfully to make payments or transfers from the segregated portfolio assets attributable to any segregated portfolio of the company to a person entitled, in conformity with the provisions of this Act, to have recourse to those segregated portfolio assets.

(8) Notwithstanding the provisions of this section, a segregated portfolio company shall not require a segregated portfolio transfer order to invest, and change investment of, segregated portfolio assets or otherwise to make payments or transfers from segregated portfolio assets in the ordinary course of the company's business.

(9) Section 187 shall not apply to a transfer of segregated portfolio assets attributable to a segregated portfolio of a segregated portfolio company made in compliance with this section.

Division 3

Liquidation, Portfolio Liquidation Orders and Administration

Meaning of "liquidator"

170. In this Division, "liquidator" means a voluntary liquidator or a liquidator appointed under a liquidation order.

Liquidation of segregated portfolio company

171. Notwithstanding the provisions of Part 15, or any other statutory provision or rule of law to the contrary, in the liquidation of a segregated portfolio company, the liquidator—

(a) shall be bound to deal with the company's assets in accordance with the requirements set out in section 163(5); and

(b) in discharge of the claims of creditors of the segregated portfolio company shall apply the company's assets to those entitled to have recourse thereto in conformity with the provisions of this Part.

Portfolio liquidation orders

172. (1) Subject to the provisions of this section, if in relation to a segregated portfolio company the Court is satisfied—

(a) that the segregated portfolio assets attributable to a particular segregated portfolio of the company (when account is taken of the company's general assets, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company's general assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that segregated portfolio; and

(b) that the making of an order under this section would achieve the purposes set out in subsection (3);

the Court may make a portfolio liquidation order under this section in respect of that segregated portfolio.

(2) A portfolio liquidation order may be made in respect of one or more segregated portfolios.

(3) A portfolio liquidation order is an order directing that the business and segregated portfolio assets of or attributable to a segregated portfolio shall be managed by a portfolio liquidator specified in the order for the purposes of—

(a) the orderly closing down of the business of or attributable to the segregated portfolio; and

(b) the distribution of the segregated portfolio assets attributable to the segregated portfolio to those entitled to have recourse thereto.

(4) Where the Court makes a portfolio liquidation order it shall, at the same time, appoint an insolvency practitioner to act as portfolio liquidator under the portfolio liquidation order.

(5) A portfolio liquidation order—

(a) shall not be made if a liquidator is appointed in respect of the segregated portfolio company; and

(b) shall cease to be of effect upon the appointment of a liquidator in respect of the segregated portfolio company, but without prejudice to the prior acts of the portfolio liquidator or his agents.

(6) The members of a segregated portfolio company shall not pass a resolution to appoint a liquidator of the company under Part 15 if any segregated portfolio is subject to a portfolio liquidation order without the prior leave of the Court.

(7) Any resolution passed contrary to subsection (6) shall be void and of no effect.

Application for portfolio liquidation order

173. (1) An application for a portfolio liquidation order in respect of a segregated portfolio of a segregated portfolio company may be made by—

(a) the company;

(b) the directors of the company;

(c) any creditor of the company in respect of that segregated portfolio;

(d) any holder of segregated portfolio shares in respect of that segregated portfolio; or

(e) the Commission.

(2) Notice of an application to the Court for a portfolio liquidation order in respect of a segregated portfolio of a segregated portfolio company shall be served upon—

(a) the company;

(b) the Commission; and

(c) such other persons, if any, as the Court may direct;

each of whom shall be given an opportunity of making representations to the Court before the order is made.

(3) The Court, on hearing an application—

(a) for a portfolio liquidation order; or

(b) for leave, pursuant to section 172(6), to pass a resolution appointing a liquidator;

may, instead of making the order sought or dismissing the application, make an interim order or adjourn the hearing, conditionally or unconditionally.

(4) The Court may make a portfolio liquidation order subject to such terms and conditions as it considers appropriate.

Conduct of portfolio liquidation

174. (1) The portfolio liquidator of a portfolio of a segregated portfolio company—

(a) may do all such things as may be necessary for the purposes set out in section 172(3); and

(b) shall have all the functions and powers of the directors in respect of the business and segregated portfolio assets of, or attributable to, the segregated portfolio.

(2) The portfolio liquidator may at any time apply to the Court—

(a) for directions as to the extent or exercise of any function or power;

(b) for the portfolio liquidation order to be discharged or varied; or

(c) for an order as to any matter arising in the course of the liquidation of the portfolio.

(3) In exercising his functions and powers the portfolio liquidator shall be deemed to act as agent of the segregated portfolio company, and shall not incur personal liability except to the extent that he is fraudulent, reckless, negligent, or acts in bad faith.

(4) Any person dealing with the portfolio liquidator in good faith is not concerned to inquire whether the portfolio liquidator is acting within his powers.

(5) When an application has been made for, and during the period of operation of, a portfolio liquidation order—

(a) no proceedings may be instituted or continued by or against the segregated portfolio company in relation to the segregated portfolio in respect of which the portfolio liquidation order was made; and

(b) for the portfolio liquidation order to be discharged or varied; or

(c) no steps may be taken to enforce any security or in the execution of legal process in respect of the business or segregated portfolio assets of, or attributable to, the segregated portfolio in respect of which the portfolio liquidation order was made;

except by leave of the Court, which may be conditional or unconditional.

(6) During the period of operation of a portfolio liquidation order—

(a) the powers, functions and duties of the directors in respect of the business of, or attributable to, and the segregated portfolio assets of or attributable to, the segregated portfolio in respect of which the order was made continue to the extent specified in this Part or in Regulations made under section 179 or to the extent that the portfolio liquidator or the Court shall direct; and

(b) the portfolio liquidator of the segregated portfolio shall be entitled to be present at all meetings of the segregated portfolio and to vote at such meetings, as if he were a director of the segregated portfolio company, in respect of the general assets of the company, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company's general assets.

Distribution of segregated portfolio assets

175. (1) Subject to subsection (2) and to any agreement between the segregated portfolio company and any creditor of the company as to the subordination of the debts due to that creditor or to the debts due to the company's other creditors, the portfolio liquidator of a segregated portfolio shall, in the winding up of the business of that segregated portfolio, apply the segregated portfolio assets in satisfaction of the company's liabilities attributable to that segregated portfolio *pari passu*.

(2) Creditors of a segregated portfolio that is subject to a portfolio liquidation order shall be regarded as preferential creditors of the segregated portfolio to the extent that they would be preferential creditors if—

(a) the segregated portfolio was a company; and

(b) the portfolio liquidator was a liquidator appointed under a liquidation order.

(3) Subject to the articles or by-laws, any surplus shall be distributed among the holders of the segregated portfolio shares or the persons otherwise entitled to the surplus, in each case according to their respective rights and interests in or against the company.

(4) Where there are no segregated portfolio shares and no persons otherwise entitled to the surplus, any surplus shall be paid to the segregated portfolio company and shall become a general asset of the company.

Discharge and variation of portfolio liquidation orders

176. (1) The Court shall not discharge a portfolio liquidation order unless it appears to the Court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

(2) Subject to subsection (1), the Court, on hearing an application for the discharge or variation of a portfolio liquidation order, may make such order as it considers appropriate, may dismiss the application, may make any interim order or may adjourn the hearing, conditionally or unconditionally.

(3) Upon the Court discharging a portfolio liquidation order in respect of a segregated portfolio on the ground that the purpose for which the order was made has been achieved or substantially achieved, the Court may direct that any payment made by the portfolio liquidator to any creditor of the company in respect of that segregated portfolio shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that segregated portfolio, and the creditor's claims against the company in respect of that segregated portfolio shall be thereby deemed extinguished.

(4) Nothing in subsection (3) shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the segregated portfolio company.

(5) The Court may, upon discharging a portfolio liquidation order in respect of a segregated portfolio of a segregated portfolio company, direct that the segregated portfolio shall be dissolved on such date as the Court may specify.

(6) When a segregated portfolio of a segregated portfolio company has been dissolved under subsection (5), the company may not undertake business or incur liabilities in respect of that segregated portfolio.

Remuneration of portfolio liquidator

177. The remuneration of a portfolio liquidator shall be fixed by the Court and shall be payable, in priority to all other claims, from—

(a) the segregated portfolio assets attributable to the segregated portfolio in respect of which the portfolio liquidator was appointed; and

(b) to the extent that these may be insufficient, from the general assets of the company;

but not from any of the segregated portfolio assets attributable to any other segregated portfolio.

Division 4

General Provisions

Regulations

178. The Executive Council may make Regulations concerning segregated portfolio companies.

Provisions in Regulations

179. (1) Without limiting section 178, Regulations made under that section may—

(a) provide that the provisions of this Act shall apply in relation to any class or description of company specified by or prescribed under section 155(2)(b) subject to such exceptions, adaptations and modifications as may be specified in the Regulations;

(a) make provision in respect of any of the following matters—

(i) the classes or descriptions of segregated portfolio company which shall obtain the approval of the Commission for the creation of segregated portfolios, or circumstances in which such approval is required to be obtained,

(ii) where the Commission's approval is required for the creation of segregated portfolios under subparagraph (i), the procedure for the application for, and the granting of, the Commission's approval,

(iii) the conduct of the business of segregated portfolio companies,

(iv) the manner in which segregated portfolio companies may carry on, or hold themselves out as carrying on, business,

(v) the form and content of the financial statements of segregated portfolio companies and the audit requirements applicable with respect to such financial statements,

(vi) the portfolio liquidation of segregated portfolios under Division 3, and

(vii) the fees payable by segregated portfolio companies and by applicants for an approval under section 156;

(b) generally give effect to this Part; and

(c) provide for the fees and penalties payable by segregated portfolio companies.

(2) Regulations made under section 178 may make different provision in relation to different persons, circumstances or cases.

PART 10

REGISTRATION OF CHARGES

Interpretation of this Part

180. (1) In this Part—

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

"commencement date" means the date of the coming into force of this Part;

"liability" includes contingent and prospective liabilities;

"property" includes future property; and

"relevant charge" means a charge created on or after the commencement date.

(2) A reference in this Part to the creation of a charge includes a reference to the acquisition of property, wherever situated, which was, immediately before its acquisition, the subject of a charge and which remains subject to that charge after its acquisition and for this purpose, the date of creation of the charge is deemed to be the date of acquisition of the property.

Creation of charges by a company

181. (1) Subject to its articles and by-laws, a company may, by an instrument in writing, create a charge over its property.

(2) The governing law of a charge created by a company may be the law of such jurisdiction that may be agreed between the company and the chargee and the charge shall be binding on the company to the extent, and in accordance with, the requirements of the governing law.

