

## **International Business companies Act 1996**

### **SAINT VINCENT AND THE GRENADINES**

ACT NO. 18 OF 1996, ACT NO. 38 OF 1996

International Business Companies Act, 1996.

I ASSENT CHARLES J. ANTROBUS

[L.S.] Ag. Governor-General

7th October, 1996 / 31st December, 1996

**AN ACT** to make provision for the incorporation, regulation and operation of International Business Companies and related matters.

[By Order]

**BE IT ENACTED** by the Queen's Most Excellent Majesty by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines, and by the authority of the same, as follows:-

### **PART I**

#### **Short Title and Interpretation**

##### **Short Title**

1. This Act may be cited as the International Business Companies Act, 1996.

##### **Interpretation and definitions**

2. (1) In this Act -

"Articles" means the Articles of Incorporation of a company incorporated under this Act and, unless qualified-

(a) the original or restated articles of incorporation, articles of amendment, articles of merger, articles of continuation, articles of reorganisation, articles of consolidation, articles of dissolution, articles of arrangement, and articles of revival, and

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

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

"Authority" means the Saint Vincent and the Grenadines Offshore Finance Authority established under the Saint Vincent and the Grenadines Offshore Finance Authority Act;

"banking business" has the meaning ascribed to that expression in the Banking Act Cap. 63, and includes offshore banking business as defined in the International Banks Act, 1996;

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

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

company as treasury shares, and

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

"Companies Act" means the Companies Act, 1994;

"continued" means, unless the context requires otherwise, continued within the context of Part VIII hereof;

"court" means the High Court of the State or a judge thereof;

"Gazette" means the Government Gazette and includes any supplement thereto or replacement thereof;

"insurance business" means the undertaking, for remuneration or profit, by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of insurance might be exposed or to provide a service or pay a sum of money or other thing of value on the happening of a certain event and including re-insurance;

"international business company" means a company that satisfies the requirements of section 5 and is incorporated under the provisions of this Act;

"Inspector" ["*Minister*"] means the person appointed under section 8(2) of the Saint Vincent Offshore Finance Authority Act, 1996;

"person" includes a natural person, a company, trust, the estate of a deceased individual, a partnership, a limited liability or duration company, a company limited by guarantee or an unincorporated association of persons;

"Register" means the Register of International Business Companies maintained by the Registrar in accordance with subsection (1) of section 12, and shall include a Branch Register of International Business Companies maintained by a Deputy-Registrar in accordance with subsection (4) of section 12;

"Registrar" means the Registrar of International Business Companies appointed by the Authority under this Act;

"registered agent" means a person licensed to carry on the business of Offshore Representation under the Registered Agent and Trustee Licensing Act, 1996;

"Resident" means, for purposes of this Act,

(1) a natural person who is ordinarily resident and subject to income tax in the State under general principles of State income taxation,

(2) a trust, company, partnership, limited partnership or other body, incorporated, established, formed or organised in the State under the laws of the State, the majority of shares or other ownership of which is legally or beneficially owned, directly or indirectly, by persons who are resident under the provisions of subparagraph (1) or (3) hereof, or by the State, and

(3) any other trust, corporation, partnership, limited partnership, or other entity who or which is a resident of, or ordinarily resident or domiciled in, the State under general principles of State income taxation;

provided that for purposes hereof the term "Resident" shall not include any International Trust that complies with the income tax exemption provisions of the

International Trusts Act, or if registered under the Trust Authority Act, the tax exemption provisions of that act; or an International Business Company that complies with the tax exemption provisions of this Act; or an International Banking Company that complies with the tax exemption provisions of the International Banks Act; so long as and to the extent that such compliance continues under the provisions of the applicable act;

"securities" includes shares and indicia of equity ownership of a company or association of every kind, and options, warrants and rights to acquire the same;

"shareholder" means a person who holds shares in a company, including a limited duration company and a company limited by guarantee with a share capital, and where the context so allows, a person who is liable to contribute to the assets of a company limited by guarantee which does not have a share capital;

"State" means the State of Saint Vincent and the Grenadines; and

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

(2) A company that is incorporated under the Companies Act or under the laws of a jurisdiction outside the State shall be a company incorporated under this Act if it is continued as a company incorporated under this Act in accordance with Part VIII, and references in this Act to a "company incorporated under this Act" shall be construed accordingly.

(3) References in this Act to voting shall be construed in this Act as a reference to voting by shareholders who are entitled to vote under the provisions of the Articles or By-Laws of the company in which they own shares or other securities.

(4) In this Act any reference to another act or to Regulations made under this Act or another act shall be deemed to include any re-enactment, replacement or modification thereof.

## **PART II**

### **Registration and Constitution of Companies**

#### **Incorporation**

3. (1) Subject to the requirements of this Act, one or more persons may incorporate an international business company by signing and sending Articles to the Registrar in accordance with the provisions of this Act, so long as such Articles have been subscribed by a registered agent.

(2) No individual who

(a) is less than 18 years of age;

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

(c) has the status of a bankrupt,  
shall form or join in the formation of an international business company.

#### **Restriction on Incorporation**

4. Without limiting the effect of Part VIII of this Act, no company shall be incorporated under this Act unless immediately upon its incorporation the company is an international business company.

**Requirements for  
International Business  
Companies**

5. (1) For purposes of this Act an international business company is a company that does not -

- (a) regularly carry on business with persons Resident;
- (b) own an interest in real property situate in the State, other than a lease referred to in paragraph (e) of subsection (2);
- (c) carry on a banking business with Residents (whether alone or in conjunction with any other activity) unless it has fully complied with the Banking Act, Cap 63;
- (d) carry on an insurance business with Residents (whether alone or in conjunction with any other activity) unless it has fully complied with any statute concerning the carrying on of insurance business or any regulations concerning the same which may from time to time be prescribed by the Government;
- (e) carry on a shipping business with Residents (whether alone or in conjunction with any other activity) unless it has complied with any statute concerning the carrying on of shipping business or any regulations concerning the same which may from time to time be prescribed by the Government; or
- (f) unless otherwise allowed, carry on the business of Offshore Representation under the Registered Agents and Trustees Licensing Act, 1996.

(2) For purposes of paragraph (a) of subsection (1) an international business company shall not be treated as carrying on business with Residents by reason only that-

- (a) it makes or maintains deposits with a person lawfully carrying on a banking business within the State;
- (b) it makes or maintains professional contact with solicitors, barristers, accountants, bookkeepers, trust companies, administration companies, investment advisers, registered agents or other similar persons carrying on business within the State;
- (c) it prepares or maintains books or records within the State;
- (d) it holds, within the State, meetings of its directors and/or shareholders;
- (e) it holds a lease of property for use as an office from which to communicate with shareholders or where books or records of the company are prepared or maintained;
- (f) it holds securities in a company incorporated under this Act or under the Companies Act;
- (g) securities in the company are owned by any Resident or citizen of the State or by a company incorporated or existing under this Act or under the Companies Act;
- (h) it owns a vessel or vessels registered in the State in accordance with the Merchant Shipping Act, Cap. 364 or under the International Companies (Regulation of Ships) Rules 1978;
- (i) it employs Residents or leases or purchases property (other than real property)

in the State in connection with its operations; or

(j) a ship or vessel owned by such company does business with a Resident in the course of its operations.

**Effect of failure to satisfy requirements of section 5**

6. (1) Without affecting the operation of section 40, if a company is incorporated under this Act without having satisfied the requirements prescribed for an international business company under section 5, or if having satisfied such requirements it subsequently ceases to satisfy the requirements for a continuous period of more than 30 days (or for a total of 60 days in the aggregate), the company shall upon expiration of that period notify the Registrar of that fact.

(2) A company that wilfully contravenes subsection (1) is liable to be struck off the Register and to a penalty of one hundred dollars for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

**Personal liability**

7. Subject to section 41, no shareholder, director, officer, agent or liquidator of a company incorporated under this Act shall be liable for any debt, obligation or default of the company, unless specifically provided in this Act or in any other law for the time being in force in the State, and except in so far as he may be liable for his own conduct or acts under general principles of law applicable to the same

**Objects or purposes**

8. A company may be incorporated under this Act for any object or purpose not prohibited under this Act or under any other law for the time being in force in the State.

**Powers**

9. (1) Subject to any limitations in its Articles or By-Laws or in this Act, but notwithstanding any of the provisions of the Companies Act, a company incorporated under this Act has the power, irrespective of corporate benefit, to perform all acts and engage in all activities necessary or conducive to the conduct, promotion or attainment of the objects or purposes of the company, including the power to do the following:

(a) issue registered shares or shares issued to bearer or both;

(b) issue the following:

(i) voting shares,

(ii) non-voting shares,

(iii) shares that may have more or less than one vote per share,

(iv) shares that may be voted only on certain matters or only upon the occurrence of certain events, and

(v) shares that may be voted only when held by persons who meet specified requirements;

(c) issue common shares, preferred shares, limited shares, shares limited by guarantee or redeemable shares;

(d) issue shares that entitle participation only in certain assets;

(e) issue options, warrants or rights, or instruments of a similar nature,

to acquire any securities of the company;

(f) issue securities that, at the option of the holder thereof or of the company or upon the happening of a specified event, are convertible into, or exchangeable for, other securities in the company or any property then or to be owned by the company;

(g) purchase, redeem or otherwise acquire and hold its own shares;

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

(i) protect the assets of the company for the benefit of the company, its creditors, its shareholders, or, at the discretion of the directors, for any person having a direct or indirect interest in the company;

(j) issue shares in any one or more currencies, so long as a mechanism for calculating exchange rates into dollars is provided in the Articles or By-Laws; and  
(k) maintain offices or branches or a presence in any form whatsoever, in any country of the world, subject to the limitations of section 5.

(2) For purposes of paragraph (i) of subsection (1), notwithstanding any other provision of this Act or of any other law for the time being in force in the State or any rule of law to the contrary, the directors may cause the company to transfer any of its assets in trust to one or more trustees or to any person; and, with respect to the transfer, the directors may provide that the company, its creditors, its shareholders or any person having a direct or indirect interest in the company, or any of them, may be the beneficiaries, creditors, shareholders, certificate holders, partners or holders of any other similar interest.

