

**SAINT VINCENT AND THE GRENADINES  
INTERNATIONAL BUSINESS COMPANIES (AMENDMENT AND  
CONSOLIDATION) ACT, 2007**

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**SAINT VINCENT AND THE GRENADINES**

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**ACT NO. 34 OF 2007**

**I ASSENT**

[ ]

Governor-General

**AN ACT** to amend and consolidate all provisions relating to the International Business Companies Act 1996.

[ 31st December, 2007]

**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**  
**PRELIMINARY**

1. (1) *This Act may be cited as the International Business Companies (Amendment and Consolidation) Act, 2007.*

(2) This Act comes into operation on a day that the Governor-General may, by Proclamation printed in the Gazette, appoint.

2. *In this Act, unless the context otherwise requires:*

“approved”, in relation to a certificate or other document, means approved by the Registrar under section 186;

“approved custodian”, in relation to the immobilisation of bearer shares under section 30 means, a properly regulated custodian or financial institution approved in writing by the Authority where the custodian or financial institution is required to hold bearer shares subject to a mortgage, charge or other form of security interest;

“articles” means:

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

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

“authorised capital” of an international business company means the sum of the aggregate par value of all shares with par value that 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 that the company is authorised by its articles to issue;

“Authority” means the International Financial Services Authority established under the Saint Vincent and the Grenadines International Finance Authority Act;

“banking business” has the meaning ascribed to it in the Banking Act;

“capital” of an international business 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 the directors;

“Companies Act” means the Companies Act 1994;

“continued” means continued under Part X;

“Court” means the High Court of Saint Vincent and the Grenadines or a judge thereof;

“determination of solvency” means a determination of the directors made under section 43(2), section 45(5) or section 46(3);

“dollar” or “\$” means a dollar in the currency of the United States of America;

“Gazette” means the Saint Vincent and the Grenadines Gazette published by authority of the Government of Saint Vincent and the Grenadines and includes any supplement thereto;

“guarantee member” has the meaning specified in section 52;

“incorporator”, in relation to an international business company, means a person who signs the articles of incorporation of the company;

“international business company” means a company that is incorporated or continued under this Act;

“Judge” means a Judge of the Court;

“member”, in relation to an international business company, means a person who as set out in section 52, is:

- (a) a shareholder;
- (b) a guarantee member; or
- (c) a member of an unlimited company who is not a shareholder;

“Minister” means the minister responsible for finance;

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

“prescribed” means prescribed by Regulations made by the Minister under sections 136 and 198;

“Register” means the Register of International Business Companies maintained by the Registrar in accordance with section 5(3):

“registers of members” means the registers required to be kept by a registered agent or the company in accordance with section 54:

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

“Registrar” means the Registrar of International Business Companies, appointed by the Authority under section 182 of this Act;

“relevant licence” means a licence issued under the Registered Agent and Trustee Licensing Act;

“resident” means, for the purposes of this Act:

- (a) a natural person who is ordinarily resident and subject to income tax in the State under general principles of State income taxation;
- (b) a trust, company, partnership, limited partnership or other body, incorporated, established, formed or organised 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 (a) or (c) hereof;
- (c) 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;

but does not include:

- (d) an international trust registered under the International Trusts Act;
- (e) an international business company incorporated or continued under this Act;
- (f) an international insurance company licensed under the International Insurance (Amendment and Consolidation) Act;
- (g) a mutual fund licensed under the Mutual Funds (Amendment) Act, or
- (h) an international bank licensed under the International Banks Act;

so long as and to the extent that the registration, incorporation, continuation or compliance, as the case may be, continues under the provisions of the applicable Act;

“resolution of directors” means, unless otherwise defined in the articles or bylaws of an international business company:

- (a) a resolution approved at a duly constituted meeting of directors or of a committee of directors of the company, by affirmative vote of a simple majority, or such larger majority as may be specified in the articles or bylaws, of the directors present at the meeting who voted and did not abstain; or
- (b) a resolution consented to in writing by an absolute majority, or such larger majority as may be specified in the articles or bylaws, of all the directors or of all the members of the committee, as the case may be;

but, where a director is given more than one vote in any circumstances, he shall in the circumstances be counted for the purposes of establishing majorities by the number of votes he casts;

“resolution of members” means, unless otherwise defined in the articles or bylaws of an international business company:

- (a) a resolution approved at a duly constituted meeting of the members of the company by the affirmative vote of—
  - (i) a simple majority, or such larger majority as may be specified in the articles or bylaws, of the votes of the members that were present at the meeting and entitled to vote thereon and were voted and did not abstain, or
  - (ii) a simple majority, or such larger majority as may be specified in the articles or bylaws, of the votes of each class or series of shares that were present at the meeting and entitled to vote thereon as a class or series and were voted and not abstained and of a simple majority, or such larger majority as may be specified in the articles or bylaws, of the votes of the remaining shares entitled to vote thereon that were present at the meeting and were voted and not abstained; or
- (b) a resolution consented to in writing by—
  - (i) an absolute majority, or such larger majority as may be specified in the articles or bylaws, of the votes of the members entitled to vote thereon, or
  - (ii) an absolute majority, or such larger majority as may be specified in the articles or bylaws, of the votes of each class or series of shares entitled to vote thereon as a class or series and of an absolute majority, or such larger majority as may be specified in the articles or bylaws, of the votes of the remaining shares entitled to vote thereon;