(3) Where a company acquires property subject to a charge—

(a) subsection (1) does not require the acquisition of the property to be by instrument in writing, if the acquisition is not otherwise required to be by instrument in writing; and

(b) unless the company and the chargee agree otherwise, the governing law of the charge is the law that governs the charge immediately before the acquisition by the company of the property subject to the charge.

Company to keep register of charges

182. (1) A company shall keep a register of all relevant charges created by the company showing—

(a) if the charge is a charge created by the company, the date of its creation or, if the charge is a charge existing on property directly or indirectly acquired by the company, the date on which the property was acquired;

(b) a short description of the liability secured by the charge;

(c) a short description of the property charged;

(d) the name and address of the trustee for the security or, if there is no such trustee, the name and address of the chargee; and

(e) details of any prohibition or restriction, if any, contained in the instrument creating the charge on the power of the company to create any future charge ranking in priority to or equally with the charge.

(2) A copy of the register of charges shall be kept at the registered office of the company or at the office of its registered agent.

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

Registration of charges

183. (1) Where a company creates a relevant charge, an application to the Registrar to register the charge may be made by—

(a) the company, or a person authorised to act on its behalf; or

(b) the chargee, or a person authorised to act on his behalf.

(2) An application to the Registrar under subsection (1) shall specify the particulars of the charge, in the approved form.

(3) The Registrar shall keep, with respect to each company, a Register of Charges containing such information as may be prescribed.

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

(a) register the charge in the Register of Charges kept by him for that company; and

(b) issue a certificate of registration of the charge and send a copy to the company and to the chargee.

(5) The Registrar shall state in the Register of Charges and on the certificate of registration the date and time on which a charge was registered.

(6) A certificate issued under subsection (4) is conclusive proof that the requirements of this Part as to registration have been complied with and that the charge referred to in the certificate was registered on the date and time stated in the certificate.

Variation of registered charge

184. (1) Where there is a variation in the terms of a charge registered under section 183, application for the variation to be registered may be made by—

(a) the company, or a person authorised to act on its behalf; or

(b) the chargee, or a person authorised to act on his behalf.

(2) An application under subsection (1) is made by filing an application in the approved form.

(3) Upon receipt of an application complying with subsection (2), the Registrar shall forthwith—

(a) register the variation of the charge; and

(b) issue a certificate of variation and send a copy of the certificate to the company and to the chargee.

(4) The Registrar shall state in the Register of Charges and on the certificate of variation the date and time on which a variation of charge was registered.

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

Charge ceasing to affect company's property

185. (1) Where a charge registered under section 183 ceases to affect the property of a company, the company shall file a notice specifying the property that has ceased to be affected by the charge in the approved form.

(2) A notice filed under subsection (1) shall be signed by or on behalf of the chargee.

(3) If he is satisfied that a notice filed under subsection (1) is correctly completed and has been signed in accordance with subsection (2), the Registrar shall forthwith—

(a) register the notice; and

(b) issue a certificate and send a copy of the certificate to the company and to the chargee.

(4) The Registrar shall state in the Register of Charges and on the certificate issued under subsection (3) the date and time on which the notice filed under subsection (1) was registered.

(5) From the date and time stated in the certificate issued under subsection (3), the charge is deemed not to be registered in respect of the property specified in the notice filed under subsection (1).

Priority of relevant charges

186. (1) A relevant charge on property of a company that is registered in accordance with section 183 has priority over—

(a) a relevant charge on the property that is subsequently registered in accordance with section 183; and

(b) a relevant charge on the property that is not registered in accordance with section 183.

(2) Charges created on or after the commencement date which are not registered shall rank among themselves in the order in which they would have ranked had this section not come into force.

Priority of other charges

187. Charges created prior to the commencement date shall continue to rank in the order in which they would have ranked had section 186 not come into force and, where they would have taken priority over a charge created on or after the commencement date, they shall continue to take such priority after the commencement date.

Exceptions to sections 186 and 187

188. Notwithstanding sections 186 and 187—

(a) the order of priorities of charges is subject to—

(i) any express consent of the holder of a charge that varies the priority of that charge in relation to one or more other charges that it would, but for the consent, have had priority over, or

(ii) any agreement between chargees that effects the priorities in relation to the charges held by the respective chargees; and

(b) a registered floating charge is postponed to a subsequently registered fixed charge unless the floating charge contains a prohibition or restriction on the power of the company to create any future charge ranking in priority to or equally with the charge.

PART 11

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

Interpretation for purposes of this Part

189. In this Part—

"consolidated company" means the new company that results from the consolidation of two or more constituent companies;

"consolidation" means the consolidating of 2 or more constituent companies into a new company;

"constituent company" means an existing company that is participating in a merger or consolidation with one or more other existing companies;

"merger" means the merging of 2 or more constituent companies into one of the constituent companies;

"parent company" means a company that owns at least 90% of the outstanding shares of each class of shares in another company;

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

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

Approval of merger and consolidation

190. (1) Two or more companies may merge or consolidate in accordance with this section.

(2) The directors of each constituent company that proposes to participate in a merger or consolidation shall approve a written plan of merger or consolidation containing, as the case requires—

(a) the name of each constituent company and the name of the surviving company or the consolidated company;

(b) with respect to each constituent company—

(i) the designation and number of outstanding shares of each class of shares, specifying each such class entitled to vote on the merger or consolidation, and

(ii) a specification of each such class, if any, entitled to vote as a class;

(c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of cancelling, reclassifying or converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other assets, or a combination thereof; and

(d) in respect of a merger, a statement of any amendment to the articles or by-laws of the surviving company to be brought about by the merger.

(3) In the case of a consolidation, the plan of consolidation shall have annexed to it articles and by-laws complying with Part 2, Division 2 to be adopted by the consolidated company.

(4) Some or all shares of the same class of shares in each surviving company may be converted into a particular or mixed kind of assets and other shares of the class, or all shares of other classes of shares, may be converted into other assets.

(5) The following apply in respect of a merger or consolidation under this section—

(a) the plan of merger or consolidation shall be authorised by a resolution of members and the outstanding shares of every class of shares that are entitled to vote on the merger or consolidation as a class if the articles or by-laws so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the articles or by-laws, would entitle the class to vote on the proposed amendment as a class;

(b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each member, whether or not entitled to vote on the merger or consolidation; and

(c) if it is proposed to obtain the written consent of members, a copy of the plan of merger or consolidation shall be given to each member, whether or not entitled to consent to the plan of merger or consolidation.

Registration of merger and consolidation

191. (1) After approval of the plan of merger or consolidation by the directors and members of each surviving company, articles of merger or consolidation shall be executed by each company containing—

(a) the plan of merger or consolidation;

(b) the date on which the articles and by-laws of each surviving company were registered by the Registrar; and

(c) the manner in which the merger or consolidation was authorised with respect to each surviving company.

(2) The articles of merger or consolidation shall be filed with the Registrar together with—

(a) in the case of a merger, any resolution to amend the articles and by-laws of the surviving company; and

(b) in the case of a consolidation, articles and by-laws for the consolidated company complying with Part 3, Division 2.

(3) If he is satisfied that the requirements of this Act in respect of merger or consolidation have been complied with and that the proposed name of the surviving or consolidated company complies with section 16 and, if appropriate, sections 18 and 19 and is a name under which the company could be registered under section 17, the Registrar shall—

(a) register—

(i) the articles of merger or consolidation, and

(ii) in the case of a merger, any amendment to the articles or by-laws of the surviving company or, in the case of a consolidation, the articles and by-laws of the consolidated company; and

(b) issue a certificate of merger or consolidation in the approved form and, in the case of a consolidation, a certificate of incorporation of the consolidated company.

(4) A certificate of merger or consolidation issued by the Registrar is conclusive evidence of compliance with all requirements of this Act in respect of the merger or consolidation.

Merger with subsidiary

192. (1) A parent company may merge with one or more subsidiary companies, without the authorisation of the members of any company, in accordance with this section.

(2) The directors of the parent company shall approve a written plan of merger containing—

(a) the name of each constituent company and the name of the surviving company;

(b) with respect to each constituent company—

(i) the designation and number of outstanding shares of each class of shares, and

(ii) the number of shares of each class of shares in each subsidiary company owned by the parent company;

(c) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other assets, or a combination thereof; and

(d) a statement of any amendment to the articles or by-laws of the surviving company to be brought about by the merger.

(3) Some or all shares of the same class of shares in each company to be merged may be converted into assets of a particular or mixed kind and other shares of the class, or all shares of other classes of shares, may be converted into other assets; but, if the parent company is not the surviving company, shares of each class of shares in the parent company may only be converted into similar shares of the surviving company.

(4) A copy of the plan of merger or an outline thereof shall be given to every member of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that member.

(5) Articles of merger shall be executed by the parent company and shall contain—

(a) the plan of merger;

(b) the date on which the articles and by-laws of each constituent company were registered by the Registrar; and

(c) if the parent company does not own all shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or an outline thereof was made available to, or waived by, the members of each subsidiary company.

(6) The articles of merger shall be filed with the Registrar together with any resolution to amend the articles and by-laws of the surviving company.

(7) If he is satisfied that the requirements of this section have been complied with and that the proposed name of the surviving company complies with section 16 and, if appropriate, sections 18 and 19 and is a name under which the company could be registered under section 17, the Registrar shall—

(a) register—

(i) the articles of merger, and

(ii) any amendment to the articles or by-laws of the surviving company; and

(b) issue a certificate of merger in the approved form.

(8) A certificate of merger issued by the Registrar is conclusive evidence of compliance with all requirements of this Act in respect of the merger.

Effect of merger with consolidation

193. (1) A merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation.

(2) As soon as a merger or consolidation becomes effective—

(a) the surviving company or the consolidated company in so far as is consistent with its articles and by-laws, as amended or established by the articles of merger or consolidation, has all rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;

(b) in the case of a merger, the articles and by-laws of the surviving company are automatically amended to the extent, if any, that changes in its articles and by-laws are contained in the articles of merger;

(c) in the case of a consolidation, the articles and by-laws filed with the articles of consolidation are the articles and by-laws of the consolidated company;

(d) assets of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and

(e) the surviving company or the consolidated company is liable for all claims, debts, liabilities and obligations of each of the constituent companies.

(3) Where a merger or consolidation occurs—

(a) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any member, director, officer or agent thereof, is released or impaired by the merger or consolidation; and

(b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any member, director, officer or agent thereof, are abated or discontinued by the merger or consolidation, but—

(i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, officer or agent thereof, as the case may be, or

(ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.

(4) The Registrar shall strike off the Register of Companies—

(a) a constituent company that is not the surviving company in a merger; or

(b) a constituent company that participates in a consolidation.

Merger or consolidation with foreign company

194. (1) One or more companies may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside Anguilla in accordance with this section, including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of the jurisdictions in which the companies incorporated outside Anguilla are incorporated.