(3) The rights or interests of any existing or subsequent creditor of a company incorporated hereunder in any assets of such company shall not be affected by any transfer under subsection (2), and those rights or interests may be pleaded against any transferee in any such transfer to the extent allowed at law or in equity.

**Name**

10. (1) The word "Limited" "Corporation" "Incorporated" "Soci t  Anonyme" "Sociedad Anonima" "Company" "Limitada" "Soci t  par actions" or "Aktiengesellschaft" or the abbreviation "Ltd" "Corp" "Inc." "A/S" "AG" "N.V." "B.V." "GmbH" "S.A." or any other words or abbreviations which signify limited liability and which are approved by the Registrar, must be part of the name of every company incorporated under this Act, but a company may use and be legally designated by either the full or the abbreviated form.

(2) No company shall be incorporated under this Act under a name that

(a) is identical with that under which a company in existence is already incorporated under this Act or registered under the Companies Act or so nearly resembles the name as to be calculated to deceive, except where the company in existence gives its written consent; or

(b) contains the words "Assurance", "Bank", "Building Society", "Chamber of Commerce", "Chartered", "Co-operative", "Imperial", "Insurance", "Municipal", "Royal:", "Trust Company", "Trust Company", "Trustee Company", or a word conveying a similar meaning, or any other word that, in the opinion of the Registrar, suggests or is calculated to suggest

- (i) the patronage of Her Majesty or that of a member of the Royal Family,
- (ii) a connection with Her Majesty's Government or a department thereof, or
- (iii) a connection with a municipality or other local authority or with a society or body incorporated by Royal Charter, except under agreement with the State subsisting as at the date of commencement of this Act or with the approval of the Registrar in writing;
- (c) is indecent, offensive, or, in the opinion of the Registrar, objectionable.

(3) A company may amend its Articles to change its name.

(4) If a company is incorporated under a name that

(a) is identical with a name under which a company in existence was incorporated under this Act or registered under the Companies Act, or

(b) so nearly resembles the name as to be calculated to deceive, the Registrar may, without the consent of the company in existence, give notice to the last registered company to change its name and if it fails to do so within 60 days from the date of the notice, the Registrar must amend the Articles of the company to change its name to such name as the Registrar deems appropriate.

(5) Subject to subsections (2) and (4), where a company changes its name, the Registrar must enter the new name on the Register in place of the former name, and must issue a Certificate of Incorporation indicating the change of name.

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

(7) Subject to subsection (2) the Registrar may, upon a request made by any person, reserve for up to 30 days a name for future adoption by a company under this Act. Names may be reserved free of charge for up to 72 hours.

(8) (a) Where under this Act a company is required to lodge with the Registrar any instrument, certificate or document or a certified copy thereof and the same is not written in the English language, but is written in a foreign language, alphabet, or characters, subject to the foregoing provisions of this Act the Registrar will accept the same, provided it is accompanied by a certified translation thereof.

(b) For the purposes of the administration of this Act, the name of the company as it appears in the English translation shall be the name which is registered under this Act, but for all other purposes the company shall be deemed to be also registered with the name expressed in the foreign language, alphabet, or characters.

(9) Notwithstanding anything contained in this section, a company that is continued under this Act is entitled to be continued with the name it lawfully had before that continuance.

(10) The name of a proposed international business company contained in its

Articles may end with the words "International Business Company" or the abbreviation "IBC".

**Requirements for Articles**

11. (1) The Articles shall follow the form prescribed by the Regulations hereunder and must include the following -

(a) the proposed name of the company;

(b) the address of the registered office of the company within the State, which may be the office of the registered agent;

(c) the name and address of the registered agent of the company;

(d) the currency in which shares in the company shall be issued and whether shares may be issued in more than one currency;

(e) the authorised capital (if any) of the company (expressed in dollars) and setting forth the aggregate par value of all shares with par value that the company is authorised to issue and the amount, if any, to be represented by shares without par value that the company is authorised to issue;

(f) a statement of the designations, powers, preferences and rights, and the qualifications, limitations or restrictions of each class and series of shares that the company is authorised to issue, unless the directors are to be authorised to fix any such designations, powers, preferences, rights, qualifications, limitations or restrictions, and in that case, an express grant of such authority as may be desired to grant to the directors to fix by a resolution any such designations, powers, preference, rights, qualifications, limitations and restrictions that have not been fixed by the Articles;

(g) a statement of the number of shares to be issued as registered shares and, the number of shares to be issued as shares issued to bearer, unless the directors are authorised to determine at their discretion whether shares are to be issued as registered shares or to bearer, and in that case an express grant of such authority as may be desired must be given to empower the directors to issue shares as registered shares or to bearer as they may determine by resolution of directors;

(h) whether registered shares may be exchanged for shares issued to bearer and whether shares issued to bearer may be exchanged for registered shares;

(i) if shares issued to bearer are authorised to be issued, the manner in which a required notice to members is to be given to the holders of shares issued to bearer;

(j) where the company is to be limited by guarantee, a declaration signed by each member that such member undertakes to contribute to the assets of the company in the event of the company being wound up during the time that he is a member, or within one year afterwards, for the payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of the winding-up of the company, and for the adjustment of the rights of the contributors amongst themselves -

(i) such amount as may be required not exceeding a specified amount to be therein named; or

(ii) where the Articles contains a declaration in the terms specified in subsection (3), an unlimited amount; or

(k) where the proposed company is to be an unlimited company, a declaration that the liability of its members is unlimited.

(2) The Articles may set out any provisions not expressly prohibited by this Act.

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

(4) Except as expressly provided in this Act, no company may change any information contained in its Articles as filed with the Registrar unless such change is approved by the unanimous vote of the shareholders and is contained in a duly filed and registered amendment to the company's Articles.

(5) The Articles must be subscribed by the registered agent named in the Articles in the presence of another Resident person who must sign his name as a witness.

(6) The Articles, when registered, binds the company and its shareholders from time to time to the same extent as if each shareholder had subscribed his name and affixed his seal thereto and as if there were contained in the Articles, on the part of himself, his heirs, executors and administrators, a covenant to observe the provisions of the Articles, subject to this Act.

## **Registration**

12. (1) The Registrar shall not register the Articles delivered to him unless he is satisfied that all requirements of this Act in respect of registration have been complied with and

(a) a solicitor acting in the formation of the company, or

(b) the registered agent named in the Articles as registered agent, certifies in writing that the requirements of this Act in respect of registration have been complied with, and the written certification delivered to the Registrar is sufficient evidence of compliance; provided, however, if a solicitor acts in the formation of the company, such company must still appoint and maintain a registered agent as provided in this Act.

(2) Subject to subsection (1), the Registrar shall retain and register the Articles submitted to him in a Register to be maintained by him to be known as the Register of International Business Companies.

(3) Upon the registration of the Articles, the Registrar shall issue a certificate of incorporation under his hand and seal certifying that the company is incorporated as an international business company.

(4) The Minister, on advice of the Authority, may direct that the Registrar maintain one or more Branch Registers either within or outside of the State; provided that any such register shall be maintained under the supervision of the Registrar and the Offshore Finance Inspector and shall be managed by a citizen of the State; provided, further, if a Branch Register is maintained outside of the State, all information received or residing at such Branch Register shall be made secure against disclosure or intervention by any person or government authority under procedures acceptable to the Authority.

## **Certificate of Incorporation and amendments to**

13. (1) Upon the issue by the Registrar of a certificate of incorporation of a company, the company is, from the date shown on the certificate of incorporation,

**amendments to Articles**

a body corporate under the name contained in the Articles with the full capacity of an individual who is *sui juris*.

(2) A certificate of incorporation of a company incorporated under this Act issued by the Registrar is *prima facie* evidence of compliance with all requirements of this Act in respect of incorporation.

(3) A shareholder, director or officer of a company may order, upon payment to the Registrar of the prescribed fee, a duplicate copy of the certificate of incorporation for that company.

(4) Subject to any limitation in its Articles or By-Laws, an international business company may amend its Articles by a resolution of shareholders or, where permitted by its Articles or By-Laws or by this Act, by a resolution of directors.

(5) An international business company that amends its Articles must submit a copy of the amendment to the Registrar, accompanied by the prescribed filing fee.

(6) An amendment to the Articles has effect from the time the amendment is registered by the Registrar.

**Annual fee**

14. (1) Every company incorporated under this Act shall pay the prescribed annual fee at such times and in such manner as may be prescribed by the Minister.

(2) The annual fee shall also be due in respect of the year in which the company is incorporated and shall be payable in respect of the period between the month of incorporation to the 31st December in that year and shall be calculated for that period at the rate of one-twelfth of the annual fee for each month or any part of a month.

**PART III  
Capital and Dividends**

**Shares to be fully paid**

15. No share in a company incorporated under this Act may be issued until the consideration in respect of the share is fully paid, and when issued the share is for all purposes fully paid and non-assessable save that a share issued for a promissory note or other written obligation for payment of a debt may be issued subject to forfeiture in the manner prescribed by the directors.

**Kind of consideration for shares**

16. Subject to any limitations or provisions to the contrary in the Articles, each share in a company incorporated under this Act shall be issued for money, services rendered, personal property (including other shares, debt obligations or other securities in the company), an estate in real property, a promissory note or other binding obligation to contribute money or property, or any combination thereof.

**Amount of consideration for shares**

17. (1) Subject to any limitations or provisions to the contrary in the Articles, shares in a company incorporated under this Act may be issued for such amount as may be determined from time to time by the directors, except that in the case of shares with par value, the amount shall not be less than the par value; and, the decision of the directors as to the value of the consideration received by the company in respect of the issue is conclusive, so long as the directors' determination was based upon reasonable business judgement.

(2) A share issued by a company incorporated under this Act upon conversion of, or in exchange for, another share or a debt obligation or other security in the

company, shall be treated for all purposes as having been issued for money equal to the consideration received or deemed to have been received by the company in respect of the other share, debt obligation or security.

**Authorised capital in several currencies**

18. (1) The authorised capital, if any, of a company incorporated under this Act may be stated in more than one currency in which case the par value of the shares, if any, shall be expressed in the same currencies.

(2) The Registrar may issue guidelines with respect to the calculation of fees payable for companies with an authorised capital stated in a currency other than United States dollars.