“securities” includes shares, indicia of equity ownership of a company of every kind, debt, obligations of every kind, and options, warrants and rights to acquire shares or debt obligations;

“shareholder” has the meaning specified in section 52;

“State” means the State of Saint Vincent and the Grenadines;

“surplus”, in relation to an international business company, means the excess, if any, at the time of the determination, of the total assets of the company over the sum of its total liabilities as shown in the books of account, plus its capital;

“treasury shares” means shares of an international business company that were previously issued but were repurchased, redeemed or otherwise acquired by the company and not cancelled;

“voting” means, in relation to shares, voting by members holding the shares except that it is the votes allocated to the shares that shall be counted and not the number of members who actually voted, and a reference to shares being present at a meeting shall be given a corresponding meaning;

“writing” in relation to a resolution of members or a resolution of directors, unless otherwise defined in the articles or bylaws of an international business company, includes writing by telex, telegram, facsimile, cable, electronic mail or other written electronic communication; and in relation to a resolution consented to in writing, no notice is required.

## **PART II**

### **INCORPORATION, CAPACITY AND POWERS**

#### **Division 1 - Incorporation**

3. An international business company may be incorporated or continued under this Act as:

- (a) a company limited by shares;
- (b) a company limited by guarantee that is authorised to issue shares;
- (c) a company limited by guarantee that is not authorised to issue shares;
- (d) an unlimited company that is not authorised to issue shares; or
- (e) an unlimited company that is authorised to issue shares.

4. (1) Subject to this Act, one or more persons may incorporate an international business company by signing and filing articles of incorporation with the Registrar.

(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 of competent jurisdiction in the State or elsewhere; or
- (c) has the status of an undischarged bankrupt;

may incorporate or join in the incorporation of an international business company.

5. (1) If he is satisfied that the requirements of this Act in respect of incorporation have been complied with, the Registrar shall, upon receipt of articles of incorporation, issue a certificate of incorporation bearing a unique registration number to the international business company, and the certificate is conclusive proof of the incorporation of the international business company named in the certificate.

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

(3) The Registrar shall keep a register to be known as the Register of International Business Companies that shall contain information as he thinks fit.

6. Notwithstanding section 19(2), a company may be incorporated or continued under this Act with a finite duration of a period not in excess of 30 years and shall be referred to as a limited duration company.

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

- (a) in the ordinary course of business, make its goods or services available to persons resident;
- (b) without first obtaining any licence required under the Aliens Landholding (Regulation) Act, own an interest in real property situate in the State, other than a lease referred to in paragraphs (e) or (i) of subsection (2);
- (c) carry on any activity for which it requires a licence granted by the Authority, unless such a licence has been granted.

(2) Notwithstanding any other provision contained in this Act or any other enactment, an international business company shall not be treated as making its goods or services available to persons resident by reason only of the fact that:

- (a) it makes or maintains deposits with, or borrows money from, a bank that has a licence to carry on banking business granted under the Banking Act or a bank that has an international banking licence granted under the International Banks Act;
- (b) it makes or maintains professional contact with or acquires the services of utility companies, 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 and records within the State;
- (d) it holds within the State meetings of its directors or of its members;
- (e) it owns or leases property for use as an office from which to communicate with members or where books and records of the company are prepared or maintained;
- (f) it holds shares, debt obligations or other securities in another international business company or in a company incorporated under the Companies Act;
- (g) shares, debt obligations or other securities in the international business company are owned by any person resident or by an international business company or company incorporated under the Companies Act;
- (h) it owns a vessel or vessels registered in the State in accordance with the Shipping Act or 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 an international business company does business with a resident in the course of its operations.

(3) An international business company that contravenes subsection (1) commits an offence and is liable as specified in the Schedule.

8. (1) Subject to subsections (3), (4), (5), (6), (7), and (8), the name of a limited company shall end with:

- (a) “Limited” or the abbreviation “Ltd.”;
- (b) “Corporation” or the abbreviation “Corp.”;
- (c) “Incorporated” or the abbreviation “Inc.”;
- (d) “Sendirian Berhad” or the abbreviation “Sdn Bhd”;
- (e) “Société a Responsabilité Limitée” or the abbreviation “SARL”;
- (f) “Société Anonyme” or the abbreviation “S. A.”;
- (g) “Sociedad Anonima” or the abbreviation “S. A.”;
- (h) “Besloten Vennootschap” or the abbreviation “B.V.”;
- (i) “Gesellschaft mit beschränkter Haftung” or the abbreviation “GmbH”; or
- (j) “Naamloze Vennootschap” or the abbreviation “N.V.”.
- (k) “Société par Actions” or the abbreviation “S.p.A.”

(2) The name of an unlimited company shall end with the word “Unlimited” or the abbreviation “Unltd”.