(2) The following apply in respect of a merger or consolidation under this section—

(a) a company shall comply with the provisions of this Act with respect to merger or consolidation, as the case may be, and a company incorporated under the laws of a jurisdiction outside Anguilla shall comply with the laws of that jurisdiction; and

(b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside Anguilla, it shall file—

(i) an agreement that a service of process may be effected on it in Anguilla in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company that is a company registered under this Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company that is a company registered under this Act against the surviving company or the consolidated company,

(ii) an irrevocable appointment of its registered agent as its agent to accept service of process in proceedings referred to in subparagraph (i),

(iii) an agreement that it will promptly pay to the dissenting members of a constituent company that is a company registered under this Act the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting members, and

(iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated; or, if no certificate of merger

or consolidation is issued by the appropriate authority of the foreign jurisdiction, then, such evidence of the merger or consolidation as the Registrar considers acceptable.

(3) The effect under this section of a merger or consolidation is the same as in the case of a merger or consolidation under section 190 if the surviving company or the consolidated company is incorporated under this Act, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Anguilla, the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 190 except in so far as the laws of the other jurisdiction otherwise provide.

(4) If the surviving company or the consolidated company is a company incorporated under this Act, the merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation; but if the surviving company or the consolidated company is a company incorporated under the laws of a jurisdiction outside Anguilla, the merger or consolidation is effective as provided by the laws of that other jurisdiction.

Disposition of assets

195. Subject to the articles or by-laws of a company, any sale, transfer, lease, exchange or other disposition, other than a mortgage, charge or other encumbrance or the enforcement thereof, of more than 50% in value of the assets of the company, other than a transfer pursuant to the power described in section 27(3), if not made in the usual or regular course of the business carried on by the company, shall be made as follows—

(a) the sale, transfer, lease, exchange or other disposition shall be approved by the directors;

(b) upon approval of the sale, transfer, lease, exchange or other disposition, the directors shall submit details of the disposition to the members for it to be authorised by a resolution of members;

(c) if a meeting of members is to be held, notice of the meeting, accompanied by an outline of the disposition, shall be given to each member, whether or not he is entitled to vote on the sale, transfer, lease, exchange or other disposition; and

(d) if it is proposed to obtain the written consent of members, an outline of the disposition shall be given to each member, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.

Redemption of minority shares

196. (1) Subject to the articles or by-laws of a company—

(a) members of the company holding 90% of the votes of the outstanding shares entitled to vote; and

(b) members of the company holding 90% of the votes of the outstanding shares of each class of shares entitled to vote as a class;

may give a written instruction to the company directing it to redeem the shares held by the remaining members.

(2) Upon receipt of the written instruction referred to in subsection (1), the company shall redeem the shares specified in the written instruction irrespective of whether or not the shares are by their terms redeemable.

(3) The company shall give written notice to each member whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.

Arrangements

197. (1) In this section, "arrangement" means—

(a) an amendment to the memorandum or articles;

(b) a reorganisation or reconstruction of a company;

(c) a merger or consolidation of one or more companies that are companies registered under this Act with one or more other companies, if the surviving company or the consolidated company is a company incorporated under this Act;

(d) a separation of two or more businesses carried on by a company;

(e) any sale, transfer, exchange or other disposition of any part of the assets or business of a company to any person in exchange for shares, debt obligations or other securities of that other person, or money or other assets, or a combination thereof;

(f) any sale, transfer, exchange or other disposition of shares, debt obligations or other securities in a company held by the holders thereof for shares, debt obligations or other securities in the company or money or other property, or a combination thereof;

(g) a dissolution of a company; and

(h) any combination of any of the things specified in paragraph (a) to (g).

(2) If the directors of a company determine that it is in the best interest of the company or members thereof and creditors, the directors of the company may approve a plan of arrangement that contains details of the proposed arrangement, even though the proposed arrangement may be authorised or permitted by any other provision of this Act or otherwise permitted.

(3) Upon approval of the plan of arrangement by the directors, the company shall make application to the Court for approval of the proposed arrangement.

(4) The Court may, upon an application made to it under subsection (3), make an interim or a final order that is not subject to an appeal unless a question of law is involved and in which case notice of appeal shall be given within the period of 21 days immediately following the date of the order, and in making the order the Court may—

(a) determine what notice, if any, of the proposed arrangement is to be given to any person;

(b) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;

(c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under section 199;

(d) conduct a hearing and permit any interested person to appear; and

(e) approve or reject the plan of arrangement as proposed or with such amendments as it may direct.

(5) Where the Court makes an order approving a plan of arrangement, the directors of the company, if they are still desirous of executing the plan, shall confirm the plan of arrangement as approved by the Court whether or not the Court has directed any amendments to be made thereto.

(6) The directors of the company, upon confirming the plan of arrangement, shall—

(a) give notice to the persons to whom the order of the Court requires notice to be given; and

(b) submit the plan of arrangement to those persons for such approval, if any, as the order of the Court requires.

(7) After the plan of arrangement has been approved by those persons by whom the order of the Court may require approval, articles of arrangement shall be executed by the company and shall contain—

(a) the plan of arrangement;

(b) the order of the Court approving the plan of arrangement; and

(c) the manner in which the plan of arrangement was approved, if approval was required by the order of the Court.

(8) The articles of arrangement shall be filed with the Registrar who shall register them.

(9) Upon the registration of the articles of arrangement, the Registrar shall issue a certificate in the approved form certifying that the articles of arrangement have been registered.

(10) An arrangement is effective on the date the articles of arrangement are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of arrangement.

Arrangement where company is in voluntary liquidation

198. The voluntary liquidator of a company may approve a plan of arrangement under section 197 in which case, that section applies as if "voluntary liquidator" was substituted for "directors" and subject to such other modifications as are appropriate.

Rights of dissenters

199. (1) A member of a company is entitled to payment of the fair value of his shares upon dissenting from—

(a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;

(b) a consolidation, if the company is a constituent company;

(c) any sale, transfer, lease, exchange or other disposition of more than 50% in value of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including—

(i) a disposition pursuant to an order of the Court having jurisdiction in the matter,

(ii) disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within 1 year after the date of disposition, or

(iii) a transfer pursuant to the power described in section 27(2);

(d) a redemption of his shares by the company pursuant to section 196; and

(e) an arrangement, if permitted by the Court.

(2) A member who desires to exercise his entitlement under subsection (1) shall give to the company, before the meeting of members at which the action is submitted to a vote, or at the meeting but before the vote, written objection to the action; but an objection is not required from a member to whom the company did not give notice of the meeting in accordance with this Act or where the proposed action is authorised by written consent of members without a meeting.

(3) An objection under subsection (2) shall include a statement that the member proposes to demand payment for his shares if the action is taken.

(4) Within 20 days immediately following the date on which the vote of members authorising the action is taken, or the date on which written consent of members without a meeting is obtained, the company shall give written notice of the authorisation or consent to each member who gave written objection or from whom written objection was not required, except those members who voted for, or consented in writing to, the proposed action.

(5) A member to whom the company was required to give notice who elects to dissent shall, within 20 days immediately following the date on which the notice referred to in subsection (4) is given, give to the company a written notice of his decision to elect to dissent, stating—

(a) his name and address;

(b) the number and classes of shares in respect of which he dissents; and

(c) a demand for payment of the fair value of his shares;

and a member who elects to dissent from a merger under section 192 shall give to the company a written notice of his decision to elect to dissent within 20 days immediately following the date on which the copy of the plan of merger or an outline thereof is given to him in accordance with section 192.

(6) A member who dissents shall do so in respect of all shares that he holds in the company.

(7) Upon the giving of a notice of election to dissent, the member to whom the notice relates ceases to have any of the rights of a member except the right to be paid the fair value of his shares.

(8) Within 7 days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within 7 days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company shall make a written offer to each dissenting member to purchase his shares at a specified price that the company determines to be their fair value; and if, within 30 days immediately following the date on which the offer is made, the company making the offer and the dissenting member agree upon the price to be paid for his shares, the company shall pay to the member the amount in money upon the surrender of the certificates representing his shares.

(9) If the company and a dissenting member fail, within the period of 30 days referred to in subsection (8), to agree on the price to be paid for the shares owned by the member, within 20 days immediately following the date on which the period of 30 days expires, the following shall apply—

(a) the company and the dissenting member shall each designate an appraiser;

(b) the two designated appraisers together shall designate an appraiser;

(c) the three appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorising the action was taken or the date on which written consent of members without a meeting was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and

(d) the company shall pay to the member the amount in money upon the surrender by him of the certificates representing his shares.

(10) Shares acquired by the company pursuant to subsection (8) or (9) shall be cancelled but if the shares are shares of a surviving company, they shall be available for reissue.

(11) The enforcement by a member of his entitlement under this section excludes the enforcement by the member of a right to which he might otherwise be entitled by virtue of his holding shares, except that this section does not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.

(12) Only subsections (1) and (8) to (11) shall apply in the case of a redemption of shares by a company pursuant to the provisions of section 196 and in such case the written offer to be made to the dissenting member pursuant to subsection (8) shall be made within 7 days immediately following the direction given to a company pursuant to section 196 to redeem its shares.

Schemes of arrangement

200. (1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them, the Court may, on the application of a person specified in subsection (2), order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be summoned in such manner as the Court directs.

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

(a) the company;

(b) a creditor of the company;

(c) a member of the company; or

(d) if the company is in voluntary liquidation by the voluntary liquidator.

(3) If a majority in number representing 75% in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the Court, is binding on all the creditors or class of creditors, or the members or class of members, as the case may be, and also on the company or, in the case of a company in voluntary liquidation or in liquidation under a liquidation order, on the liquidator and on every person liable to contribute to the assets of the company in the event of its liquidation.

(4) An order of the Court made under subsection (3) shall have no effect until a copy of the order has been filed with the Registrar.

(5) A copy of an order of the Court made under subsection (3) shall be annexed to every copy of the company's articles issued after the order has been made.

(6) In this section, "arrangement" includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

(7) The Regulations may provide for the information and explanations to be contained in, or to accompany, a notice calling a meeting under this section.

(8) Where the Court makes an order with respect to a company under this section, sections 189 to 199 shall not apply to the company.

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

PART 12

CONTINUATION

Foreign company may continue under this Act

201. (1) Subject to subsection (2), a foreign company may continue as a company incorporated under this Act in accordance with this Part if the laws of the jurisdiction in which it is registered permit it to continue in another jurisdiction, including Anguilla.

(2) A foreign company may not continue as a company incorporated under this Act if—

(a) it is in liquidation, or subject to equivalent insolvency proceedings, in another jurisdiction;

(b) a receiver or manager has been appointed in relation to any of its assets;

(c) it has entered into an arrangement with its creditors, that has not been concluded; or

(d) an application made to a Court in another jurisdiction for the liquidation of the company or for the company to be subject to equivalent insolvency proceedings has not been determined.