**Share register**

19. (1) A company incorporated under this Act shall cause to be kept one or more registers to be known as share registers containing

(a) the names and addresses of the persons who hold registered shares in the company;

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

(c) the date on which the name of each person was entered in the share register;

(d) the date on which any person ceased to be a shareholder;

(e) in the case of shares issued to bearer, the total number of each class and series of shares issued to bearer and outstanding at any given time; and

(f) with respect to each certificate for shares issued to bearer,

(i) the identifying number of the certificate;

(ii) the number of each class or series of shares issued to bearer specified therein; and

(iii) the date of issue of the certificate;  
but the company may delete from the register information relating to persons who are no longer shareholders or information relating to shares issued to bearer that have been cancelled.

(2) The share register may be in any such form as the directors may approve but if it is in magnetic, electronic or other machine-readable form, the company must be able to produce a human-readable copy.

(3) A copy of the share register, commencing from the date of the registration of the company, shall be kept at such place as the directors may determine and may be registered as provided in section 115.

(4) The share register is *prima facie* evidence of any information directed or authorised by this Act to be contained therein.

(5) The provisions of sections 181 to 185 (both inclusive) of the Companies Act (relating to substantial shareholders registers) shall not apply to companies incorporated under this Act.

**Rectification of share**

20. (1) If -

**register**

(a) information that is required to be entered in the share register under section 19 is omitted therefrom or inaccurately entered therein; or

(b) there is unreasonable delay in entering the information in the share register, a shareholder of the company, or any person who is aggrieved by the omission, inaccuracy or delay, may apply to the court for an order that the share register be rectified, and the court may either grant or refuse the application, with or without costs to be paid by the applicant, or order the rectification of the share register, and may direct the company to pay all costs of the application and any damages the applicant may have sustained.

(2) The court may, in any proceedings under subsection (1), determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the share register, whether the question arises between-

(a) two or more shareholders or alleged shareholders; or

(b) between shareholders or alleged shareholders and the company; and generally the court may in the proceedings determine any question that may be necessary or expedient to be determined for the rectification of the share register.

**Transfer of registered shares**

21. (1) Subject to any limitations or provisions to the contrary in the Articles or the By-Laws, registered shares of a company incorporated under this Act may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee or by endorsement.

(2) In the absence of a written instrument of transfer mentioned in subsection (1), the directors may accept such evidence of a transfer of shares as they consider appropriate.

(3) A company shall not be required to treat a transferee of a registered share in the company as a shareholder until the transferee's name has been entered in the share register.

(4) Subject to any limitations or provisions to the contrary in its Articles, a company incorporated under this Act must, on the application of the transferor or transferee of a registered share in the company, enter in its share register the name of the transferee of the share.

(5) A transfer of registered shares of a deceased, incompetent or bankrupt shareholder of a company incorporated under this Act made by his personal representative, guardian or trustee, as the case may be, or a transfer of registered shares owned by a person as a result of a transfer from a shareholder by operation of law, is of the same validity as if the personal representative, guardian, trustee or transferee had been the registered owner of the shares at the time of the execution of the instrument of transfer.

(6) For the purposes of subsection (5), what amounts to incompetence on the part of a person is a matter to be determined by the court after having regard to all the relevant evidence and the circumstances of the case.

**Transfer of bearer shares**

22. A share issued to bearer is transferable by delivery of the certificate relating to the share.

**Seizure**

23. (1) Unless the By-Laws provide otherwise, where a governmental authority, whether it is legally constituted or not, in any jurisdiction outside the State-

(a) by or in connection with a nationalisation, expropriation, confiscation, coercion, force or duress, or similar action; or

(b) by or in connection with the imposition of any confiscatory tax, assessment or other governmental charge, takes or attempts to take or seize any shares or other interest in a company incorporated under this Act, the company itself or a person holding shares or any other interest in the company, including an interest as a creditor, may apply to the court for an order that the company disregard the taking or seizure and continue to treat the person who would have held shares or any other interest in the company but for the taking or seizure of the shares or other interest as continuing to hold the shares or other interest.

(2) Without affecting subsection (1), where a person whose shares or other interests have been taken or seized as referred to in subsection (1) is other than a natural person, the person making the application under subsection (1), or the company itself, may apply to the court for an additional order for the company to treat the persons believed by the company to have held the direct or indirect beneficial interests in the shares or other interests in the company as the holder of those shares or other interests.

(3) The court may, upon application made to it under subsection (1) or (2),

(a) grant such relief as it considers equitable and proper; and

(b) order that any shares or other interests in the company vest in such trustees as the court may appoint upon such trusts and for such purposes as the court determines.

**Dividends**

24. (1) Subject of its Articles or By-Laws, an international business company may, by a resolution of its directors, declare and pay dividends in money, shares or other property.

(2) Dividends may only be declared and paid out of capital surplus.

(3) No dividend may be paid unless the directors determine that immediately after the payment of the dividend

(a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and

(b) the realisable value of the assets of the company will not be less than the sum of its total liabilities, other than liabilities for deferred taxes, as shown in the books of account, and its capital, and the decision of the directors as to the realisable value of the assets of the company shall be conclusive, so long as the directors' determination is based upon reasonable business judgement.

**PART IV**  
**Registered Office and Agent**

**Registered office**

25. A company incorporated under this Act shall at all times have a registered office in the State, which may be the office of its registered agent in the State.

**Registered agent** 26. A company incorporated under this Act shall at all times have a registered agent in the State who shall be a licensed registered agent under the Registered Agent and Trustee Licensing Act, 1996.

**Change of registered office or registered agent** 27. A company incorporated under this Act may, by a resolution of directors, amend its Articles or By-Laws to change the place of its registered office or to change its registered agent. Any change of registered agent shall be effective upon the proper filing with the Registrar of an amendment to the company's Articles.

## **PART V Directors, Officers, Agents And Liquidators**

**Management by directors** 28. Subject to its Articles or By-Laws, the business and affairs of an international business company shall be managed by a board of directors that consists of one or more persons who may be individuals or companies.

**Organisational meeting** 29. (1) After the issue of a Certificate of Incorporation of a company, a meeting of the directors of the company shall be held at which the directors may

- (a) make By-Laws;
- (b) adopt forms of share certificates and corporate records;
- (c) authorise the issue of shares;
- (d) appoint officers;
- (e) appoint an auditor to hold office until the first annual meeting of shareholders;
- (f) make banking arrangements; and
- (g) transact any other lawful business that is within the company's stated purposes.

(2) An incorporator or a director may call a meeting of directors referred to in subsection (1) by giving by post or any other similar means not less than 3 clear days notice of the meeting to each director and stating in the notice the time and place of the meeting.

**Appointment of directors etc.** 30. (1) The first directors of an international business company shall be selected by the persons who have formed the company and thereafter, the directors shall be elected on an annual basis by the shareholders for such term(s) as the shareholders or directors may determine.

(2) Each director holds office until his successor takes office or until his earlier death, resignation or removal.

(3) A director may:

- (a) be removed from office by a resolution of shareholders or by a resolution of directors; and
- (b) 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.

(4) A vacancy in the board of directors may be filled by a resolution of shareholders or of a majority of the remaining directors or as otherwise provided in the Articles or By-Laws of the company.

- Number of directors** 31. The number of directors shall be fixed by the Articles or By-Laws, and the Articles or By-Laws may be amended to change the number of directors. Each international business company shall have at least one director, and if such company has more than one shareholder, it shall have at least two directors.
- Powers of directors** 32. The directors have all the powers of management of the company that are not reserved to the shareholders under this Act or the By-Laws of the company.
- Emoluments of directors** 33. Subject to the Articles or By-Laws, the directors may, by a resolution of directors, fix the emoluments of directors in respect of services to be rendered in any capacity to the company.
- Committees of directors** 34. (1) The directors may, by a resolution of directors, designate one or more committees, each consisting of one or more directors.
- (2) Subject to the Articles or By-Laws of the company, each committee has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the resolution of directors establishing the committee.
- Meetings of directors** 35. (1) Subject to the Articles or By-Laws, the directors of an international business company shall meet at least annually but may meet at such times and in such manner and places within or outside the State as the directors may determine to be necessary or desirable.
- (2) A director shall be deemed to be present at a meeting of directors if
- (a) he participates by telephone or other electronic means; and
- (b) all directors participating in the meeting are able to hear each other.
- Notice of meetings of directors** 36. (1) Subject to a requirement in the Articles By-Laws to give longer notice, a director shall be given not less than one day's notice of meetings of directors.
- (2) Notwithstanding subsection (1), but subject to its Articles or By-Laws, a meeting of directors held in contravention of that subsection is valid if all of the directors, or such majority thereof as may be specified in the Articles or By-Laws entitled to vote at the meeting, have waived the notice of the meeting; and, for this purpose, the presence of a director at the meeting shall be deemed to constitute a waiver on his part.
- (3) The inadvertent failure to give notice of a meeting to a director, or the fact that a director has not received the notice, does not invalidate the meeting.
- Quorum for meetings of directors** 37. The quorum for a meeting of directors is that meetings of fixed by the Articles or By-Laws; but, where no quorum is so fixed, a meeting of directors is properly constituted for all purposes if at the commencement of the meeting one-half of the total number of directors are present in person or by alternate.