(3) The name of a limited duration company shall end with one of the following phrases:

- (a) “Limited Duration Company”;
- (b) “LDC”;
- (c) “(LDC) Limited” ;
- (d) “(LDC) Ltd”.

(4) The name of a segregated cell company shall end with one of the following phrases:

- (a) “Segregated Cell Company Limited”;
- (b) “Segregated Cell Company Ltd”;
- (c) “SCC Limited”;
- (d) “SCC Ltd”; or
- (e) in the case of a segregated cell company that is a limited duration company, one of the phrases specified in paragraphs (a) to (d) with

“(LDC)” inserted immediately before that phrase or immediately before “Limited” or “Ltd”.

(5) Where the abbreviation “Ltd”, “Corp” or “Inc” is used, a full stop may be inserted at the end of the abbreviation.

(6) A company may use, and be legally designated by, either the full or the abbreviated form of any word or words required as part of its name under this section.

(7) A company may represent its name by using characters other than Roman characters provided that its name in Roman characters is displayed along with its non-Roman name.

(8) Notwithstanding subsection (1), one or more words, or an abbreviation thereof, approved by the Registrar that, in his opinion, denotes the existence of a body corporate with limited or (in the case of an unlimited company) unlimited liability may be used in place of the word or words or abbreviations set out in subsection (1).

9. (1) The name of an international business company:

(a) shall not be the same as, or similar to, the name or business name of any other person or of any association, partnership or firm registered or incorporated under this Act or the Companies Act, if the use of that name would be likely to confuse or mislead, unless the person, association, partnership or firm consents in writing to the use of that name in whole or in part, and—

(i) if required by the Registrar in the case of any person, undertakes to dissolve or change his or its name to a dissimilar name within 6 months after the filing of the articles by which the name is acquired, or

(ii) if required by the Registrar in the case of an association, partnership or firm, undertakes to cease to carry on its business or activities, or undertakes to change its name to a dissimilar name, within 6 months after the filing of the articles by which the name is acquired;

(b) shall not be identical to 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;

(c) shall not suggest or imply-

(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 with the written approval of the Governor-General;

- (d) shall not suggest or imply a connection with a political party or a leader of a political party;
- (e) shall not be indecent, offensive, or, in the opinion of the Registrar, objectionable;
- (f) shall not suggest or imply a connection with a university or a professional association unless the university or professional association concerned consents in writing to the use of the proposed name; and
- (g) shall not be a name that is prohibited by the Regulations.

(2) The Registrar may prohibit an international business company from using a name that is similar to that of an existing company operating in any part of the world.

10. (1) An international business company may amend its articles to change its name.

(2) If an international business company is incorporated under a name that:

- (a) is identical or similar to the name or business name of any other person or of any association, partnership or firm registered or incorporated under this Act or under the Companies Act; or
- (b) so nearly resembles an existing name as to be likely to confuse or mislead;

the Registrar may, without the consent of the company in existence, give notice to the last registered international business company to change its name and, if it fails to do so within 7 days from the date of the notice, the Registrar shall amend the articles of the company to change its name to any name that the Registrar deems appropriate, and the Registrar shall publish notice of the change in the Gazette.

(3) Subject to section 9 and subsection (2), where an international business 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.

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

(5) An international business company that, after the publication by the Registrar of a notice of change of name under subsection (2), uses the name that has been changed commits an offence and is liable as specified in the Schedule.

11. (1) Subject to section 9, the Registrar may, upon a written or electronic request made by any person, reserve for up to 30 days a name for future adoption by an international business company under this Act.

(2) Any name requested in accordance with subsection (1) shall be reserved free of cost to the international business company for the first 72 hours immediately after the reservation of such name.

12. The Registrar may exempt a body corporate continued as an international business company under this Act from the requirements of section 8 (1), (2), (3), (4) and (5).

13. Notwithstanding the provisions of sections 8, 9, 10, 11, and 12, the Registrar may permit an international business company to be incorporated or continued under, or change its name to, a name that is identical or similar to the name of a company that has been and remains struck off the Register under this Act, if:

- (a) the company has been struck off the Register for a continuous period of more than 3 years; and
- (b) no application for the company to be restored to the Register under section 174(1) has been filed and remains undetermined by the Registrar; and
- (c) no appeal against a decision of the Registrar under section 174(3) is pending.