Application to continue under this Act

202. (1) An application by a foreign company to continue under this Act shall be made by filing—

(a) a certified copy of its certificate of incorporation, or such other document as evidences its incorporation, registration or formation;

(b) its articles and by-laws complying with subsections (2) and (3);

(c) evidence satisfactory to the Registrar that the application to continue and the proposed articles and by-laws have been approved—

(i) by a majority of the directors or the other persons who are charged with exercising the powers of the company, or

(ii) in such other manner as may be established by the company for exercising the powers of the company; and

(d) evidence satisfactory to the Registrar that the company is not disqualified from continuing in Anguilla under this Act.

(2) Subject to subsection (3), the articles of a company continuing under this Act shall comply with section 8.

(3) The articles of a company applying to continue under this Act—

(a) shall, in addition to the matters required to be stated under subsection (1), state—

(i) the name of the company at the date of the application and the name under which it proposes to be continued,

(ii) the jurisdiction under which it is incorporated, registered or formed, and

(iii) the date on which it was incorporated, registered or formed; and

(b) shall state the matters specified in subsection (2).

(4) The articles and by-laws of a company applying to continue under this Act shall be signed by, or on behalf of, the persons who have approved them under subsection (1)(c).

Continuation

203. (1) If he is satisfied that the requirements of this Act in respect of continuation have been complied with, upon receipt of the documents specified in section 202, the Registrar shall—

(a) register the documents;

(b) allot a unique number to the company; and

(c) issue a certificate of continuation to the company in the approved form.

(2) A certificate of continuation issued by the Registrar under subsection (1) is conclusive evidence that—

(a) all the requirements of this Act as to continuation have been complied with; and

(b) the company is continued as a company incorporated under this Act under the name designated in its articles on the date specified in the certificate of continuation.

Effect of continuation

204. (1) When a foreign company is continued under this Act—

(a) this Act applies to the company as if it had been incorporated under section 6 after the commencement date;

(b) the company is capable of exercising all the powers of a company incorporated under this Act;

(c) the company is no longer to be treated as a company incorporated under the laws of a jurisdiction outside Anguilla; and

(d) the articles and by-laws filed under section 202(1) become the articles and by-laws of the company.

(2) The continuation of a foreign company under this Act does not affect—

(a) the continuity of the company as a legal entity; or

(b) the assets, rights, obligations or liabilities of the company.

(3) Without limiting subsection (2)—

(a) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under this Act; and

(b) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.

(4) All shares in the company that were outstanding prior to the issue by the Registrar of a certificate of continuation shall be deemed to have been issued in conformity with this Act.

Continuation under foreign law

205. (1) Subject to its articles or by-laws, a company for which the Registrar would issue a certificate of good standing pursuant to section 264(1) may, by a resolution of directors or by a resolution of members, continue as a company incorporated under the laws of a jurisdiction outside Anguilla in the manner provided under those laws.

(2) A company that continues as a company incorporated under the laws of jurisdiction outside Anguilla does not cease to be a company incorporated under this Act unless the laws of the jurisdiction outside Anguilla permit the continuation and the company has complied with those laws.

(3) The registered agent of a company that continues as a company incorporated under the laws of a jurisdiction outside Anguilla may file a notice of the company's continuance in the approved form.

(4) If the Registrar is satisfied that the requirements of this Act in respect of the continuation of a company under the laws of a foreign jurisdiction have been complied with, he shall—

(a) issue a certificate of discontinuance of the company in the approved form;

(b) strike the name of the company off the Register of Companies with effect from the date of the certificate of discontinuance; and

(c) publish the striking off of the company in the *Gazette.*

(5) A certificate of discontinuance issued under subsection (4) is *prima facie* evidence that—

(a) all the requirements of this Act in respect of the continuation of a company under the laws of a foreign jurisdiction have been complied with; and

(b) the company was discontinued on the date specified in the certificate of discontinuance.

(6) Where a company is continued under the laws of a jurisdiction outside Anguilla—

(a) the company continues to be liable for all of its claims, debts, liabilities and obligations that existed prior to its continuation as a company under the laws of the jurisdiction outside Anguilla;

(b) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside Anguilla;

(c) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside Anguilla, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be; and

(d) service of process may continue to be effected on the registered agent of the company in Anguilla in respect of any claim, debt, liability or obligation of the company during its existence as a company under this Act.

PART 13

MEMBERS' REMEDIES

Interpretation for this Part

206. In this Part, "member", in relation to a company, means—

(a) a shareholder or a personal representative of a shareholder;

(b) a guarantee member of a company limited by guarantee; or

(c) an unlimited member of an unlimited company.

Restraining or compliance order

207. (1) If a company or a director of a company engages in, or proposes to engage in, conduct that contravenes this Act or the articles or by-laws of the company, the Court may, on the application of a member or a director of the company, make an order directing the company or director to comply with, or restraining the company or director from engaging in conduct that contravenes, this Act or the articles or by-laws.

(2) If the Court makes an order under subsection (1), it may also grant such consequential relief as it thinks fit.

(3) The Court may, at any time before the final determination of an application under subsection (1), make, as an interim order, any order that it could make as a final order under that subsection.

Derivative actions

208. (1) Subject to subsection (3), the Court may, on the application of a member of a company, grant leave to that member to—

(a) bring proceedings in the name and on behalf of that company; or

(b) intervene in proceedings to which the company is a party for the purpose of continuing, defending or discontinuing the proceedings on behalf of the company.

(2) Without limiting subsection (1), in determining whether to grant leave under that subsection, the Court must take the following matters into account—

(a) whether the member is acting in good faith;

(b) whether the derivative action is in the interests of the company taking account of the views of the company's directors on commercial matters;

(c) whether the proceedings are likely to succeed;

(d) the costs of the proceedings in relation to the relief likely to be obtained; and

(e) whether an alternative remedy to the derivative claim is available.

(3) Leave to bring, or intervene in, proceedings may be granted under subsection (1) only if the Court is satisfied that—

(a) the company does not intend to bring, diligently continue or defend, or discontinue the proceedings, as the case may be; or

(b) it is in the interests of the company that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders or members as a whole.

(4) Unless the Court otherwise orders, not less than 28 days' notice of an application for leave under subsection (1) must be served on the company and the company is entitled to appear and be heard at the hearing of the application.

(5) The Court may grant such interim relief as it considers appropriate pending the determination of an application under subsection (1).

(6) Except as provided in this section, a member is not entitled to bring or intervene in any proceedings in the name of or on behalf of a company.

Cost of derivative action

209. (1) If the Court grants leave to a member to bring or intervene in proceedings under section 208, it shall, on the application of the member, order that the whole of the reasonable costs of bringing or intervening in the proceedings must be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.

(2) If the Court, on an application made by a member under subsection (1), considers that it would be unjust or inequitable for the company to bear the whole of the reasonable costs of bringing or intervening in the proceedings, it may order—

(a) that the company bear such proportion of the costs as it considers to be reasonable; or

(b) that the company shall not bear any of the costs.

Powers of Court when leave granted under section 208

210. The Court may, at any time after granting a member leave under section 208, make any order it considers appropriate in relation to proceedings brought by the member or in which the member intervenes, including—

(a) an order authorising the member or any other person to control the proceedings;

(b) an order giving directions for the conduct of the proceedings;

(c) an order that the company or its directors provide information or assistance in relation to the proceedings; and

(d) an order directing that any amount ordered to be paid by a defendant in the proceedings must be paid in whole or in part to former and present members of the company instead of to the company.

Compromise, settlement or withdrawal of derivative action

211. No proceedings brought by a member or in which a member intervenes with the leave of the Court under section 208 may be settled or compromised or discontinued without the approval of the Court.

Personal actions by members

212. A member of a company may bring an action against the company for breach of a duty owed by the company to him as a member.

Representative actions

213. Where a member of a company brings proceedings against the company and other members have the same or substantially the same interest in relation to the proceedings, the Court may appoint that member to represent all or some of the members having the same interest and may, for that purpose, make such order as it thinks fit, including an order—

(a) as to the control and conduct of the proceedings;

(b) as to the costs of the proceedings; and

(c) directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the members represented.

Prejudiced members

214. (1) A member of a company who considers that the affairs of the company have been, are being or are likely to be, conducted in a manner that is, or any act or acts of the company have been, or are, likely to be, oppressive, unfairly discriminatory, or unfairly prejudicial to him in that capacity, may apply to the Court for an order under this section.

(2) If, on an application under this section, the Court considers that it is just and equitable to do so, it may make such order as it thinks fit, including, without limiting the generality of this subsection, one or more of the following orders—

(a) in the case of a shareholder, requiring the company or any other person to acquire the shareholder's shares;

(b) requiring the company or any other person to pay compensation to the member;

(c) regulating the future conduct of the company's affairs;

(d) amending the articles or by-laws of the company;

(e) appointing a receiver of the company;

(f) appointing a liquidator of the company;

(g) directing the rectification of the records of the company; or

(h) setting aside any decision made or action taken by the company or its directors in breach of this Act or the articles or by-laws of the company.

(3) No order may be made against the company or any other person under this section unless the company or that person is a party to the proceedings in which the application is made.

PART 14

FOREIGN COMPANIES

Meaning of "carrying on business"

215. (1) A reference in this Part to a foreign company carrying on business in Anguilla includes a reference to the foreign company establishing or having a place of business in Anguilla.

(2) For the purposes of this Part, a foreign company does not carry on business in Anguilla solely by reason of the fact that, in Anguilla, it—

(a) is or becomes a party to legal proceedings or settles a legal proceeding or a claim or dispute;

(b) holds meetings of its directors or members or carries on other activities concerning its internal affairs;

(c) maintains a bank account;

(d) effects a sale of property through an independent contractor;

(e) solicits or procures an order that becomes a binding contract only if the order is accepted outside Anguilla;

(f) creates evidence of a debt, or creates a charge on property;

(g) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;

(h) conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or

(i) invests any of its funds or holds any property.

Registration of foreign company

216. (1) A foreign company shall not carry on business in Anguilla unless it is registered under this Part.

(2) An application by a foreign company for registration under this Part shall be made to the Registrar in the approved form and shall be accompanied by—

(a) evidence of its incorporation;

(b) a certified copy of the instrument constituting or defining its constitution;

(c) a list of its directors as at the date of the application specifying the full name, nationality and address of each director;

(d) a notice specifying the name of the person appointed as the registered agent of the foreign company in Anguilla, endorsed by the registered agent with his agreement to act as registered agent;

(e) if a document specified in paragraph (a) to (d) is not in English, a translation of the document certified as accurate in accordance with the Regulations; and

(f) such other documentation as may be prescribed.

(3) A foreign company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $10,000.

Registration

217. Where the Registrar receives an application complying with section 216(2), he shall register the foreign company in the Register of Foreign Companies and issue a certificate of registration as a foreign company in the approved form.