- Consent of directors** 38. 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 by all directors, in counterpart or otherwise, or by telex, telegram, facsimile, electronic mail, cable or other written electronic communication, without the need for any notice or waiver of notice.
- Alternates for directors** 39. (1) Subject to the Articles or By-Laws a director may by a written instrument appoint an alternate who need not be a director.
- (2) An alternate for a director appointed under subsection (1) is entitled to attend meetings in the absence of the director who appointed him and to vote or consent in the place of the director.
- Officers and agents** 40. (1) The directors may, by a resolution, appoint any person, including a person who is a director, to be an officer or agent of the company.
- (2) Subject to the Articles and the By-Laws, each officer or agent has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the Articles, the By-Laws or in the resolution of directors appointing the officer or agent, except that no officer or agent has any power or authority with respect to the matters requiring a resolution of directors under section 38 and this section.
- (3) The directors may remove an officer or agent appointed under subsection (1) and may revoke or vary a power conferred on him under subsection (2).
- Standard of care** 41. (1) Every director, officer, agent and liquidator of an international business company, in performing his functions, shall act honestly and in good faith with a view to the best interests of the company and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- (2) No provision in the Articles or By-Laws of an international business company or in any agreement entered into by the company relieves a director, officer, agent or liquidator of the company from the duty to act in accordance with the Articles or By-Laws or from any personal liability arising from his management of the business and affairs of the company.
- Reliance on records and reports** 42. Every director, officer, agent and liquidator of an international business company, in performing his functions is entitled to rely upon the share register kept under section 19, the books of accounts and records and the minutes and copies of consents to resolutions kept under section 53, and any report made to the company by any other director, officer, agent or liquidator or by any person selected by the company to make the report.
- Conflicts of interest** 43. (1) Subject to the Articles or By-Laws, if the requirements of subsection (2) or (3) are satisfied, no agreement or transaction between
- (a) an international business company; and
- (b) one or more of its directors, officers or liquidators, or any person in which any director or liquidator has a financial interest or to whom any director or liquidator is related, including as a director or liquidator of that other person, is void or voidable for this reason only or by reason only that the director, officer or liquidator is present at the meeting of directors or liquidators, or at the meeting of the committee of directors or liquidators, that approves the agreement or transaction or that the vote or consent of the director or liquidator is counted for

that purpose.

(2) An agreement or transaction referred to in subsection (1) is valid if

(a) the material facts of the interest of each director, officer or liquidator in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the other directors or liquidators; and

(b) the agreement or transaction is approved or ratified by a resolution of directors or liquidators that has been approved

(i) without counting the vote or consent of any interested director or liquidator, or

(ii) by the unanimous vote or consent of all disinterested directors or liquidators if the votes or consents of all disinterested directors or liquidators is insufficient to approve a resolution of directors or liquidators.

(3) An agreement or transaction referred to in subsection (1) is valid if

(a) the material facts of the interest of each director or liquidator in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the shareholders entitled to vote at a meeting of shareholders; and

(b) the agreement or transaction is approved or ratified by a resolution of shareholders.

(4) Subject to the Articles or By-Laws, a director or liquidator who has an interest in any particular business to be considered at a meeting of directors, liquidators or shareholders may be counted for purposes of determining whether the meeting is duly constituted in accordance with section 37 or otherwise.

## **Indemnification**

44. (1) Subject to subsection (2) and to the By-Laws, an international business company may indemnify against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings against any person who

(a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director, an officer or a liquidator of the company; or

(b) is or was, at the request of the company, serving as a director, officer or liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise.

(2) Subsection (1) only applies to a person referred to in that subsection if the person acted honestly and in good faith with a view to the best interests of the company and, in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.

(3) The decision of the directors as to whether the person acted honestly and in good faith and with a view to the best interests of the company and as to whether the person had no reasonable cause to believe that his conduct was

unlawful is, in the absence of fraud, sufficient for the purposes of this section, unless a question of law is involved.

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

(5) If a person referred to in subsection (1) has been successful in defence of any proceedings referred to in subsection (1), the person is entitled to be indemnified against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

#### **Insurance**

45. An international business company may purchase and maintain insurance in relation to any person who is or was a director, an officer or a liquidator of the company, or who at the request of the company is or was serving as a director, an officer or a liquidator, of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under subsection (1) of section 44.

### **PART VI**

#### **Protection of Shareholders and Certain Creditors**

#### **Meetings of shareholders**

46. (1) Subject to the Articles or By-Laws, the directors of an international business company may convene meetings of the shareholders of the company at such times and in such manner and places within or outside the State as the directors consider necessary or desirable.

(2) Subject to the Articles or By-Laws, upon the written request of shareholders holding more than fifty per cent of the votes of the outstanding voting shares in the company, the directors shall convene a meeting of shareholders.

(3) Subject to the Articles or By-Laws, a shareholder shall be deemed to be present at a meeting of shareholders if

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

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

(4) A shareholder may be represented at a meeting of shareholders by a proxy who may speak and vote on behalf of the shareholder.

(5) The following apply in respect of joint ownership of shares:

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

(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 two or more are present in person or by proxy, they must vote as one.

#### **Notice of meetings of**

47. (1) The directors shall give not less than 7 clear days notice of meetings of

**shareholders**

shareholders to those persons whose names on the date the notice is given appear as shareholders in the share register referred to in section 19 and are entitled to vote at the meeting.

(2) Notwithstanding subsection (1), a meeting of shareholders held in contravention of the requirement to give notice is valid if shareholders holding a majority of

(a) the total number of shares entitled to vote on all the matters to be considered at the meeting; or

(b) the votes of each class or series of shares where shareholders are entitled to vote thereon as a class or series together with an absolute majority of the remaining votes, have waived notice of the meeting; and, for this purpose, the presence of a shareholder at the meeting shall be deemed to constitute a waiver on his part.

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

**Quorum for meetings of shareholders**

48. The quorum for a meeting of shareholders for purposes of a resolution of shareholders is that fixed by the Articles or By-Laws; but, where no quorum is so fixed, a meeting of shareholders is properly constituted for all purposes if, at the commencement of the meeting, there are present in person or by proxy one-half of the votes of the shares of each class or series entitled to vote thereon.

**Voting by shareholders**

49. (1) Except as otherwise provided in the Articles or By-Laws, all shares vote as one class and each whole share has one vote.

(2) The directors of an international business company may fix the date notice is given of a meeting as the record date for determining those shares that are entitled to vote at the meeting.

**Consent of shareholders**

50. Subject to the Articles or By-Laws, an action that may be taken by shareholders at a meeting of shareholders may also be taken by a resolution of shareholders consented to in writing by all shareholders, or by telex, telegram, facsimile, cable or other written electronic communication consented to by all shareholders, without the need for any notice or waiver of notice.

**Service of notice on shareholders**

51. (1) Any notice, information or written notice (or statement required under this Act to be given by an international business company to shareholders must be served

(a) in the case of shareholders holding registered shares,

(i) in the manner prescribed in the Articles or By-Laws, as the case may be, or

(ii) in the absence of a provision in the Articles or By-Laws, by personal service or by mail addressed to each shareholder at the address shown in the share register; and

(b) in the case of shareholders holding shares issued to bearer, in the absence of a provision in the Articles or By-Laws, by publishing the notice, information or written statement in a newspaper of general circulation in the State and a newspaper in the place where the company has its principal office, if different.

(2) The directors must give sufficient notice of meetings of shareholders to shareholders holding shares issued to bearer to allow a reasonable opportunity for them to take action in order to secure or exercise the right or privilege, other than the right or privilege to vote, that is the subject of the notice.

(3) For purposes of subsection (2), what amounts to sufficient notice is a matter of fact to be determined after having regard to all the circumstances.

**Service of process on company**

52. (1) Any summons, notice, order, document, process, information or written statement to be on company served on an international business company may be served by leaving it, or by sending it by registered mail addressed to the company, at its registered office, or by leaving it with, or by sending it by registered mail to, the registered agent of the company.

(2) Service of any summons, notice, order, document, process, information or written statement to be served on an international business company may be proved by showing that the summons, notice, order, document, process, information or written statement

(a) was mailed in such time as to admit to its being delivered in the normal course of delivery, within the period prescribed for service; and

(b) was correctly addressed and the postage was prepaid.

**Books, records and common seal**

53. (1) An international business company shall keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company.

(2) An international business company shall keep

(a) minutes of all meetings of

(i) directors,

(ii) shareholders,

(iii) committees of directors,

(iv) committees of officers, and

(v) committees of shareholders; and

(b) copies of all resolutions consented to by:

(i) directors,

(ii) shareholders,

(iii) committees of directors,

(iv) committees of officers, and

(v) committees of shareholders.

(3) The books, records and minutes required by this section shall be kept at the registered office of the company or at such other places the directors may direct in writing.

(4) An international business company shall have a common seal and an imprint thereof shall be kept at the registered office of the company.

**Inspection of business books and records**

54. (1) A shareholder of an international company may, in person or by attorney and in furtherance of a proper purpose, request in writing, specifying the purpose, to inspect during normal business hours the share register of the company or the books, records, minutes and consents kept by the company and to make copies or extracts therefrom.

(2) For purposes of subsection (1), a proper purpose is a purpose reasonably related to the shareholder's interest as a shareholder.

(3) If a request under subsection (1) is submitted by an attorney for a shareholder, the request must be accompanied by a power-of-attorney authorising the attorney to act for the shareholder.

(4) If the company, by a resolution of directors, determines that it is not in the best interest of the company or of any other shareholder of the company to comply with a request under subsection (1), the company may refuse the request.

(5) Upon refusal by the company of a request under subsection (1), the shareholder may, before the expiration of a period of 90 days of his receiving notice of the refusal, apply to the court for an order to allow the inspection.

(6) Any inspection under this section shall be subject to the provisions of the Confidential Information Preservation (International Finance) Act, 1996, to the extent such act applies.

**Contracts generally**

55. (1) Contracts may be entered into on behalf of an international business company as follows:

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

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

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

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

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

instrument.

**Pre-incorporation contracts**

56. (1) A person who enters into a written contract in the name of or on behalf of an international business company before the company comes into existence, is personally bound by the contract and is entitled to the benefits of the contract, except where

(a) the contract specifically provides otherwise; or

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

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

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

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

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

**Contracts for payment or transfer**

57. (1) If any contract, agreement, deed or other instrument relating to the payment of a claim or the delivering or transferring of property, whether real or personal, wherever situated, is entered into by an international business company and the contract, agreement, deed or other instrument designates a payee or beneficiary to receive the payment or property

(a) upon the death of the person making the designation;

(b) upon the death of another person; or

(c) upon the happening of any other event specified in the contract, agreement, deed or other instrument, then, any such payment, delivery or transfer, the rights of any payee or beneficiary, and the ownership of any property received, are not impaired or defeated by any law or rule of law governing the transfer of property by will, gift or intestacy.

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

(a) the designation is revocable or subject to change; or

(b) the claim or property

(i) is not yet payable or transferable, as the case may be, at the time the

designation is made, or

(ii) is subject to withdrawal, collection or assignment by the person making the designation.