## **Division 2 - Articles of Incorporation and Bylaws**

14. (1) Articles of incorporation shall be in prescribed form and shall set out, in respect of the proposed international business company:

- (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 within the State;
- (d) whether the company is-
  - (i) a company limited by shares,
  - (ii) a company limited by guarantee that is authorised to issue shares,

- (iii) a company limited by guarantee that is not authorised to issue shares,
  - (iv) an unlimited company that is authorised to issue shares;
  - (v) an unlimited company that is not authorised to issue shares,
  - (vi) a segregated cell company, or
  - (vii) a limited duration company;
- (e) in the case of a company authorised to issue shares:
- (i) the currency in which shares in the company shall be issued and whether shares may be issued in more than one currency,
  - (ii) the authorised capital (if any) of the company expressed in the denominated currency, 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,
  - (iii) 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,
  - (iv) 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,
  - (v) whether registered shares may be exchanged for shares issued to bearer and whether shares issued to bearer may be exchanged for registered shares,
  - (vi) 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;
- (f) 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) a specified amount to be therein named, or
- (ii) an unlimited amount;
- (g) where the proposed company is to be an unlimited company, a declaration that the liability of its members is unlimited;
- (h) where the proposed company is a limited duration company, a statement of the date on which its duration ends;
- (i) whether the proposed company has elected to pay income tax at the specified rate on its profits and gains;
- (j) whether the proposed company has elected to register charges with the Registrar; and
- (k) any other matter relevant to the ownership, management or control of the company.

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

(3) The articles must be subscribed by the registered agent named in the articles in the presence of a natural person who is a resident and who must sign his name as a witness.

15. (1) The articles, when registered, bind the company and its members from time to time to the same extent as if each member 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.

(2) Subject to this Act, the articles and bylaws of an international business company are binding as:

- (a) between the company and each member; and
- (b) amongst members.

16. (1) Except as expressly provided in this Act or the articles of a company, a company may not change any information contained in its articles as filed with the Registrar unless the change is unanimously approved by the members whether by voting or by written resolution and is contained in a duly filed and registered amendment to the company's articles.

(2) An international business company that resolves to amend its articles must, within 14 days of the date of the resolution effecting the amendment, file articles of amendment with the Registrar.

(3) An amendment to the articles has effect from the time the amendment is registered by the Registrar.

(4) An international business company that fails to comply with subsection (2) shall be liable to pay an administrative fine imposed by the Registrar at the rate specified in the Schedule for each day of default.

17. (1) The members or, if the articles so provide, the directors, may by resolution make, amend, or repeal any bylaws of the international business company.

(2) At any time before the organisational meeting of directors held pursuant to section 102, the incorporators may make bylaws by signing them.

18. The articles and bylaws of an international business company have no effect to the extent that they contravene, or are inconsistent with this Act.

### **Division 3 - Capacity and Powers**

19. (1) An international business company is a legal entity in its own right separate from its members.

(2) An international business company continues in existence until it is dissolved.

20. (1) Subject to this Act, any other enactment and the articles and bylaws of the company, an international business company has, irrespective of corporate benefit:

- (a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and
- (b) for the purposes of paragraph (a), full rights, powers and privileges.

(2) Without limiting subsection (1), subject to its articles and bylaws, the powers of an international business company include the power to do the following:

- (a) unless it is a company limited by guarantee and not authorised to issue shares or an unlimited company not authorised to issue shares:
  - (i) issue and cancel shares and hold treasury shares,
  - (ii) grant options over unissued shares in the company and over treasury shares,
  - (iii) issue securities that are convertible into shares, and
  - (iv) give financial assistance to any person in connection with the acquisition of its own shares;
- (b) issue debentures;

- (c) borrow money;
- (d) guarantee a liability or obligation of any person and secure any of its obligations by mortgage, pledge or other charge, of any of its assets for that purpose; and
- (e) protect the assets of the company for the benefit of the company, its creditors and its members and, at the discretion of the directors, for any person having a direct or indirect interest in the company.

(3) For purposes of subsection (2)(e), notwithstanding any other provision of this Act, any other enactment or any rule of law to the contrary, the directors may cause the international business company to transfer any of its assets in trust to one or more trustees, to any company, association, partnership, foundation or similar entity and, with respect to the transfer, the directors may provide that the company, its creditors, its members or any person having a direct or indirect interest in the company, or any of them, may be the beneficiaries, creditors, members, certificate holders, partners or holders of any other similar interest.

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

21. No act of an international business company, including any transfer of property to or by the company, is invalid by reason only that the act or transfer is contrary to its articles.

22. Subject to section 83, no director, agent or voluntary liquidator of an international business company is liable for any debt, obligation or default of the company, unless specifically provided in this Act or in any other enactment, and except in so far as he may be liable for his own conduct or acts.

23. (1) An international business company or a guarantor of an obligation of an international business company may not assert against a person dealing with the company or with a person who has acquired assets, rights or interests from the company that:

- (a) this Act or the articles or bylaws of the company have not been complied with;
- (b) a person named as a director in the company's register of directors-
  - (i) is not a director of the company,
  - (ii) has not been duly appointed as a director of the company, or
  - (iii) does not have authority to exercise a power which a director of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

- (c) a person held out by the company as a director, employee or agent of the company-
  - (i) has not been duly appointed, or
  - (ii) does not have authority to exercise a power which a director, employee or agent of a company carrying on business of the kind carried on by the company customarily has authority to exercise;
- (d) a person held out by the company as a director, employee or agent of the company with authority to exercise a power which a director, employee or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power; or
- (e) a document issued on behalf of a company by a director, employee or agent of the company with actual or usual authority to issue the document is not valid or not genuine;

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

(2) Subsection (1) applies even though a person of the kind specified in paragraphs (b) to (e) of that subsection acts fraudulently or forges a document that appears to have been signed on behalf of the company, unless the person dealing with the company or with a person who has acquired assets, rights or interests from the company has actual knowledge of the fraud or forgery.