Registration of changes in particulars

218. (1) A foreign company registered under this Part shall file a notice in the approved form within 1 month after a change in—

(a) its corporate name;

(b) the jurisdiction of its incorporation;

(c) the instrument constituting or defining its constitution;

(d) its directors, or in the information filed in respect of a director; or

(e) its registered agent.

(2) A notice of change of registered agent shall be endorsed by the new registered agent with his agreement to act as registered agent.

(3) A notice of a change in the instrument constituting or defining the constitution of a foreign company shall be accompanied by—

(a) a certified copy of the new or amended instrument; and

(b) if the instrument is not in English, a translation of the document certified as accurate in accordance with the Regulations.

(4) A foreign company that contravenes this section commits an offence and is liable on summary conviction to a fine of $1,000.

Foreign company to have registered agent

219. (1) A foreign company that carries on business in Anguilla shall, at all times, have a registered agent in Anguilla.

(2) No person shall act, or agree to act, as the registered agent of a foreign company unless that person—

(a) holds a licence under the Companies Management Act or under the Trust Companies and Offshore Banking Act or any other applicable enactment; and

(b) has the approval of the Commission to provide registered agent services.

(3) A foreign company that contravenes subsection (1) and a person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of $10,000.

Control over names of foreign companies

220. (1) Where the Registrar is satisfied that the corporate name of, or a name being used by, a foreign company carrying on business in Anguilla is undesirable, he may serve a notice in the approved form on the foreign company requiring it to cease carrying on business in Anguilla under, or using, that name.

(2) A foreign company on which a notice is served under subsection (1) shall not carry on business in Anguilla under, or using, the name specified in the notice from—

(a) a date 30 days after the date of the service of the notice; or

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

(3) The Registrar may, at any time, withdraw a notice served under subsection (1).

(4) A foreign company on which a notice is served under subsection (1) shall, if it proposes to carry on business in Anguilla under, or using, an alternate name, file a notice of the alternate name.

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

Use of name by foreign company

221. (1) A foreign company that carries on business in Anguilla shall ensure that its full corporate name and the name of the country of its incorporation are clearly stated in every—

(a) communication sent by it, or on its behalf; and

(b) document issued or signed by it, or on its behalf, that evidences or creates a legal obligation of the foreign company.

(2) For the purposes of subsection (1), a generally recognised abbreviation of a word or words may be used in the name of a foreign company if it is not misleading to do so.

Annual return

222. (1) A foreign company registered under this Part shall file within the calendar quarter of its registration but not later than the last day of the calendar quarter, an annual return.

(2) The annual return shall be—

(a) in the approved form; and

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

Foreign company ceasing to carry on business in Anguilla

223. (1) A foreign company shall, within 7 days of ceasing to carry on business in Anguilla, file a notice in the approved form.

(2) On receipt of a notice under subsection (1), the Registrar shall remove the name of the foreign company from the Register of Foreign Companies and, from that time, the person appointed as the registered agent of the foreign company ceases to be its registered agent.

Service of documents on a foreign company registered under this Part

224. (1) A document may be served on a foreign company registered under this Part by leaving it at, or sending it by post to, the address of the registered agent of the foreign company.

(2) Subsection (1) does not affect or limit the power of the Court to authorise a document to be served on a foreign company registered under this Part in a different manner.

Validity of transactions not affected

225. A failure by a foreign company to comply with this Part does not affect the validity or enforceability of any transaction entered into by the foreign company.

Transitional provision

226. A foreign company registered under any of the repealed Acts at the effective date is deemed to be registered under this Part.

PART 15

LIQUIDATION, STRIKING-OFF AND DISSOLUTION

Division 1

Liquidation

Application of this Part

227. A company may only be liquidated under this Division if—

(a) it has no liabilities; or

(b) it is able to pay its debts as at the date they become due.

Declaration of solvency

228. (1) Where it is proposed to appoint a voluntary liquidator under this Division, the directors of the company shall—

(a) make a declaration of solvency in the approved form stating that, in their opinion, the company is and will continue to be able to discharge, pay or provide for its debts as they fall due; and

(b) approve a liquidation plan specifying—

(i) the reasons for the liquidation of the company,

(ii) their estimate of the time required to liquidate the company,

(iii) whether the liquidator is authorised to carry on the business of the company if he determines that to do so would be necessary or in the best interests of the creditors or members of the company,

(iv) the name and address of each individual to be appointed as liquidator and the remuneration proposed to be paid to each liquidator, and

(v) whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.

(2) A declaration of solvency has no effect for the purposes of this Part unless—

(a) it is made on a date no more than 4 weeks earlier than the date of the resolution to appoint a voluntary liquidator; and

(b) it includes a statement of the company's assets and liabilities as at the latest practical date before the making of the declaration.

(3) A liquidation plan has no effect for the purposes of this Part unless it is approved by the directors no more than 6 weeks prior to the date of the resolution to appoint a voluntary liquidator.

(4) A director making a declaration of solvency under this section without having reasonable grounds for the opinion that the company is and will continue to be able to discharge, pay or provide for its debts in full as they fall due, commits an offence and is liable on summary conviction to a fine of $10,000.

Appointment of liquidator

229. (1) The Court may order the liquidation and dissolution of a company or any of its affiliated companies upon the application of a shareholder, debenture holder, creditor, director or officer if the Court is satisfied that—

(a) any unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the company after the occurrence of a specified event and that event has occurred;

(b) it is just and equitable that the company be liquidated and dissolved; or

(c) the company is insolvent or unable to pay its debts.

(2) Upon an application under this section, the Court may make such order under this section as it thinks fit.

(3) Subject to section 230(2), a voluntary liquidator may be appointed in respect of a company by a resolution of—

(a) directors passed under subsection (4); or

(b) members passed under subsection (5).

(4) The directors of a company may, by resolution, appoint an eligible individual as the voluntary liquidator of the company—

(a) upon the expiration of such time as may be specified in its articles or by-laws for the company's existence;

(b) upon the happening of such event as may be specified in its articles or by-laws as an event that shall terminate the existence of the company;

(c) in the case of a company limited by shares, if it has never issued any shares; or

(d) in any other case—

(i) if the articles or by-laws permit them to pass a resolution for the appointment of a voluntary liquidator, and

(ii) the members have, by resolution, approved the liquidation plan.

(5) The members of a company may, by resolution—

(a) approve the liquidation plan; and

(b) appoint an eligible individual as the voluntary liquidator of the company.

(6) The following provisions apply to a members' resolution under subsection (4)(d)(ii) or (5)—

(a) holders of the outstanding shares of a class or series of shares are entitled to vote on the resolution as a class or series only if the articles or articles so provide;

(b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the liquidation plan, shall be given to each member, whether or not entitled to vote on the liquidation plan; and

(c) if it is proposed to obtain the written consent of members, a copy of the liquidation plan shall be given to each member, whether or not entitled to consent to the liquidation plan.

(7) The Regulations may provide for descriptions or categories of individuals who are eligible to be appointed as the voluntary liquidator of a company under this section.

(8) An application to the Court under this section must state the reasons the company should be liquidated and dissolved, and the reasons must be verified by the affidavit of the applicant.

(9) Upon an application under this section the Court may make an order requiring the company and any person having an interest in the company or claim against it to show cause, at a time and place specified in the order, which must not be less than 4 weeks after the date of the order, why the company should not be liquidated and dissolved.

(10) Upon an application to supervise a voluntary liquidation and dissolution of a company, the Court may order the directors and officers of the company to furnish to the Court all material information known to, or reasonably ascertainable by, them including—

(a) the financial statements of the company;

(b) the name and address of each shareholder of the company; and

(c) the name and address of each known creditor or claimant, including any creditor or claimant with unliquidated, future or contingent claims, and any person with whom the company has a contract.

(11) A copy of an order made under subsection (2) must—

(a) be published in a newspaper distributed in Anguilla, as directed in the order, at least once in each week before the time appointed for the hearing; and

(b) be served upon the Registrar and each person named in the order.

(12) Publication and service of an order under this section must be effected by the company or by such other person and in such manner as the Court may order.

Appointment of voluntary liquidator of long term insurance company or other regulated person

230. (1) A voluntary liquidator shall not be appointed under this Division in respect of a long term insurance company and any appointment made in contravention of this subsection is void and of no effect.

(2) A resolution to appoint a voluntary liquidator shall not be passed under section 229(1) by the directors or members of a company that is a regulated person, other than a long term insurance company, unless the Commission has—

(a) given its prior written consent to the company being put into voluntary liquidation; and

(b) approved the appointment of the individual proposed as voluntary liquidator.

(3) Any resolution passed in contravention of subsection (2) and any appointment of a liquidator who has not been approved by the Commission under subsection (2) is void and of no effect.

Control of voluntary liquidation of regulated person

231. (1) The Commission may, at any time during or after the completion of the voluntary liquidation of a regulated person, require the liquidator to produce for inspection, at such place as it may specify—

(a) his records and accounts in respect of the liquidation; and

(b) any reports that he has prepared in respect of the liquidation.

(2) The Commission may cause the accounts and records produced to it under subsection (1) to be audited.

(3) The voluntary liquidator of a regulated person shall give the Commission such further information, explanations and assistance in relation to the records, accounts and reports as the Commission may require.

Duration of liquidation

232. The liquidation of a company under this Division commences at the time at which a voluntary liquidator is appointed under section 229 and continues until it is terminated in accordance with section 238 or section 239 and throughout this period, the company is referred to as being in voluntary liquidation.

Circumstances in which liquidator may not be appointed

233. (1) A voluntary liquidator may not be appointed under section 229 by the directors or the members of a company if—

(a) an application has been made to the Court to appoint an administrator or a liquidator of the company and the application has not been dismissed;

(b) the person to be appointed voluntary liquidator has not consented in writing to his appointment;

(c) the directors of the company have not made a declaration of solvency complying with section 228; or

(d) the directors have not approved a liquidation plan under section 228(1)(b).

(2) A resolution to appoint a voluntary liquidator under this Part in the circumstances referred to in subsection (1) is void and of no effect.

(3) Where a voluntary liquidator is appointed under this section, the directors or the members, as the case may be, shall, as soon as practicable, give the liquidator notice of his appointment.

Notice and advertisement of liquidation

234. Where a voluntary liquidator is appointed under section 229 the liquidator shall—

(a) within 14 days of the commencement of the liquidation, file the following documents—

(i) a notice of the appointment,

(ii) the declaration of solvency made by the directors, and

(iii) a copy of the liquidation plan; and

(b) within 30 days of commencement of the liquidation, advertise notice of his appointment in the manner prescribed.