**Notes and bills of exchange**

58. A promissory note or bill of exchange shall be deemed to have been made, accepted or exchange endorsed by an international business company if it is made, accepted or endorsed in the name of the company

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

(b) by a person acting under the express or implied authority of the company, and if so endorsed, the person signing the endorsement is not liable thereon.

**Power-of-attorney**

59. (1) An international business company may, by an instrument in writing, whether or not under its common seal, authorise a person, either generally or in respect of any specified matters, as its agent to act on behalf of the company and to execute contracts, agreements, deeds and other instruments on behalf of the company.

(2) A contract, agreement, deed or other instrument executed on behalf of the company by an agent appointed under subsection (1), whether or not under his seal, is binding on the company and has the same effect as if it were under the common seal of the company.

**Authentication or attestation**

60. (1) A document requiring authentication or attestation by an international business company may be signed by a director, a secretary or by an authorised officer or agent of the company, and need not be under its common seal.

(2) If the signature of any director, officer or agent authenticating or attesting any document is verified in writing by the registered agent of a company the company is bound by the document.

**Company without shareholders**

61. If at any time there is no shareholder of an international business 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 therefor without joinder in the proceedings of any other person. For purposes of this section, a company limited by guarantee and a limited duration company shall be deemed to have shareholders if it is validly existing under this Act and has one or more members.

**PART VII  
Merger, Consolidation, Sale of Assets, Forced Redemptions,  
Arrangements and Dissenters**

**Interpretation**

62. In this Part

"consolidated company" means the new company that results from the consolidation of two or more constituent companies;

"consolidation" means the uniting of two 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 two or more constituent companies into one of the constituent companies;

"parent company" means a company that owns at least 90 per cent of the outstanding shares of each class and series of shares in another company;

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

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

## **Merger and consolidation**

63. (1) Two or more international business companies may merge or consolidate in accordance with subsections (3) to (5).

(2) One or more international business companies may merge or consolidate with one or more companies incorporated under the Companies Act in accordance with subsections (3) to (5), if the surviving company or the consolidated company will satisfy the requirements of sections 4 and 5.

(3) The directors of each constituent company that proposes to participate in a merger or consolidation must approve a written plan of merger or consolidation containing, as the case requires,

(a) the name of each constituent company and the name of the surviving company or the consolidated company;

(b) in respect of each constituent company,

(i) the designation and number of outstanding shares of each class and series of shares, specifying each such class and series entitled to vote on the merger or consolidation, and

(ii) a specification of each such class and series, if any, entitled to vote as a class or series;

(c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other property, or a combination thereof;

(d) in respect of a merger, a statement of any amendment to the Articles or By-Laws of the surviving company to be brought about by the merger; and

(e) in respect of a consolidation, everything required to be included in the Articles or By-Laws for an international business company, except statements as to facts not available at the time the plan of consolidation is approved by the directors.

(4) Some or all shares of the same class or series of shares in each constituent company may be converted into a particular or mixed kind of property and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property.

(5) The following apply in respect of a merger or consolidation under this section -

- (a) the plan of merger or consolidation must be authorised by a resolution of shareholders and the outstanding shares of a class or series of shares are entitled to vote on the merger or consolidation as a class or series if the Articles or By-Laws so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the Articles or By-Laws, would entitle the class or series to vote on the proposed amendment as a class or series;
- (b) if a meeting of shareholders is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, must be given to each shareholder, whether or not entitled to vote on the merger or consolidation;
- (c) if it is proposed to obtain the written consent of shareholders, a copy of the plan of merger or consolidation must be given to each shareholder, whether or not entitled to consent to the plan of merger or consolidation;
- (d) after approval of the plan of merger or consolidation by the directors and shareholders of each constituent company, Articles of merger or consolidation must be executed by each company and must contain
  - (i) the plan of merger or consolidation and, in the case of consolidation, any statement required to be included in the Articles for an international business company;
  - (ii) the date on which the Articles of each constituent company were registered by the Registrar;
  - (iii) the manner in which the merger or consolidation was authorised with respect to each constituent company;
- (e) the Articles of merger or consolidation must be submitted to the Registrar who must retain and register them in the Register; and
- (f) upon the registration of the Articles of merger or consolidation, the Registrar shall issue a certificate under his hand and seal certifying that the Articles of merger or consolidation have been registered;
- (g) A certification of merger or consolidation issued by the Registrar is *prima facie* evidence of compliance with all requirements of this Act in respect of the merger or consolidation.

**Merger with subsidiary** 64. (1) A parent international business company may merge with a subsidiary international business company or company under the Companies Act, without the authorisation of the shareholders of any company, in accordance with subsections (2) to (6), if the surviving company is an international business company and will satisfy the requirements prescribed for an international business company under section 5.

(2) The directors of the parent company must approve a written plan of merger containing

- (a) the name of each constituent company and the name of the surviving company;
- (b) in respect of each constituent company,
  - (i) the designation and number of outstanding shares of each class and series of shares, and
  - (ii) the number of shares of each class and series of shares in each subsidiary company owned by the parent company; and

(c) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other property, or a combination thereof.

(3) Some or all shares of the same class or series of shares in each company to be merged may be converted into property of a particular or mixed kind and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property; but, if the parent company is not the surviving company, shares of each class and series of shares in the parent company may only be converted into similar shares of the surviving company.

(4) A copy of the plan of merger or an outline thereof must be given to every shareholder of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that shareholder.

(5) Articles of merger must be executed by the parent company and must contain

(a) the plan of merger;

(b) the date on which the Articles of each constituent company were registered by the Registrar; and

(c) if the parent company does not own all shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or an outline thereof was made available to the shareholders of each subsidiary company.

(6) The Articles of Merger must be submitted to the Registrar who must retain and register them in the Register.

(7) Upon the registration of the Articles of Merger, the Registrar shall issue a certificate under his hand and seal certifying that the Articles of Merger have been registered.

(8) A Certificate of Merger issued by the Registrar is *prima facie* evidence of compliance with all requirements of this Act in respect of the merger.

#### **Effect of merger or consolidation**

65. (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 statements contained in the Articles of consolidation that are required or authorised to be contained in the Articles and By-Laws of an international business company are the Articles and By-Laws of the consolidated company;

(d) property of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and

(e) the surviving company or the consolidated company is liable for all claims, debts, liabilities and obligations of each of the constituent companies.

(3) Where a merger or consolidation occurs

(a) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any shareholder, director, officer or agent thereof, is released or impaired by the merger or consolidation; and

(b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any shareholder, director, officer or agent thereof, are abated or discontinued by the merger or consolidation, but

(i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the shareholder, director, officer or agent thereof, as the case may be, or

(ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.

(4) The Registrar shall strike off the Register

(a) a constituent company that is not the surviving company in a merger; or

(b) a constituent company that participates in a consolidation.

**Merger or  
consolidation with  
foreign company**

66. (1) One or more international business companies may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside the State in accordance with subsections (2) to (4), including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of the jurisdictions in which the companies incorporated outside the State are incorporated.

(2) The following apply in respect of a merger or consolidation under this section:

(a) an international business company shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of such companies and companies incorporated under the laws of a jurisdiction outside the State shall comply with the laws of that jurisdiction; and

(b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside the State, it must submit to the Registrar

(i) an agreement that a service of process may be effected on it in the State in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent international business company or in respect of proceedings for the enforcement of the rights of a dissenting shareholder of constituent international business company against the surviving company or the consolidated company;

(ii) an irrevocable appointment of the Registrar as its agent to accept service of process in proceedings referred to in subparagraph (i);

(iii) an agreement that it will promptly pay to the dissenting shareholders of a constituent international business company the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting shareholders; and

(iv) a certificate of merger or consolidation issued by the appropriate authority of

the foreign jurisdiction where it is incorporated; or, if no certificate of merger is issued by the appropriate authority of the foreign jurisdiction, 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 63 if the surviving company or the consolidated company is incorporated under this Act, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside the State, the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 63 except in so far as the laws of the other jurisdiction otherwise provide.

(4) If the surviving company or the consolidated company is incorporated under this Act, the merger or consolidation is effective on the date the Articles of Merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the Articles of Merger or consolidation; but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside the State, the merger or consolidation is effective as provided by the laws of that other jurisdiction.

#### **Disposition of assets**

67. Any sale, transfer, lease, exchange or other disposition of more than fifty per cent of the assets of an international business company, if not made in the usual or regular course of the business carried on by the company, shall be made as follows:

(a) the proposed sale, transfer, lease, exchange or other disposition must be approved by the directors;

(b) upon approval of the proposed sale, transfer, lease, exchange or other disposition, the directors must submit the proposal to the shareholders for it to be authorised by a resolution of shareholders;

(c) if a meeting of shareholders is to be held, notice of the meeting, accompanied by an outline of the proposal, must be given to each shareholder, 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 shareholders, an outline of the proposal must be given to each shareholder, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.

#### **Redemption of minority shares**

68. (1) Subject to the Articles or By-Laws

(a) shareholders holding 90 per cent of the votes of the outstanding shares entitled to vote; and

(b) shareholders holding 90 per cent of the votes of the outstanding shares of each class and series of shares entitled to vote as a class or series, on a merger or consolidation under section 63, may give a written instruction to an international business company directing the company to redeem the shares held by the remaining shareholders.

(2) Upon receipt of the written instruction referred to in subsection (1), the company shall redeem the shares specified in the written instruction whether or not the shares are by their terms redeemable.

(3) The company must give written notice to each shareholder whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.

**Proposed compromise** 69. (1) Where a compromise or arrangement is proposed between a company and its creditors of any class, or between the company and its shareholders of any class, the court may, on the application of the company or of any creditor or shareholder of the company or, in the case of a winding-up, of the liquidator, order a meeting of the creditors or class of creditors, or of the shareholders of the company or class of shareholders, as the case may be.

(2) If a majority representing 75 per cent in value of the creditors or class of creditors, or shareholders or class thereof as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if approved by the court and an order was accordingly made, be binding on all creditors or class of creditors, or on the shareholders or class thereof, as the case may be, and on the company or in the event of a winding-up, on the liquidator.

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

(4) In this section "arrangement" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both.