24. (1) A person is not deemed to have notice or knowledge of any document relating to a company, including the articles and bylaws, or of the provisions or contents of any such document, by reason only of the fact that a document:

- (a) is available to the public from the Registrar; or
- (b) is available for inspection at the registered office of the company.

(2) Subsection (1) does not apply in relation to a document filed under Part VIII.

### **PART III**

### **SHARES**

#### **Division 1 - General**

25. (1) A share in an international business company is a form of personal property.

(2) Unless otherwise specified in the articles or bylaws or upon the issue of a share, each share of an international business company has attached to it the following rights:

- (a) the right to one vote at any meeting of the members of the company, other than a meeting of the members of a class of which the holder of the share is not a member;

- (b) the right to share *pari passu* in dividends declared and paid by the company under section 46;
- (c) the right to share *pari passu* in any distribution of any amount by which the assets of the company exceeds its liabilities.

26. (1) Without prejudice to the generality of section 29, and subject to its articles or bylaws, an international business company may issue shares and other securities of any type including:

- (a) registered shares, or shares issued to bearer, or both;
- (b) shares with special, conditional, limited or no voting rights;
- (c) common shares, preference shares, limited shares and redeemable shares;
- (d) shares that entitle the holder to participation in certain assets only;
- (e) shares with a par value;
- (f) shares with no par value;
- (g) options, warrants or rights, or instruments of a similar nature, to acquire any securities of the company; and
- (h) 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 owned or to be owned by the company.

(2) An international business company may issue shares in more than one currency.

(3) Subject to its articles and bylaws, an international business company may issue bonus shares, partly paid shares and nil paid shares.

27. Subject to the articles or bylaws, an international business company may issue fractions of a share, and unless and to the extent otherwise provided in the articles or bylaws, a fractional share has the corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share of the same class or series of shares.

28. (1) Subject to the articles and bylaws of an international business company:

- (a) a share may be issued with or without a par value; and
- (b) a share with a par value may be issued in any currency.

(2) The par value of a par value share may be a fraction of the smallest denomination of the currency in which it is issued.

29. (1) Unless expressly authorised to do so by its articles in accordance with section 14, an international business company has no power to, and shall not:

- (a) issue a bearer share;
- (b) convert a registered share to a bearer share; or
- (c) exchange a registered share for a bearer share.

(2) Notwithstanding any provision to the contrary in its articles or bylaws, an international business company may, at any time, convert a bearer share to a registered share or exchange a bearer share for a registered share.

(3) A segregated cell company has no power to, and shall not:

- (a) issue a bearer share;
- (b) convert a registered share to a bearer share; or
- (c) exchange a registered share for a bearer share.

(4) An international business company that contravenes subsection (1) or a segregated cell company that contravenes subsection (3) commits an offence and is liable as specified in the Schedule.

30. (1) Any share certificate issued in respect of bearer shares shall not be distributed but shall be retained in the safe custody of the registered agent for the international business company which issued such certificate or in the safe custody of any other approved custodian.

(2) The registered agent shall, if requested to do so by the beneficial owner or the nominee thereof of each bearer share, give thereto a certificate of immobilisation issued in prescribed form under its hand and seal which shall contain:

- (a) the information referred to in subsections (4) (a) – (e);
  - (b) confirmation of the terms of the custodianship;
  - (c) a statement that the shares are held to the account of the beneficial owner;
- and

(d) a statement that the certificate is not a negotiable instrument.

(3) A certificate of immobilization is *prima facie* evidence of the beneficial ownership of the bearer share to which it relates.

(4) Every registered agent or approved custodian shall maintain a record of each bearer certificate issued or deposited in its custody and the record shall contain the following information:

- (a) the name of the company issuing the bearer certificate;
- (b) the identification number of the bearer share certificate;
- (c) the number of shares and the class of shares in the company contained in the bearer share certificate;
- (d) the identity of the beneficial owner of the shares contained in the bearer share certificate, including but not restricted to the name, address, date of birth and other details of identification as may be prescribed;
- (e) where the beneficial owner of the shares contained in the bearer share certificate is a corporation, including a trust corporation, the evidence of identity shall be evidence of the identity of the persons who are the beneficial owners of that corporation, except where the corporation is a publicly traded corporation on a recognized stock exchange under the International Insurance Regulations; and
- (f) where issued, a copy of the relevant certificate of immobilisation.

(5) The registered agent shall, where custody of the bearer certificates is transferred to another registered agent, notify the Registrar and the Authority within seven days of such transfer and of the particulars of the new registered agent.

(6) The registered agent shall not effect a substitution of one bearer for another in relation to the same certificate without prior notification of at least three working days before such substitution, in writing to the Registrar and the Authority, and such notification shall include the identification number of the certificate and the date on which the change is to take effect.