Effect of appointment of voluntary liquidator

235. (1) Subject to subsections (2) and (3), with effect from the commencement of the voluntary liquidation of a company—

(a) the voluntary liquidator has custody and control of the assets of the company; and

(b) the directors of the company remain in office but they cease to have any powers, functions or duties other than those required or permitted under this Part.

(2) Subsection (1)(a) does not affect the right of a secured creditor to take possession of and realise or otherwise deal with assets of the company over which the creditor has a security interest.

(3) Notwithstanding subsection (1)(b), the directors, after the commencement of the voluntary liquidation, may—

(a) authorise the liquidator to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company where the liquidation plan does not give the liquidator such authorisation; and

(b) exercise such powers as the liquidator, by written notice, may authorise them to exercise.

Duties of voluntary liquidator

236. (1) The principal duties of a voluntary liquidator are to—

(a) take possession of, protect and realise the assets of the company;

(b) identify all creditors of and claimants against the company;

(c) pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the company;

(d) distribute the surplus assets of the company to the members in accordance with the articles and by-laws;

(e) prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and

(f) send a copy of the statement of account to all members if so required by the liquidation plan required by section 228(1)(b).

(2) A transfer, including a prior transfer, described in section 27(3) of all or substantially all of the assets of a company incorporated under this Act for the benefit of the creditors and members of the company, is sufficient to satisfy the requirements of subsection (1)(c) and (d).

Powers of voluntary liquidator

237. (1) In order to perform the duties imposed on him under section 236, a voluntary liquidator has all powers of the company that are not reserved to the members under this Act or in the articles or by-laws, including, but not limited to, the power—

(a) to take custody of the assets of the company and, in connection therewith, to register any property of the company in the name of the liquidator or that of his nominee;

(b) to sell any assets of the company at public auction or by private sale without any notice;

(c) to collect the debts and assets due or belonging to the company;

(d) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;

(e) to negotiate, compromise and settle any claim, debt, liability or obligation of the company;

(f) to prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;

(g) to retain solicitors, accountants and other advisers and appoint agents;

(h) to carry on the business of the company, if the liquidator has received authorisation to do so in the plan of liquidation or from the directors under section 235(3)(a), as the liquidator may determine to be necessary or to be in the best interests of the creditors or members of the company;

(i) to execute any contract, agreement or other instrument in the name of the company or in the name of the liquidator; and

(j) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

(2) Notwithstanding subsection (1)(h), a voluntary liquidator shall not, without the permission of the Court, carry on the business of a company in voluntary liquidation for a period of more than 2 years.

Termination of voluntary liquidation

238. (1) The Court may, at any time after the appointment of a voluntary liquidator under section 229, make an order terminating the liquidation if it is satisfied that it would be just and equitable to do so.

(2) An application under subsection (1) may be made by the voluntary liquidator or by a director, member or creditor of the company.

(3) Before making an order under subsection (2), the Court may require the voluntary liquidator to file a report with respect to any matters relevant to the application.

(4) An order under subsection (1) may be made subject to such terms and conditions as the Court considers appropriate and, on making the order or at any time thereafter, the Court may give such supplemental directions or make such other order as it considers fit in connection with the termination of the liquidation.

(5) Where the Court makes an order under subsection (1), the company ceases to be in voluntary liquidation and the voluntary liquidator ceases to hold office with effect from the date of the order or such later date as may be specified in the order.

Completion of liquidation

239. (1) A voluntary liquidator shall, upon completion of a voluntary liquidation, file a statement that the liquidation has been completed and upon receiving the statement, the Registrar shall—

(a) strike the company off the Register of Companies; and

(b) issue a certificate of dissolution in the approved form certifying that the company has been dissolved.

(2) Where the Registrar issues a certificate of dissolution under subsection (1), the dissolution of the company is effective from the date of the issue of the certificate.

(3) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (1), the person who, immediately prior to the dissolution, was the voluntary liquidator of the company shall cause to be published in the *Gazette*, a notice that the company has been struck off the Register of Companies and dissolved.

Division 2

Striking Off and Dissolution

Interpretation for this Division

240. In this Division, "Register" means the Register of Companies.

Striking company off Register

241. (1) The Registrar may strike the name of a company off the Register if—

(a) the company fails to—

(i) appoint a registered agent under section 83(4) or 84(4),

(ii) file any return, notice or document required to be filed under this Act, or

(iii) satisfy the Registrar, through filed information, that it either meets the economic substance test for each relevant activity or is an exempt relevant company (the terms in this sub-paragraph are defined in Part 18);

(b) he is satisfied that—

(i) the company has ceased to carry on business, or

(ii) the company is carrying on business for which a licence, permit or authority is required under the laws of Anguilla without having such licence, permit or authority; or

(c) the company fails to pay its annual fee or any late payment penalty by the due date.

(2) Before striking a company off the Register on the grounds specified in subsection (1)(a) or (1)(b), the Registrar shall—

(a) send the company a notice stating that, unless the company shows cause to the contrary, it will be struck from the Register on a date specified in the notice which shall be no less than 30 days after the date of the notice; and

(b) publish a notice of his intention to strike the company off the Register in the *Gazette*.

(3) After the expiration of the time specified in the notice, unless the company has shown cause to the contrary, the Registrar may strike the name of the company off the Register.

(4) The Registrar shall publish a notice of the striking of a company from the Register in the *Gazette*.

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

(6) The striking off of a company shall not be affected by any failure on the part of the Registrar to serve a notice on the registered agent or to publish a notice in the *Gazette* under subsection (4).

Appeal

242. (1) Any person who is aggrieved by the striking of a company off the Register under section 241 may, within 90 days of the date of the notice published in the *Gazette*, appeal to the Court.

(2) Notice of an appeal to the Court under subsection (1) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(3) The Registrar may, pending an appeal under subsection (1) of any person aggrieved by the striking of a company off the Register, suspend the operation of the striking off upon such terms as he considers appropriate, pending the determination of the appeal.

Effect of striking off

243. (1) Where a company has been struck off the Register, the company and the directors, members and any liquidator or receiver thereof, may not—

(a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;

(b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the company; or

(c) act in any way with respect to the affairs of the company.

(2) Notwithstanding subsection (1), where a company has been struck off the Register, the company, or a director, member, liquidator or receiver thereof, may—

(a) make application for restoration of the company to the Register;

(b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and

(c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.

(3) The fact that a company is struck off the Register does not prevent—

(a) the company from incurring liabilities; or

(b) any creditor from making a claim against the company and pursuing the claim through to judgement or execution;

and does not affect the liability of any of its members, directors, officers or agents.

Dissolution of company struck off the Register

244. Where a company that has been struck off the Register under section 241(1) remains struck off continuously for a period of 10 years, it is dissolved with effect from the last day of that period.

Restoration of name of company to Register by Registrar

245. (1) Where a company has been struck off the Register, but not dissolved, the Registrar may, upon receipt of an application in the approved form and upon payment of the restoration fee and all outstanding fees and penalties, restore the company to the Register and issue a certificate of restoration to the Register.

(2) Where the company has been struck off the Register under section 241(1), the Registrar shall not restore the company to the Register unless—

(a) he is satisfied that a licensed person has agreed to act as registered agent of the company; and

(b) he is satisfied that it would be fair and reasonable for the name of the company to be restored to the Register;

(3) An application to restore a company to the Register under subsection (1) may be made by the company, or a creditor, member or liquidator of the company and shall be made within 10 years of the date of the notice published in the *Gazette* under section 241(2).

(4) The company, or a creditor, a member or a liquidator thereof, may, within 10 working days, appeal to the Court from a refusal of the Registrar to restore the company to the Register and, if the Court is satisfied that it would be just for the company to be restored to the register, the Court may direct the Registrar to do so upon such terms and conditions as it may consider appropriate.

(5) Notice of an appeal to the Judge in chambers under subsection (4) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(6) Where a company is restored to the Register under this section, the company is deemed never to have been struck off the Register.

Declaration that dissolution is void and restoration of name to Register by Court

246. (1) Where a company has been dissolved, application may be made to the Court in accordance with subsection (2) to declare the dissolution of the company void and restore the company to the Register.

(2) An application under subsection (1)—

(a) may be made by the company or by a creditor, member or liquidator of the company; and

(b) shall be made within 10 years of the date that the company was dissolved.

(3) On an application under subsection (1), the Court may declare the dissolution of the company void and restore the company to the Register subject to such conditions as it considers just.

(4) Where a company is restored to the Register under this section, the company is deemed never to have been dissolved or struck off the Register.

Appointment of Official Receiver as liquidator of company struck off

247. (1) Where a company has been struck off the Register, the Registrar may apply to the Court for the appointment of the Official Receiver or an eligible insolvency practitioner as liquidator of the company.

(2) Where the Court makes an order under subsection (1) the company is restored to the Register.

Property of dissolved company

248. (1) Subject to subsection (2), any property of a company that has not been disposed of at the date of the company's dissolution vests in the Crown.

(2) When a company is restored to the Register, any property, other than money, that was vested in the Crown under subsection (1) on the dissolution of the company and that has not been disposed of must be returned to the company upon its restoration to the Register.

(3) The company is entitled to be paid out of the *bona vacantia* account—

(a) any money received by the Crown under subsection (1) in respect of the company; and

(b) if property, other than money, vested in the Crown under subsection (1) in respect of the company and that property has been disposed of, an amount equal to the lesser of—

(i) the value of any such property at the date it vested in the Crown, and

(ii) the amount realized by the Crown by the disposition of that property.

Disclaimer

249. (1) In this section, "onerous property" means—

(a) an unprofitable contract; or

(b) property of the company that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act.

(2) The Minister may, by notice in writing published in the *Gazette*, disclaim the Crown's title to onerous property which vests in the Crown under section 248.

PART 16

INVESTIGATION OF COMPANIES

Definition of "inspector"

250. Under this Part, "inspector" means an inspector appointed by an order made under section 251(2).

Investigation order

251. (1) A member or the Registrar may apply to the Court *ex parte* or upon such notice as the Court may require, for an order directing that an investigation be made of the company and any of its affiliated companies.

(2) If, upon an application under subsection (1), it appears to the Court that—

(a) the business of the company or any of its affiliates is or has been carried on with intent to defraud any person;

(b) the company or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or

(c) persons concerned with the incorporation, business or affairs of the company or any of its affiliates have in connection therewith acted fraudulently or dishonestly;

the Court may make any order it thinks fit with respect to an investigation of the company and any of its affiliated companies by an inspector, who may be the Registrar.

(3) If a member makes an application under subsection (1), he shall give the Registrar reasonable notice of it, and the Registrar is entitled to appear and be heard at the hearing of the application.

(4) The Regulations may define an affiliated company for the purposes of this Part.

Court's powers

252. (1) An order made under section 251(2) shall include an order appointing an inspector to investigate the company and an order fixing the inspector's remuneration.