**Rights of dissenters** 70. (1) A shareholder of an international business 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 shareholder continues to hold the same or similar shares;

(b) a consolidation, if the company is a constituent company;

(c) any sale, transfer, lease, exchange or other disposition of more than 50 per cent of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including

(i) a disposition pursuant to an order of the court having jurisdiction in the matter;

(ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition; or

(d) a redemption of his shares by the company pursuant to section 67.

(2) A shareholder who desires to exercise his entitlement under subsection (1) must give to the company, before the meeting of shareholders 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 shareholder 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 shareholders without a meeting.

(3) An objection under subsection (2) must include a statement that the shareholder 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 shareholders authorising the action is taken, or the date on which written consent of shareholders without a meeting is obtained, the company must give written notice of the authorisation or consent to each shareholder who gave written objection or from whom written objection was not required, except those shareholders who voted for, or consented in writing to, the proposed action.

(5) A shareholder to whom the company was required to give notice who elects to dissent must, within 20 days immediately following the date on which the notice referred to in subsection (4) is given, give to the company a written notice of his decision to elect to dissent, stating

(a) his name and address;

(b) the number and classes or series of shares in respect of which he dissents; and

(c) a demand for payment of the fair value of his shares, and a shareholder who elects to dissent from a merger under section 64 must 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 64.

(6) A shareholder who dissents must do so in respect of all shares that he holds in the company.

(7) Upon the giving of a notice of election to dissent, the shareholder to whom the notice relates ceases to have any of the rights of a shareholder except the right to be paid the fair value of his shares.

(8) Within 7 clear days immediately following the date of the expiration of the period within which shareholders may give their notices of election to dissent, or within 7 clear days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company, must make a written offer to each dissenting shareholder 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 shareholder agree upon the price to be paid for his shares, the company shall pay to the shareholder the amount in money upon the surrender of the certificates representing his shares.

(9) If the company and a dissenting shareholder 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 shareholder, 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 shareholder shall each designate an appraiser;

(b) the two designated appraisers together shall designate a third appraiser;

(c) the three appraisers shall fix the fair value of the shares owned by the dissenting shareholder as of the close of business on the day prior to the date on

which the vote of shareholders authorising the action was taken or the date on which written consent of shareholders 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 shareholder for all purposes; and

(d) the company shall pay to the dissenting shareholder 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 shareholder of his entitlement under this section excludes the enforcement by the shareholder 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 shareholder to institute proceedings to obtain relief on the ground that the action is illegal.

### **PART VIII Continuation**

#### **Continuation**

71. (1) A company incorporated under the Companies Act, the International Companies Act, Cap 104 or a company or comparable judicial entity incorporated under the laws of a jurisdiction outside the State may, if it satisfies the requirements of section 5, continue as an international business company as follows:

(a) the Articles of Continuation, written in the English language or if written in a language other than the English language, accompanied by a certified translation into the English language, must be approved

(i) by a majority of the directors or the other persons who are charged with exercising the powers of the company, or

(ii) in such other manner as may be established by the company for exercising the powers of the company;

(b) the Articles of Continuation must contain

(i) the name of the company and the name under which it is being continued,

(ii) the jurisdiction under which it is incorporated,

(iii) the date on which it was incorporated,

(iv) the information required to be included in the Articles under section 11, and

(v) the amendments to its Articles and By-Laws or their equivalent, that are to be effective upon the registration of the Articles of Continuation;

(c) the Articles of Continuation, accompanied by a copy of the Articles and By-Laws of the company, or their equivalent, written in the English language or, if written in a language other than the English language, accompanied by a certified translation into the English language and in the case of a foreign company, evidence satisfactory to the Registrar that the company is in good standing, must

be submitted to the Registrar who, if the same are in acceptable form, must retain and register them in the Register; and

(d) upon the registration of the Articles of Continuation, the Registrar shall issue a certificate of continuation under his hand and seal certifying that the company is incorporated under this Act.

(2) A company incorporated under the laws of a jurisdiction outside the State is entitled to continue as an international business company notwithstanding any provision to the contrary in the laws of the jurisdiction under which it is incorporated.

(3) Notwithstanding any provisions of the Companies Act, a company incorporated under that Act may, by resolution of the directors, continue as a company under this Act.

**Provisional registration** 72. (1) A company incorporated under the laws of a jurisdiction outside the State that is permitted under section 71 to continue as an international business company may, after complying with paragraphs

(a) and (b) of subsection (1) of section 71, submit to the Registrar the following documents:

(a) Articles of Continuation, accompanied by a copy of its Articles and By-Laws, or their equivalent, written in the English language, or if written in a language other than the English language accompanied by a certified translation into the English language; and

(b) a written authorisation designating one or more persons who may give notice to the Registrar, by telex, telegram, facsimile, electronic mail, cable or by registered mail, that the Articles of continuation should become effective.

(2) The Registrar shall not, prior to the receipt of the notice referred to in subsection (1), permit any person to inspect the documents referred to in subsection (1) and shall not divulge any information in respect thereof.

(3) Upon receipt of the notice referred to in subsection (1), the Registrar shall

(a) register the documents referred to in subsection (1) in the Register; and  
(b) issue a Certificate of Continuation under his hand and seal certifying that the company is incorporated under this Act.

(4) For purposes of subsection (3), the Registrar may rely on a notice referred to in subsection (1) sent, or purported to be sent, by a person named in the written authorisation.

(5) Prior to the registration of the documents referred to in subsection (1), a company may rescind the written authorisation referred to in subsection (1) by delivering to the Registrar a written notice of rescission.

(6) If the Registrar does not receive a notice referred to in subsection (1) from a person named in the written authorisation within one year immediately following the date on which the documents referred to in subsection (1) were submitted to the Registrar, the Articles of Continuation are rescinded.

(7) A company entitled to submit to the Registrar the documents referred to in

subsection (1) may authorise the Registrar to accept as resubmitted the documents referred to in that subsection, before or after the documents previously submitted referred to in subsection (1) have been rescinded.

**Certificate of continuation**

73. A Certificate of Continuation issued by the Registrar under section 71 or under section 72 is continuation *prima facie* evidence of compliance with all requirements of this Act in respect of continuation.

**Effect of continuation**

74. (1) From the time of the issue by the Registrar of a certificate of continuation

(a) the company to which the certificate relates

(i) continues to be an international business company under the name designated in the Articles of Continuation;

(ii) is capable of exercising all powers of an international business company; and

(iii) is no longer to be treated as a company incorporated under the Companies Act or a company incorporated under the laws of a jurisdiction outside the State;

(b) the Articles and By-Laws of the company, or their equivalent, as amended by the Articles of Continuation, are the Articles and By-Laws of the company;

(c) property of every description, including choses in action and the business of the company, continues to be vested in the company; and

(d) such continuation shall not affect the liability of the company continues to be liable for its claims, debts, liabilities and obligations.

(2) Where a company is continued under this Act

(a) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any shareholder, 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 shareholder, 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 shareholder, director, officer or agent thereof, as the case may be.

(3) All shares in the company that were outstanding prior to the issue by the Registrar of a Certificate of Continuation in respect of the company shall be deemed to have been issued in conformity with this Act, but a share that at the time of the issue of the certificate of continuation was not fully paid, shall be paid up no later than one year immediately following the date of the issue of the certificate of continuation and until the share is paid up, the shareholder holding the share remains liable for the amount unpaid on the share.

(4) If at the time of the issue by the Registrar of a certificate of continuation in respect to the company any provisions of the Articles and By-Laws of the company do not in any respect accord with this Act

(a) the provisions of the Articles and By-Laws continue to govern the company until the provisions are amended to accord with this Act or for a period of two years immediately following the date of the issue of the Certificate of Continuation, whichever is the sooner;

(b) any provisions of the Articles and By-Laws of the company that are in any respect in conflict with this Act cease to govern the company when the provisions are amended to accord with this Act or after the expiration of a period of two years after the date of the issue of the Certificate of Continuation, whichever is the sooner; and

(c) the company shall make such amendments to its Articles and By-Laws as may be necessary to accord with this Act within a period that is not later than two years immediately following the date of the issue of the Certificate of Continuation.

**Continuation under foreign law**

75. (1) Subject to its Articles or By-Laws, an international business company may, by a resolution of directors or of shareholders, continue as a company incorporated under the laws of a jurisdiction outside the State in the manner provided under those laws.

(2) An international business company that continues as a company incorporated under the laws of a jurisdiction outside the State does not cease to be an international business company unless the laws of the jurisdiction outside the State permit the continuation and the company has complied with those laws.

(3) Where an international business company is continued under the laws of a jurisdiction outside the State

(a) the company continues to be liable for all of its claims, debts, liabilities and obligations that existed prior to its continuation as a company under the laws of the jurisdiction outside the State;

(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 shareholder, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside the State; and

(c) no proceedings, whether civil or criminal, pending by or against the company, or against any shareholder, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside the State, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the shareholder, director, officer or agent thereof, as the case may be.

**PART IX**

**Winding-Up, Dissolution and Striking-Off**

**Compulsory winding-up and dissolution**

76. A company incorporated under this Act shall commence to wind up and dissolve by a resolution of directors upon expiration of such time or on the happening of an event as may be prescribed by its Articles for its existence. Otherwise the provisions of the Companies Act shall apply to the winding-up of companies incorporated under this Act.

**Striking-off**

77. (1) Notwithstanding section 6, where the Authority has reasonable cause to believe that a company incorporated under this Act no longer satisfies the

requirements prescribed for an international business company under section 5, the Authority may serve on the company a notice that the name of the company may be struck off the Register if the company no longer satisfies those requirements.

(2) If the Authority does not receive a reply within 30 days immediately following the date of the service of the notice referred to in subsection (1), it may serve on the company another notice that the name of the company may be struck off the Register if a reply to the notice is not received within 30 days immediately following the date thereof and that a notice of the contemplated striking-off will be published in the Gazette.

(3) If the Authority-

(a) receives from the company a notice stating that the company no longer satisfies the requirements prescribed for an international business company under section 5, in reply to a notice served on the company under subsection (1) or (2); or

(b) does not receive a reply to a notice served on the company under subsection (2) as required by that subsection, the Authority may cause to be published a notice in the Gazette that the name of the company will be struck off the Register unless the company or another person satisfies the Authority that the name of the company should not be struck off.