(7) All international business companies which have issued bearer share certificates shall, to the extent they have not done so already, within six months of the date of this Act, provide to the registered agent of such companies information as to the beneficial owners of the shares contained in such certificates in accordance with subsection (4)(d) and a full and detailed account of changes if any, in the beneficial ownership of such shares since their issuance by the company.

(8) The registered agent of each company referred to in subsection (7) shall notify the Registrar or the Authority within thirty days of the expiration of the six month period of those companies that have failed or refused to comply with the provisions of subsection (7) and upon such notification, the Registrar or the Authority shall have the power to strike such company from the register.

(9) An international business company can be restored to the register within twelve months of being struck from the register upon satisfying the Registrar or the Authority that the required information has been provided to the registered agent or authorized custodian and upon paying the prescribed fee for reinstatement to the register.

(10) A registered agent who refuses or fails to comply with the provisions of this section other than subsection (9) commits an offence specified in the Schedule.

(11) The Authority shall have the power to revoke the licence of any registered agent or authorised custodian that does not comply with the provisions of subsections (1) to (6).

31. 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.

32. (1) Upon the issue by an international business company of a share with par value, the consideration in respect of the share constitutes capital to the extent of the par value and the excess constitutes surplus.

(2) Subject to any limitations in its articles or bylaws, upon the issue by an international business company of a share without par value, the consideration in respect of the share constitutes capital to the extent designated by the directors and the excess constitutes surplus, except that the directors must designate as capital an amount of the consideration that is at least equal to the amount that the share is entitled to as a preference, if any, in the assets of the company upon its liquidation.

(3) Upon the disposition by an international business company of a treasury share, the consideration in respect of the share is added to surplus.

33. (1) A share issued as a dividend by an international business company shall be treated for all purposes as having been issued for money equal to the surplus that is transferred to capital upon the issue of the share.

(2) In the case of a dividend of authorised but unissued shares with par value, an amount equal to the aggregate par value of the shares shall be transferred from surplus to capital at the time of the distribution.

(3) In the case of a dividend of authorised but unissued shares without par value, the amount designated by the directors shall be transferred from surplus to capital at the time of the distribution, except that the directors must designate as capital an amount that is at least equal to the amount that the shares are entitled to as a preference, if any, in the assets of the international business company upon its liquidation.

(4) A division of the issued and outstanding shares of a class or series of shares into a larger number of shares of the same class or series having a proportionately smaller par value does not constitute a dividend of shares.

34. (1) An international business company may amend its articles or bylaws:

(a) to divide the shares, including issued shares, of a class or series into a larger number of shares of the same class or series; or

(b) to combine the shares, including issued shares, of a class or series into a smaller number of shares of the same class or series.

(2) Where shares are divided or combined under subsection (1), the aggregate par value of the new shares must be equal to the aggregate par value of the original shares, unless a reduction of capital is involved.

35. (1) An international business company must state in its articles or bylaws whether or not certificates in respect of its shares are required to be issued.

(2) If an international business company issues certificates in respect of its shares, the certificates:

(a) must be signed by a director or such other person who may be so authorised under the articles or pursuant to section 81(1); or

(b) must be under the common seal of the company, with or without the signature of any director or officer of the company;

and the articles or bylaws may provide for the signatures or common seal to be facsimiles.

(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) A certificate issued in accordance with subsection (2) specifying a share held by a member of the company is *prima facie* evidence of the title of the shareholder to the shares specified therein.

36. (1) Notwithstanding any statutory provision or rule of law to the contrary, where voting shares of an international business company are settled into a unit trust the proper law of which is the law of Saint Vincent and the Grenadines or into a trust established under the International Trust Act, 1996, the trustees of such trust shall have an overriding duty to hold the shares but no duty to enquire into or take any active part in the management of the company unless otherwise provided in:

(a) the articles;

(b) the bylaws; or

(c) the trust deed.

(2) The directors of a company to which subsection (1) applies shall have exclusive right to manage the affairs of the company without any interference or intervention whatsoever from the trustees.

(3) No civil action may be brought against any trustee referred to in subsection (1) in respect of his failure or refusal to interfere in the management of the company, unless fraud or dishonesty on the part of the trustee is being alleged.

(4) Nothing in this section shall affect the right of:

(a) the trustees in seeking and obtaining from the directors of the company financial information pertaining to the management of the company;

(b) the company in indemnifying the trustees pursuant to section 109 of this Act.

### **Division 2 – Issue of Shares**

37. Subject to any contrary provision in its articles or bylaws, 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.

38. (1) 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.

(2) 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.

(3) A share issued by an international business company 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.

(4) Subject to its articles or bylaws, the unissued shares and treasury shares of an international business company shall be at the disposal of the directors who may, without limiting or affecting any rights previously conferred on the holders of any existing shares or class or series of shares, offer, allot, grant options over or otherwise dispose of shares to such persons, at such times and upon such terms as the directors may, by resolution, determine.

### **Division 3 - Transfer of Shares**

39. (1) Subject to any limitations or restrictions on the transfer of shares in this Act or the articles or bylaws, a share in a company is transferable.

(2) The personal representative of a deceased shareholder may transfer a registered share or the beneficial interest in a bearer share even though the personal representative is not a shareholder at the time of the transfer.