(2) The Court may, at any time, make any order it considers appropriate with respect to the investigation, including but not limited to making any one or more of the following orders, that is to—

(a) replace the inspector;

(b) determine the notice to be given to any interested person, or dispense with notice to any person;

(c) authorise the inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;

(d) require any person to produce documents or records to the inspector;

(e) authorise the inspector to conduct a hearing, administer oaths or affirmations and examine any person upon oath or affirmation, and prescribe rules for the conduct of the hearing;

(f) require any person to attend a hearing conducted by the inspector and to give evidence upon oath or affirmation;

(g) give directions to the inspector or any interested person on any matter arising in the investigation;

(h) require the inspector to make an interim or final report to the Court;

(i) determine whether a report of the inspector should be published, and, if so, order the Registrar to publish the report in whole or in part, or to send copies to any person the Court designates;

(k) require an inspector to discontinue an investigation; or

(l) require the company to pay the costs of the investigation in part or in full.

(3) The inspector shall file a copy of every report he makes under this section.

(4) A report under subsection (3) shall not be disclosed to any person other than in accordance with an order of the Court made under subsection (2)(i).

Inspector's powers

253. An inspector—

(a) has the powers set out in the order appointing him; and

(b) shall upon request produce to an interested person a copy of the order.

Hearing in camera

254. (1) An application under this Part and any subsequent proceedings, including applications for directions in respect of any matter arising in the investigation, shall be heard in camera unless the Court orders otherwise.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part may appear or be heard at the hearing and has a right to be represented by a legal practitioner appointed by him for the purpose.

(3) No person shall publish anything relating to any proceedings under this Part except with the authorisation of the Court.

Incriminating evidence

255. No person is excused from attending and giving evidence and producing documents and records to an inspector appointed by the Court under this Part by reason only that the evidence tends to incriminate that person or subject him to any proceeding or penalty, but the evidence may not be used or received against him in any proceeding thereafter instituted against him, other than a prosecution for perjury in giving the evidence.

Privilege

256. (1) An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

(2) Nothing in this Part affects the legal privilege that exists in respect of a legal practitioner and his client.

PART 17

ADMINISTRATION AND GENERAL

Company Law Review Advisory Committee

257. (1) The Minister may, on the recommendation of the Registrar, establish a committee named the "Company Law Review Advisory Committee".

(2) The members of the Committee shall include the Registrar, the Director of the Commission and any other persons that the Minister considers to have the relevant knowledge and experience in company law and financial services.

(3) The functions of the Committee shall be to—

(a) keep this Act and other enactments relevant to company law under review;

(b) make recommendations for changes to this Act and other relevant enactments; and

(c) make recommendations for the development and reform of company law.

(4) The Chairman of the Committee shall be the Registrar.

(5) The Minister may make rules of procedure for the Committee.

Registrar of Companies

258. (1) The office of the Registrar of Companies established under section 233 of the former Companies Act is continued.

(2) No liability attaches to the Registrar or any person acting under the authority of the Registrar for any act done in good faith in the discharge of his functions under this Act.

Registers

259. (1) The Registrar shall maintain a Register of—

(a) Companies incorporated or continued under this Act;

(b) Foreign Companies registered under Part 12; and

(c) Charges registered under Part 10.

(2) The Registers maintained by the Registrar and the information contained in any document filed may be kept in such manner as the Registrar considers fit including, either wholly or partly, by means of a device or facility that—

(a) records or stores information magnetically, electronically or by other means; and

(b) permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(3) The Registrar shall—

(a) retain every qualifying document filed; and

(b) not retain any document filed that is not a qualifying document.

(4) For the purposes of subsection (3), a document is a qualifying document if—

(a) the Act or the Regulations, or another enactment, require or expressly permit the document to be filed; and

(b) the document complies with the requirements of, and is filed in accordance with, the Act, the Regulations or the other enactment that requires or permits the document to be filed.

Registration of registers of members and directors

260. A company shall file with the Registrar a copy of its register of members and directors.

Filing of documents

261. Except as otherwise provided in this Act or the Regulations, a document required or permitted to be filed by a company under this Act, may only be filed by the registered agent of the company.

Inspection of Registers and documents filed

262. (1) Except as otherwise provided in this Act, the Regulations or any other enactment, a person may—

(a) inspect the Registers maintained by the Registrar under section 259(1);

(b) inspect any document retained by the Registrar in accordance with section 259; and

(c) require a certified or uncertified copy or extract certificate of incorporation, merger, consolidation, arrangement, continuation, discontinuance, dissolution or good standing of a company, or a copy or an extract of any document or any part of a document of which he has custody, to be certified by the Registrar; and a certificate of incorporation, merger, consolidation, arrangement, continuation, discontinuance, dissolution or good standing or a certified copy or extract is *prima facie* evidence of the matters contained therein.

(2) A document or a copy or an extract of any document or any part of a document certified by the Registrar under subsection (1) is admissible in evidence in any proceedings as if it were the original document.

Form of certificate

263. Any certificate or other document required to be issued by the Registrar under this Act shall be in the approved form.

Certificate of good standing

264. (1) The Registrar shall, upon request by any person, issue a certificate of good standing in the approved form certifying that a company is of good standing if the Registrar is satisfied that—

(a) the company is on the Register of Companies; and

(b) the company has paid all fees, annual fees and penalties due and payable.

(2) The certificate of good standing issued under subsection (1) shall contain a statement as to whether—

(a) the company has filed articles of merger or consolidation that have not yet become effective;

(b) the company has filed articles of arrangement that have not yet become effective;

(c) the company is in voluntary liquidation; or

(d) any proceedings to strike the name of the company off the Register of Companies have been instituted.

Fees and penalties to be paid to Registrar

265. Unless this Act or the Regulations provide otherwise, the registered agent is the only person authorised to pay a fee to the Registrar under this section, and the Registrar shall not accept a fee paid by any other person.

Recovery of penalties, etc.

266. Any fee or penalty payable under this Act that remains unpaid for 30 days immediately following the date on which demand for payment is made by the Registrar is recoverable at the instance of the Registrar before a Magistrate in civil proceedings notwithstanding the amount sought to be recovered.

Company struck off liable for fees, etc.

267. A company may be liable for all fees and penalties payable under this Act notwithstanding that the name of the company has been struck off the Register of Companies.

Fees payable to Registrar

268. The Registrar may refuse to take any action required of him under this Act for which a fee is prescribed until all fees have been paid.

Companies Regulations

269. (1) The Executive Council may make Regulations generally for giving effect to this Act and specifically in respect of anything required or permitted to be prescribed by this Act.

(2) Without limiting subsection (1), the Regulations may provide for the circumstances in which, and the procedures by which, a company may re-register from one type of company under this Act to another type of company under this Act.

(3) The Regulations may make different provisions in relation to different persons, circumstances or cases including provisions relating to penalties and fees in this Act and generally.

Approval of forms and data by Registrar

270. The Registrar may approve and alter as needed the forms and data required on the online companies registration system.

Electronic signatures

271. The Registrar may accept any document signed or sealed electronically and such document shall have the same force and effect as if the signature is affixed to a paper copy of the document.

Offence provisions

272. (1) Where an offence under this Act is committed by a body corporate, a director or officer who authorized, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction to the penalty specified for the commission of the offence.

(2) Any person who contravenes any provision of this Act for which no penalty is specifically provided shall be liable, on summary conviction, to a fine not exceeding $10,000.

PART 18

ECONOMIC SUBSTANCE REQUIREMENTS

Purposes and operation of this Part

273. (1) The purposes of this Part is to require—

(a) any relevant company carrying on a relevant activity to satisfy the Registrar annually that it meets the economic substance test in relation to the relevant activity; and

(b) mandatory reporting of information for the purposes of the Multilateral Convention on Mutual Administrative Assistance on Tax Matters.

(2) Subsection (1)(a) does not apply to an exempt relevant company.

(3) Subject to any regulations made for the purposes of this Part, the Registrar may by notice published in the *Gazette* issue guidance on how the Registrar intends to determine whether a relevant company meets the economic substance test in relation to any relevant activity.

(4) The Registrar may delegate in writing to a specified person or authority all or any of his functions under this Part.

(5) In this Part—

"calendar quarter" means one of the following periods—

(a) 1 January to 31 March;

(b) 1 April to 30 June;

(c) 1 July to 30 September; or

(d) 1 October to 31 December;

"compliant", in relation to a relevant company, means that the relevant company is not, or no longer, compliant;

"the economic substance test", in relation to a relevant activity, means the test prescribed as the economic substance test for the relevant activity;

"exempt relevant company" means a relevant company that is prescribed to be exempt from the economic substance test;

"filed information", in relation to a relevant company, means any economic substance return or other information or evidence filed by it with the Registrar;

"intellectual property asset" includes any copyright, design, right, trademark, patent or similar asset including any utility model or any right given for plant breeders and genetic material;

"relevant activity" means the activity prescribed in regulations;

"relevant company" or "company" means—

(a) a body corporate that is incorporated or continued under this Act; or

(b) a foreign company;

"relevant quarter", in relation to any relevant company, means the calendar quarter in which the anniversary of the incorporation, continuance or first registration under this Act of the company falls; and

"relevant year", in relation to any relevant company, means the year immediately preceding the first day of the relevant quarter for the company.

Meaning of information subject to legal professional privilege

274. For the purposes of this Part, information is subject to legal professional privilege where the information would reveal confidential communications between a client and his legal representative where the communication is produced for the purpose of—

(a) seeking or providing legal advice; or

(b) use in existing or contemplated legal proceedings;

but legal professional privilege does not apply to any information or other matter, which is communicated or given with the intention of furthering a criminal purpose.

Economic substance returns

275. (1) A relevant company shall make up and file with the Registrar a return for each relevant year in accordance with this section.

(2) The return shall—

(a) be filed together with the annual return for the relevant year;

(b) include the prescribed information and be in the prescribed form; and

(c) be certified as correct by a director, officer, registered agent or liquidator of the company.

(3) Without limiting the generality of subsection (2)(b), regulations made for the purposes of that provision may require the company to provide sufficient information in the return to enable the Registrar—

(a) to identify the type of activities carried on by the company;

(b) to determine whether the company is carrying on a relevant activity; and

(c) if the company is carrying on a relevant activity—

(i) to determine the nature of the relevant activity, and

(ii) unless the company is an exempt relevant company, to determine whether or not the company meets the economic substance test in relation to the relevant activity.

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

Registrar may require further information or evidence to remedy non-compliance

276. (1) This section applies where, in the opinion of the Registrar, a relevant company is non-compliant.

(2) A relevant company is non-compliant if it—

(a) does not meet the economic substance test in relation to each relevant activity that it carries on; or

(b) is in contravention of section 275(1).

(3) Subsection (2)(a) does not apply to an exempt relevant company.