(4) At the expiration of a period of 90 days immediately following the date of the publication of the notice under subsection (3), the Registrar, on the application of the Authority, shall strike the name of the company off the Register, unless the company or any other person satisfies the Registrar that the name of the company should not be struck off, and the Registrar must publish notice of the striking-off in the Gazette.

(5) If a company has failed to pay the fee due under subsection (1) of section 14, the Registrar, on the application of the Authority may, within 30 days following the due date publish in the Gazette and serve on the company a notice stating the amount of the fee due and stating that the name of the company will be struck off the Register if the company fails to pay the fee on or before a date not more than sixty days after the date of publication of the Gazette.

(6) If a company fails to pay the fee stated in the notice referred to in subsection (5) by the prescribed date, the Registrar, on the application of the Authority, shall strike the name of the company off the Register.

(7) A company that has been struck off the Register under this section remains liable for all claims, debts, liabilities and obligations of the company, and the striking-off does not affect the liability of any of its members, directors, officers or agents.

#### **Restoration to the Register**

78. (1) If the name of a company has been struck off the Register under section 77, the company, or a creditor, member or liquidator thereof, may apply to the Authority to have the name of the company restored to the Register.

(2) If upon an application under subsection (1) the Authority is satisfied that-

(a) at the time the name of the company was struck off the Register, the company did satisfy the requirements prescribed for an international business company under section 5; and

(b) it would be fair and reasonable for the name of the company to be restored to the Register, the Authority may order the name of the company to be restored to the Register upon payment to the Registrar of all fees and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.

(3) For purposes of this Part, the appointment of a liquidator under section 80 operates as an order to restore the name of the company to the Register.

**Effect of striking-off**

79. (1) Where the name of a company has been struck off the Register, the company, and the directors, members, liquidators and receivers thereof, may not legally-

(a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;

(b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the company; or

(c) act in any way with respect to the affairs of the company.

(2) Notwithstanding subsection (1) , where the name of the company has been struck off the Register, the company, or a director, member, liquidator or receiver thereof, may-

(a) make application to the Registrar for restoration of the name of the company to the Register;

(b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and

(c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.

(3) The fact that the name of a company is struck off the Register does not prevent,

(a) the company from incurring liabilities;

(b) any creditor from making a claim against the company and pursuing the claim through to judgement or execution; or

(c) the appointment by the court or Authority of a liquidator for the company.

**Appointment by court of liquidator**

80. The court or the Authority may appoint a person to be the liquidator in respect of a company the name of which has been struck off the Register.

**Dissolution of company struck off**

81. If the name of a company has been struck off the Register under section 77 and remains struck off continuously for a period of 3 years, the company shall be deemed to have been dissolved, but the Registrar or Authority may, if he or the Authority determines that it is in the best interests of the State to do so, apply to the court to have the company put into liquidation and a person may be appointed by the court as the liquidator thereof.

**PART X**  
**Limited Duration Companies**

**International  
Business  
Companies as  
limited duration  
companies**

82. (1) A company incorporated under this Act may at any time apply to the Registrar to be registered as a limited duration company.

(2) An application may also be made to the Registrar at the same time an application is made -

(a) to register a proposed company as an international business company under section 3;

(b) to register a foreign company which is being continued in the State as if it had been incorporated as an international business company under section 71;

(3) Any application under subsections (1) and (2) shall be subject to the payment of such fee or fees as may be prescribed by the Registrar.

**Registration as a  
limited duration  
company**

83. (1) The Registrar shall register as a limited duration company a company that has made an application under section 82 -

(a) where the company was not already registered as a company prior to the application, if -

(i) the Articles of the company limit the duration of the company to a period of 30 years from the date of its incorporation or less; and

(ii) the name of the company includes at its end "Limited Duration Company" or the abbreviation "LDC"; or

(b) where the company was already registered as a company prior to the application, if -

(i) the Registrar has been supplied, where the duration of the company is not already limited to a period of 30 years or less, with a certified copy of a special resolution of the company altering its Articles to limit the duration of the company to a period of 30 years from the date of its incorporation or less; and

(ii) the Registrar has been supplied with a copy of a special resolution of the company changing its name to a name that includes at its end "Limited Duration Company" or the abbreviation "LDC".

(2) On registering a company as a limited duration company, the Registrar shall -

(a) in the case of a company referred to in subsection (1)(a), certify in the certificate of incorporation or the certificate of registration by way of continuation that the company is registered as a limited duration company; and

(b) in the case of a company referred to in subsection (1)(b), certify that the company is registered as a limited duration company stating the date of such registration.

(3) A special resolution passed for the purpose of subsection (1)(b)(ii) has no effect until the company is registered as a limited duration company.

<b>Extension of duration</b>	84. A limited duration company may by special resolution alter its Articles extending the duration of the company to such period or periods not exceeding in aggregate 100 years from the date of the incorporation of the company.
<b>Prohibition on transfer of shares</b>	85. The Articles or By-Laws of a limited duration company may prohibit the transfer of any share or other interest of a member of the company absolutely, or may provide that the transfer of any share or other interest of a member requires either the unanimous resolution of all the members or a resolution passed by such proportion of the members as the Articles or By-Laws may specify.
<b>Cessation of membership</b>	86. The Articles or By-Laws of a limited duration company may provide that a person ceases to be a member of the company upon the happening of any one or more of the events specified in the Articles, and may further provide that the rights of such former members shall be limited to an entitlement to receive such value for their shares in the company as may be determined by the Articles or By-Laws.
<b>Management of company by members</b>	87. The Articles or By-Laws of a limited duration company may provide that the affairs of the company may be managed by its members in their capacity as such, or by some person designated as manager with such rights, powers and duties as may be specified in the Articles or By-Laws; and in such a case the company shall be exempt from the requirements of section 62 (1) of the Companies Act.
<b>Liquidator named in Articles</b>	88. The Articles or By-Laws of a limited duration company may designate a person to be the liquidator of the company in the event of the company being in dissolution pursuant to section 90.
<b>Cancellation of winding-up</b>	89. The Articles or By-Laws of a limited duration company may provide that, where the company has commenced winding-up and dissolution by virtue of section 90(1)(c), the winding-up and dissolution of such company may be discontinued by the unanimous resolution of all the members of the company passed within 30 days of the events specified in section 90(1)(c), resolving to discontinue the winding-up and dissolution and continue the existence of the company as if the winding-up and dissolution had never occurred.
<b>Winding-up and dissolution</b>	<p>90. (1) A limited duration company shall automatically and without further action be in voluntary winding-up and dissolution -</p> <p>(a) when the period fixed for the duration of the company expires;</p> <p>(b) if the members of the company pass a special resolution requiring the company to be wound up and dissolved; or</p> <p>(c) subject to any contrary provisions of the Articles or By Laws, upon the happening of any one or more the following events -</p> <p>(i) the bankruptcy, death, insanity, retirement, resignation, withdrawal, expulsion, termination, cessation, or dissolution of a member;</p> <p>(ii) the transfer of any share or other interest in the company in contravention of the Articles or By-Laws;</p> <p>(iii) the redemption, repurchase, or cancellation of all the shares of a member</p>

of the company; or

(iv) the occurrence of any event (whether or not relating to the company or a member) on which it is provided in the Articles or By-Laws that the company is to be dissolved.

(2) The provisions of the Companies Act relating to voluntary winding-up shall apply to the winding-up and dissolution of a limited duration company to the extent that they are not excluded or modified by the provisions of this section.

(3) Section 76 of this Act shall not apply to the winding-up and dissolution of a limited duration company.

(4) Section 43 of the Companies Act shall apply to a limited duration company as if the words "not being a transfer made to or with the sanction of the liquidator" were omitted.

(5) Where a limited duration company is in winding-up and dissolution by virtue of subsection (1), the person, if any, designated in the Articles or By-Laws shall without further action become the liquidator, failing which the director, member, or manager (as the case may be) shall without further action become the liquidator, failing which the court shall appoint a liquidator.

(6) Any reference to the passing of a resolution for the winding-up a company in the Companies Act shall be construed as including a reference to the happening of an event causing a limited duration company to be wound-up and dissolved.

(7) The liquidator of a limited duration company, as determined under subsection (5), shall cause to be published in the Gazette notice of the winding-up and dissolution of a company pursuant to this section, but failure to so publish the same shall not prejudice the validity of the winding-up and dissolution.

**Cessation as  
limited duration  
company**

91. (1) A company ceases to be a limited duration company if -

(a) the Registrar removes its name from the Register under section 77;

(b) the Registrar issues a certificate of change of name which records a change of name for the company that does not include at its end "Limited Duration Company" or "LDC"; or

(c) the company passes a special resolution to alter its Articles to provide for a period of duration for the company that exceeds or is capable of exceeding 150 years from the date of its incorporation;  
and, in the case of paragraphs (b) or (c), the company pays a deregistration fee to be prescribed by the Registrar.

(2) Regarding a company ceasing to be a limited duration company -

(a) The Registrar shall, where the company has ceased to be a limited duration company by virtue of subsections (1)(b) or (1)(c), issue to the company a certificate of incorporation altered to meet the circumstances of the case; and

(b) the certificate issued by virtue of section 83(2) ceases to have effect.

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

**Definitions of "transfer" and "member;" operating agreement**

92. (1) In this Part, unless the context otherwise requires, "transfer" means, with respect of any shares, the transfer, sale, assignment, mortgage, creation, or permission to subsist of any pledge, lien, charge, or encumbrance over, grant of any option, interest, or other rights in, or other disposition of any such shares, any part thereof, or any interest therein, whether by agreement, operation of law, or otherwise; and "member" shall, except to the extent limited in the Articles, By-Laws or other operating agreement for the company, mean shareholder.

(2) For purposes of this Part, every reference to the "By-Laws" of the company may, at the election of the company as set forth in the Articles, be a reference to an operating agreement signed by all of the members, which operating agreement may contain any agreements, rights or restrictions not inconsistent with this Act or with the Articles of the Company. There shall be no obligation to register or otherwise make public the terms of any such operating agreement under the provisions of this Act, and the same shall be construed as a private contract among the members and the company, which shall be a party thereto.