40. Shares in a company may pass by operation of law, notwithstanding anything to the contrary in the articles and bylaws of the company.

41. (1) Subject to the articles or bylaws of an international business company, a registered share in the company may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee.

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

(3) An international business 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 its articles or bylaws, an international business company 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, unless the directors resolve to refuse or delay the registration of the transfer for reasons that shall be specified in the resolution.

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

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

(7) Subject to the articles or bylaws of a company, the directors may refuse or delay the registration of a transfer of shares if the transferor of those shares has failed to pay an amount due in respect of those shares.

(8) A transfer of registered shares of a deceased, incompetent or bankrupt shareholder 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, has the same validity as if the personal representative, guardian, trustee or transferee had been the registered holder of the shares at the time of the execution of the instrument of transfer.

(9) For the purposes of subsection (8), what amounts to incompetence on the part of a person is a matter to be determined by the Court having regard to all the relevant evidence and the circumstances of the case.

42. The beneficial ownership in a bearer share is transferred by the registered agent:

- (a) substituting one bearer for another in accordance with section 30 (6); or
- (b) cancelling the certificate of immobilisation held by transferor; and
- (c) issuing a certificate of immobilisation in accordance with section 30 (2) to the transferee.

#### **Division 4 – Distributions, Mortgages and Seizure**

43. (1) Subject to its articles or bylaws, an international business company may purchase, redeem or otherwise acquire and hold its own shares but only out of surplus or in exchange for newly issued shares of equal value.

(2) No purchase, redemption or other acquisition permitted under subsection (1) shall be made unless the directors determine that immediately after the purchase, redemption or other acquisition:

- (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, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the company is conclusive, unless a question of law is involved.

(3) A determination by the directors under subsection (2) is not required where shares are purchased, redeemed or otherwise acquired:

- (a) pursuant to a right of a shareholder to have his shares redeemed or to have his shares exchanged for money or other property of the company;
- (b) by virtue of a transfer of capital under section 45(3)(b)(iii);
- (c) by virtue of the provisions of section 155; and
- (d) pursuant to an order of the Court.

(4) Subject to any limitations in its bylaws or articles, shares that an international business company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares, unless the shares are purchased, redeemed or otherwise acquired by virtue of a reduction in capital in a manner that would be a contravention of the requirements of section 45(4). Where such contravention would not occur the shares shall be cancelled but they shall be available for reissue and, upon the cancellation of a share, the amount included as capital of the company with respect to that share shall be deducted from the capital of the company.

(5) A company incorporated under this Act may purchase, redeem or otherwise acquire its own shares at a price lower than fair value if permitted by, and then only in accordance with, the terms of:

- (a) its articles; or
- (b) a written agreement for the subscription for the shares to be purchased, redeemed or otherwise acquired.

44. Where shares in an international business company:

- (a) are held by the company as treasury shares; or
- (b) are held by another company of which the first company holds, directly or indirectly, shares having more than 50% of the votes in the election of directors of the other company;

the shares of the first company are not entitled to vote or to have dividends paid thereon and shall not be treated as outstanding for any purpose under this Act except for purposes of determining the capital of the first company.

45. (1) Subject to its articles or bylaws, an international business company may, by a resolution of directors, amend its articles or bylaws to increase or reduce its authorised capital, and in connection therewith, the company may:

- (a) increase or reduce the number of shares that the company may issue;

- (b) increase or reduce the par value of any of its shares; or
- (c) effect any combination under paragraphs (a) and (b).

(2) An increase or decrease of the authorised capital of an international business company has effect from the time the amendment referred to in subsection (1) is registered by the Registrar.

(3) Subject to its articles or bylaws and subject to subsections (4) and (5), the capital of an international business company may, by a resolution of directors, be:

- (a) increased by transferring an amount of the surplus of the company to capital; or
- (b) reduced by—
  - (i) returning to shareholders any amount received by the company upon the issue of any of its shares, the amount being surplus to the requirements of the company,
  - (ii) cancelling any capital that is lost or not represented by assets having a realisable value, or
  - (iii) transferring capital to surplus for the purpose of purchasing, redeeming or otherwise acquiring shares that the directors have resolved to purchase, redeem or otherwise acquire.

(4) No reduction of capital shall be effected that reduces the capital of the international business company to an amount that is less than the sum of:

- (a) the aggregate par value of—
  - (i) all outstanding shares with par value, and
  - (ii) all shares with par value held by the company as treasury shares; and
- (b) the aggregate of the amounts designated as capital of—
  - (i) all outstanding shares without par value, and
  - (ii) all shares without par value held by the company as treasury shares that are entitled to a preference, if any, in the assets of the company upon liquidation of the company.

(5) No reduction of capital shall be effected under subsection (1) unless the directors determine that immediately after the reduction:

- (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 its total liabilities, other than deferred taxes, as shown in the books of account, and its remaining capital;

and, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the company is conclusive unless a question of law is involved.

46. (1) Subject to its articles or bylaws, an international business company may, by a resolution of its directors, declare and pay dividends in money, shares or other property.