(4) Where the section applies, the Registrar may, by giving the company notice in writing, require it to file with the Registrar within a period specified in the notice an economic substance return, a revised economic substance return or any further information or evidence described in the notice in order to rectify or remedy the non-compliance.

(5) The period specified in a notice shall be not less than 7 days and not more than 30 days from the date of issue of the notice.

(6) A relevant company given a notice shall file with the Registrar the return, further information or evidence required by the notice within the period specified in that notice.

(7) A notice—

(a) has effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise; but

(b) does not require a relevant company to file with the Registrar any information subject to legal professional privilege.

Financial penalties for continuing non-compliance

277. (1) This section applies where a relevant company given a notice under section 276(4)—

(a) fails to file with the Registrar the return, further information or evidence required by the notice within the period specified in it; or

(b) despite filing the return, further information or evidence required by the notice, fails to satisfy the Registrar that the company is compliant.

(2) Subject to subsection (4) and (5), where the company is or continues to be non-compliant under section 276(2)(a), the Registrar shall order that company to pay to the Registrar a civil penalty consisting of—

(a) a fine of not less than $1,000 and not more than $25,000 in respect of the first relevant year to which the non-compliance relates; and

(b) thereafter, a fine of not less than $5,000 and not more than $100,000 in respect of each subsequent relevant year to which the non-compliance relates.

(3) Subject to subsection (4) and (5), where the company is or continue to be non-compliant under section 276(2)(b), the Registrar shall order that company to pay to the Registrar a civil penalty consisting of—

(a) a fine of not less than $500 and not more than $2,500 in respect of the first relevant year to which non-compliance relates; and

(b) thereafter, a fine of not less than $1,000 and not more than $5,000 in respect of any other relevant year to which the non-compliance relates.

(4) Where the Registrar intends to order a relevant company to pay a penalty in accordance with subsection (2) or (3), the Registrar shall give the company notice of his intention, and a reasonable opportunity to either or both—

(a) satisfy the Registrar that the company is compliant; and

(b) show cause why the company should be fined an amount that is less than the proposed fine.

(5) After the expiration of the time specified in a notice the Registrar shall, unless the relevant company satisfies the Registrar that it is compliant, issue a written order to the company to pay a civil penalty consisting of the proposed fine or a fine of any other amount the Registrar considers appropriate in accordance with subsection (2) or (3).

(6) Subject to section 279, a relevant company to which an order is issued shall pay the penalty specified in the order within 30 days of the date on which the order was issued.

(7) Any penalty payable under subsection (6) that that remains unpaid for 30 days immediately following the date on which the order was issued is recoverable at the instance of the Attorney-General before a Magistrate in civil proceedings as a debt due to the Crown notwithstanding the amount sought to be recovered.

(8) For the avoidance of doubt, nothing in this section limits or restricts the power of the Registrar to strike off a relevant company.

Mandatory information sharing

278. (1) This section applies to a relevant company if, in respect of any relevant year—

(a) section 277 applies in relation to the company in accordance with section 277(1);

(b) in the opinion of the Registrar, the company was a high-risk intellectual property entity: or

(c) in the opinion of the Registrar the company carried on a relevant activity, and the company claims, through filed information, that it was an exempt relevant company.

(2) Where this section applies to a relevant company, the Registrar shall promptly deliver to the competent authority of Anguilla the following information relating to the company—

(a) the name of that company;

(b) a statement of which of subsection (1)(a), (b) or (c) applies, and why the Registrar believes it applies;

(c) any inculpatory information for the relevant year;

(d) any other filed information that the Registrar considers relevant to the company's tax matters for the relevant year; and

(e) any other prescribed information.

(3) Upon receiving that information, the competent authority of Anguilla shall promptly forward it to the competent authority of each tax-concerned jurisdiction.

(4) Nothing in this section requires either the Registrar or the competent authority of Anguilla to deliver or forward to any person any information subject to legal professional privilege.

(5) In this Part—

"beneficial owner" has the meaning specified in section 2 of the Anti-Money Laundering and Terrorist Financing Regulations;

"competent authority" has the meaning specified in section 1(1) of the Tax Information Exchange (International Co-operation) Act, 2016;

"high-risk intellectual property entity" means a relevant company that—

(a) acquired an intellectual property asset—

(i) from an intellectual entity, or

(ii) in consideration for funding research and development by another person situated in a country or territory other than Anguilla; and

(b) licenses the intellectual property asset to an affiliated entity; or otherwise generates income from the asset in consequence of activities (such as facilitating sale agreements) performed by an affiliated entity;

"inculpatory information" means any information or evidence filed by the company with the Registrar, the knowledge of which, in the Registrar's opinion, might trigger off Anguilla's obligation to forward that information or evidence to another Party under Article 7 of the Multilateral Convention on Mutual Administrative Assistance on Tax Matters;

"international agreement" means the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral tax convention or any tax exchange information exchange agreement to which Anguilla is a party and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including the spontaneous exchange of such information;

"tax-concerned jurisdiction" means any jurisdiction with which there is a valid international agreement in which any of the following is known to be resident for tax purposes—

(a) a holding body of the company;

(b) an ultimate holding body of the company; or

(c) a beneficial owner of the company.

(6) An entity is an affiliated entity in relation to another entity if—

(a) one of them is the subsidiary of the other;

(b) both are subsidiaries of the same entity;

(c) each of them is controlled by the same entity; or

(d) they are both affiliated (within the meaning of paragraph (a), (b) or (c)) with the same entity at the same time.

(7) An entity is the holding body of another entity if the later-mentioned entity is a subsidiary of the first-mentioned entity.

(8) An entity is a subsidiary of another entity if the first-mentioned entity is controlled by the later-mentioned entity.

(9) An entity is controlled by another entity if for example, any shares of the first-mentioned entity carrying voting rights sufficient to elect a majority of its directors are, except by way of security only, held, directly or indirectly by or on behalf of the later-mentioned entity.

Appeals against penalties

279. (1) A relevant company to which an order under section 277(5) is issued may appeal the order to a Judge in Chambers within 90 days of the date on which the order was issued.

(2) Notice of an appeal to the Judge in Chambers under subsection (1) must be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(3) The Registrar may, pending an appeal under subsection (1), suspend the operation of the order upon any terms he considers appropriate pending the determination of the appeal.

Economic substance records to be kept

280. (1) A relevant company that is required to satisfy the Registrar that it meets the economic substance test with respect to any relevant year shall retain, at the registered office of the company for 6 years after the end of the relevant year, any book, document or other record, including any information stored by electronic means, that relates to the economic substance return or any further information or evidence required to be provided to the Registrar under that part.

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

Confidentiality

281. (1) Except in so far as may be necessary for the due performance of his functions under any provision of this Act, the Registrar and any officer or other person acting as an officer, a servant, an agent or an adviser of the Registrar shall preserve and aid in preserving confidentiality with regard to all matters relating to information or documents that may come to his knowledge in the course of the performance of his duties under this Act.

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

Immunity

282. No liability attaches to the Registrar, the competent authority of Anguilla (as defined in section 278(5)) or any person acting under the authority of either for any act done in good faith in the discharge of the functions under this Act of the Registrar or, as the case may be, the competent authority.

PART 19

TRANSITIONAL AND MISCELLANEOUS PROVISIONS

Retention of records after company is struck, dissolved or wound up

283. (1) Where a company is struck under this act, the former director shall retain the accounting records referred to in section 88 for a period of at least 6 years from the date on which the company was struck, dissolved or wound up.

(2) Where a company is wound up and dissolved under this Act, the liquidator shall retain the accounting records referred to in section 88 for a period of at least 6 years from the date on which the company was dissolved.

(3) A person who fails to comply with this section commits an offence.

Jurisdiction

284. For purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the situs of the ownership of shares, debt obligations or other securities of a company is in Anguilla.

Declaration by Court

285. (1) A company may, without the necessity of joining any other party, apply to the Court, by summons supported by an affidavit, for a declaration on any question of interpretation of this Act or of the articles or by-laws of the company.

(2) A person acting on a declaration made by the Court as a result of an application under subsection (1) shall be deemed, in so far as regards the discharge of any fiduciary or professional duty, to have properly discharged his duties in the subject matter of the application.

Judge in Chambers

286. A Judge of the High Court may exercise in Chambers any jurisdiction that is vested in the Court by this Act and in exercise of that jurisdiction, the judge may award costs as may be just.

Transitional and savings

287. (1) The International Business Companies (Economic Substance) Regulations, 2019 and the Companies (Economic Substance) Regulations, 2019 are saved and shall continue to have effect after the commencement of this Act.

(2) On the commencement of this Act—

(a) all corporate instruments of a former-Act company; and

(b) all cancellations, suspensions, proceedings, acts, registrations and things;

lawfully done under any provision of the former Act are presumed to have been lawfully done under this Act, and continue in effect under this Act as though they had been lawfully done under this Act.

(3) For the purposes of this section, "lawfully done" means to have been lawfully granted, issued, imposed, taken, done, commenced, filed, applied or passed, as the circumstances require.

(4) For the purposes of this section, "corporate instruments" includes any statute, letters patent, memorandum of association, articles of association, certificate of incorporation, certificate of continuance, by-laws, regulations or other instrument by which a body corporate is incorporated or continued or that governs or regulates the affairs of a body corporate.

(5) Where upon the commencement of this Act, an application or action made under the former Act is pending, such application or action shall be dealt with under the former Act but the grant thereafter shall be subject to this Act.

(6) Nothing in this Act shall affect the incorporation of any company registered under any enactment hereby repealed.

(7) Where in any enactment the expression "registered under the Companies Act, the International Business Companies Act or the Protected Cell Companies Act" occurs, the expression, unless the context otherwise requires, shall also refer to incorporation, continuation or registration under this Act in respect of all transactions, matters or things subsequent to the commencement date.

(8) Where in any enactment a reference is made to winding up under, or to the winding up provisions of, the former Act, then, unless the context otherwise requires, it also refers, in respect of all transactions, matters or things subsequent to the commencement date, to winding up or dissolution under this Act.

(9) A reference in an enactment to the former Act shall, as regards a transaction, matter or things subsequent to the commencement date, also be construed and applied, unless the context otherwise requires, as a reference to the provisions of this Act that relate to the same subject-matter as the provisions of the former Act; but if there are no provisions in this Act that relate to the same subject-matter, the former Act is to be construed and applied as un-repealed so far as is necessary to do so to maintain or give effect to the enactment.

Repeals

288. The Protected Cell Companies Act, the International Business Companies Act and the Companies Act are repealed.

Citation and commencement

289. This Act may be cited as the Business Companies Act, 2022 and shall come into force on a date the Minister appoints by Notice in the *Gazette*.

Barbara Webster-Bourne
Speaker

Passed by the House of Assembly this 12th day of April, 2022.

Lenox J. Proctor
Clerk of the House of Assembly