**PART XI  
Fees and Penalties**

**Fees to be prescribed**

93. (1) There shall be paid to the Registrar such fees in connection with the requirements of this Act as may be prescribed at the time and in the manner to be prescribed. If a company fails to pay any amount due as a fee under subsection (1) by the prescribed date the fee increases by 10 per cent of that amount for every 30 days that the company is in default.

(2) The fees payable at the effective date of this Act are as set forth in the regulations promulgated under this Act, and there are also included therein special fees payable for any company incorporated under this Act which carries on an insurance business or a shipping business (referred to in the said regulations as an international insurance or shipping company respectively).

**Penalty paid to State**

94. Any penalty incurred under this Act shall be paid to the State and shall be deposited in the manner prescribed by regulations promulgated under this Act.

**Recovery of fees as civil debt**

95. Any fee payable to the Registrar 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 before the court in civil proceedings as a debt due to the State.

**Liability of fees of struck off company**

96. A company incorporated under this Act continues to be liable for all fees and penalties payable under this Act notwithstanding that the name of the company has been struck off the Register and all those fees and penalties have priority to all other claims against the assets of the company.

**Registrar to take no action pending payment** 97. (1) The Registrar may refuse to take any action required of him under this Act for which a fee is prescribed until all fees and penalties have been paid whether in relation to that proposed action or otherwise.

(2) The Registrar may refuse to continue under this Act a company incorporated under the Companies Act until all fees and penalties prescribed as payable by the company under the Companies Act have been paid.

**Variation of fees** 98. (1) The Minister may from time to time prescribe fees to be payable under this Act by Regulations published in the Gazette and in particular may prescribe different fees to be applicable to different categories of international business companies including those carrying on a banking business or an insurance business or a shipping business.

(2) Any Regulations made under subsection (1) shall, as soon may be after the making thereof, be laid before the House of Assembly.

## **PART XII**

### **Exemptions from Income Taxes and Duties**

**Exemptions from tax, etc.** 99. (1) Notwithstanding any provision of the Income Tax Act -

(a) An international business company which complies with this Act shall not be subject to any corporate tax, income tax, withholding tax, capital gains tax or other like taxes based upon or measured by assets or income originating outside the State or in connection with matters of company administration which may occur in the State.

(b) For purposes of this section, no company shall be considered to be doing business in the State solely because it engages in one or more of the following activities -

(i) maintaining one or more bank, trust or securities accounts in the State;

(ii) holding meetings of directors or shareholders in the State;

(iii) maintaining corporate or financial records in the State;

(iv) maintaining an administrative or managerial office in the State with respect to assets or activities outside the State;

(v) maintaining a registered agent or registered office in the State; or

(vi) investing in stocks or entities doing business in the State or being a partner in a partnership existing under the laws of the State or a beneficiary of a trust or estate which has the State as its situs.

(2) No estate, inheritance, succession or gift tax, rate, duty, levy or other similar charge is payable by persons who are not persons resident or domiciled in the State with respect to any shares, debt obligations or other securities of a company incorporated under this Act.

(3) Notwithstanding any provision of the Stamp Act to the contrary-

(a) all instruments relating to transfers of any property to or by a company incorporated under this Act;

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

(c) all instruments relating in any way to the assets or activities of a company incorporated under this Act,  
are exempt from the payment of stamp duty.

(4) The exemption from taxes and duties conferred by this section shall, at no additional charge to the company, be evidenced by a certificate issued by the State confirming that the company shall be exempt from the taxes described in this section for a period of twenty-five (25) years from the date of incorporation of the company; provided that the provisions of this Part shall not apply so as to exempt a company incorporated under this Act from increases in fees charged under or pursuant to this Act or to exempt any Resident from the provisions of any law of the State imposing any tax.

**Exemption for dividends and distributions**

100. Any dividend or distribution by an international business company to another such company, or to individuals, trusts or other entities which are not Residents, shall be exempt from any tax or withholding provisions of State law which would otherwise be applicable to such company or to the recipient of the dividend or distribution.

**PART XIII  
Miscellaneous**

**Application of Companies Act**

101. (1) Companies incorporated under this Act shall be governed hereby; provided that, to the extent this Act does not expressly address a matter arising in the ownership or operation of a company incorporated hereunder, provisions of the Companies Act shall apply to such matter.

(2) A company incorporated under this Act may, when making its application under section 3, or when incorporated other than under this Act a company may by special resolution in general meeting of its shareholders, elect not to be bound by one or more of the provisions of the Companies Act and from the time of passing of such resolution the company shall not be so bound unless and until such time as the company rescinds such resolution by a special resolution in general meeting or unless such provision is mandatory and cannot be avoided under the express provisions of the Companies Act.

(3) In the event of any conflict between a provision of the Companies Act and of this Act with respect to any matter involving an international business company, the provisions of this Act shall prevail.

**Appointment of Registrar and records**

102. (1) The Authority, acting on the advice of the Governor-General and the Minister, shall appoint a Registrar of International Business Companies.

(2) The Minister may make regulations with respect to the duties to be performed by the Authority and the Registrar under this Act and in so doing may prescribe the place in the State where the office or offices for the registration of International Business Companies shall be located.

(3) All activities of the Registrar and of the Authority, and its designees

and employees, in the administration of this Act shall be undertaken exclusively in the State.

- Exchange control** 103. A company incorporated under this Act shall not be subject to the provisions of the Exchange Control Act Cap. 322 or any order or regulation made thereunder, or to any other exchange or currency control legislation or regulations of the State from time to time.
- Form of certificate** 104. Any certificate or other document required to be issued by the Registrar under this Act shall be in such form as the Minister after consultation with the Authority may approve.
- Certificates of good standing** 105. (1) The Registrar shall, upon request by any person, issue a certificate of good standing under his hand and seal certifying that a company incorporated under this Act is of good standing if the Registrar is satisfied that-
- (a) the name of the company is on the Register; and
  - (b) the company has paid all fees, licence fees and penalties due and payable.
- (2) The certificate of good standing issued under subsection (1) must contain a statement as to whether-
- (a) the company is in the process of being wound up and dissolved; or
  - (b) any proceedings to strike the name of the company off the Register have been instituted.
- Inspection of Register** 106. (1) Except as provided in subsection (2) of section 71 a person may -
- (a) upon showing a proper purpose, inspect the Register kept by the Registrar pursuant to this Act;
  - (b) require a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing of a company incorporated under this Act, or a copy or an extract of any such document or any part of any such document of which he has custody, to be certified by the Registrar; and
  - (c) require a certificate duly certified by the Registrar showing such then-current information available to it concerning a company incorporated under this Act as the Registrar and the Authority may think fit to provide.
- (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.
- Situs of assets** 107. For purposes of determining matters relating to title and jurisdiction but not for purposes of taxation by the State, the situs of securities of a company incorporated under this Act is the State.
- Declaration by court** 108. (1) A company incorporated under this Act may, without the necessity of joining any other party unless substantial injustice would result, 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.

**Documents by  
electronic transfer**

109. Where a notice or document is required by this Act to be sent to the Registrar, he may accept a photostatic or photographic copy of the notice or document or a copy by facsimile, electronic mail or by other electronic means.

**Filed articles**

110. (1) Where this Act requires that articles relating to a company be sent to the Registrar, unless otherwise specifically provided, such documents may be delivered in such manner as the Registrar approves.

(2) A signature required on any document referred to in subsection (1) may be printed or otherwise mechanically or electronically reproduced on the document.

(3) A document with a signature referred to in subsection (2) may be accepted in evidence, notwithstanding any provisions to the contrary of the Evidence Act.

**Regulations**

111. The Minister may make regulations for the better carrying out of the provisions of this Act and for prescribing anything that needs to be prescribed.

**Repeal of  
International  
Companies Act  
Cap. 104**

112. (1) The International Companies Act, Cap. 104, as amended, is hereby repealed.

(2) Notwithstanding subsection (1), the provisions of the International Companies Act Cap 104, as amended (the "former act"), shall continue to apply to a company incorporated under the former act to the extent provided in section 113 until such company shall have been continued under the provisions of Part VIII of this Act.

**Continuation of  
existing  
international  
companies**

113. (1) Subject to the remaining provisions of this section and of section 112, and notwithstanding the provisions of section 71 of this Act, a company incorporated and in good standing under the former act may continue in existence for a period of five years after the effective date of this Act so long as such company continues to comply with the provisions of the former act. At the end of such five-year period any company that has not been continued under this Act or otherwise dissolved or wound-up shall be struck from the former Register of International Companies.

(2) As soon as possible following the effective date of this Act the Minister shall issue regulations to govern the continuation of international companies existing under the former act, the fees payable in connection with such continuation, the timing and content of notices that may be sent to such international companies and the effect of failure to continue as an international business company hereunder. Such regulations shall also establish guidelines for the transitional management of the international companies Register created under the former act by the Registrar appointed under this Act.

(3) After the effective date of this Act, the Registrar may send written notice to each company registered under the former act of the transitional provisions of this Act and advising such companies of the deadline to continue under this Act.

(4) The provisions of this Act and the former act shall govern companies incorporated under the former act that have not effectively continued hereunder, but in the event of a conflict between this Act and the former act, the provisions of the former act shall control until the expiration of the five-year period referenced in subsection (1).

**Commencement** 114. This Act comes into operation on such day as the Minister may appoint by Order published in the Gazette.

**Optional registration of registers**

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

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

(2) A company that has elected to submit for registration a copy of a register shall, until it otherwise notifies the Registrar pursuant to subsection

(3), submit for registration any changes in its register by submitting for registration a copy of the register containing the changes.

(4) If a company elects to submit for registration any register pursuant to subsection (1), then, until such time as the company informs the Registrar pursuant to subsection (3) that it elects to cease to register changes in any register, the company is bound by the contents of the copy of the register submitted to the Registrar.

**Optional registration of mortgages and charges**

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

- (a) any document or copy of a document creating a mortgage, charge or other encumbrances over some or all of its assets;
- (b) any document or copy of a document amending any document referred to in section 115(2); and
- (c) any document releasing or discharging a mortgage, charge or other encumbrance over any or all its assets, and the Registrar must retain and register the document or, as the case may be, the copy thereof.

**Passed in the House of Assembly this 27th day of June, 1996.**

**Passed in the House of Assembly this 13th day of December, 1996.**

**J. THERESA ADAMS**  
**Clerk of the House of Assembly.**