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

(3) No dividend shall be declared and 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 deferred taxes, as shown in the books of account, and its capital;

and, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the company is conclusive, unless a question of law is involved.

47. (1) For the purposes of this section, an international business company makes an unlawful distribution if it:

(a) purchases, redeems or otherwise acquires its own shares under section 43 in circumstances where the directors have not made the determination of solvency required by section 43(2);

(b) reduces its capital under section 45—

(i) contrary to section 45(4), or

(ii) in circumstances where the directors have not made the determination of solvency required by section 45(5); or

(c) pays dividends under section 46—

(i) contrary to section 46(2), or

(ii) in circumstances where the directors have not made the determination of solvency required by section 46(3).

(2) An international business company that makes an unlawful distribution by way of dividend commits an offence.

(3) Where an international business company makes an unlawful distribution, the Court may, on the application of the company or its liquidator, make an order for recovery against a member under subsection (4) or a compensation order against a director under subsection (5).

(4) Where a benefit is received by a member as a result of an unlawful distribution, an order for the recovery of the benefit may be made against the member unless the member:

(a) received the benefit in good faith and without knowledge of the failure of the directors to make a determination of solvency; and

- (b) has altered his position in reliance upon the validity of the unlawful dividend distribution so that, having regard to all the circumstances, it would be inequitable to make a recovery order for the full amount of the benefit or at all.

(5) Where an international business company makes an unlawful distribution, a compensation order may be made against any director who knowingly authorised, acquiesced in or permitted the unlawful distribution, but the total sum ordered to be paid by those directors against whom a compensation order is made shall not exceed such sum as is necessary to restore the company to the position that it would have been in had the unlawful distribution not been made after taking account of the value of any benefits recovered from recipients of the dividend pursuant to an order made under subsection (4).

48. Subject to its articles or bylaws, an international business company may, by a resolution of directors, include in the computation of surplus for any purpose under this Act the net unrealised appreciation of the assets of the company, and, in the absence of fraud, the decision of the directors as to the value of the assets is conclusive, unless a question of law is involved.

49. (1) A mortgage or charge of shares of an international business company must be in writing signed by, or with the authority of the owner of the share to which the mortgage or charge relates.

(2) In the case of a bearer share, a mortgage or charge thereof is not valid and enforceable unless the certificate for the share to be mortgaged or charged is deposited with the mortgagee or chargee or approved custodian acting on behalf thereof; but the deposit of the certificate with the mortgagee, chargee or approved custodian shall not constitute a transfer of the bearer share, title to which shall only pass upon due compliance with the provisions of law governing realization of the security by the mortgagee or chargee.

(3) A mortgage or charge of shares of an international business company need not be in any specific form but it must clearly indicate:

- (a) the intention to create a mortgage or charge; and
- (b) the amount secured by the mortgage or charge or how that amount is to be calculated.

(4) A mortgage or charge of shares of an international business company may be governed by the law of a jurisdiction other than Saint Vincent and the Grenadines but, if a law other than the law of Saint Vincent and the Grenadines is specified as the governing law:

- (a) the mortgage or charge must be in compliance with the requirements of its governing law in order for the mortgage or charge to be valid and binding on the company; and
- (b) the remedies available to a mortgagee or chargee shall be governed by the governing law and the instrument creating the mortgage or charge save that the rights between the mortgagor or mortgagee as a member of the

company and the company shall continue to be governed by the articles and bylaws of the company and this Act.

(5) If no law is specified to govern a mortgage or charge of shares of an international business company, the instrument creating the mortgage or charge shall be governed by the law of Saint Vincent and the Grenadines and, in the case of a default by the mortgagor or chargor on the terms of the mortgage, the mortgagee or chargee is entitled to the following remedies:

- (a) subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, the right to sell the shares; and
- (b) the right to appoint a receiver who, subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, may—
  - (i) vote the shares,
  - (ii) receive dividends and other distribution payments in respect of the shares, and
  - (iii) exercise other rights and powers of the mortgagor or chargor in respect of the shares, until such time as the mortgage or charge is discharged.

(6) Subsection (5) also applies to a mortgage or charge of shares of an international business company where the law of St Vincent and the Grenadines is specified as the governing law.

(7) Subject to any provisions to the contrary in the instrument of mortgage or charge of shares of an international business company, all amounts that accrue from the enforcement of the mortgage or charge shall be applied in the following manner:

- (a) firstly, in meeting the costs incurred in enforcing the mortgage or charge;
- (b) secondly, in discharging the sums secured by the mortgage or charge; and
- (c) thirdly, in paying any balance due to the mortgagor or chargor.

(8) Where the governing law of a mortgage or charge of shares in an international business company is the law of St Vincent and the Grenadines, the remedies referred to in subsection (5) are not exercisable until:

- (a) a default has occurred and has continued for a period of not less than 30 days, or such shorter period as may be specified in the instrument creating the mortgage or charge; and
- (b) the default has not been rectified within 14 days from service of the notice specifying the default and requiring rectification thereof.

(9) In the case of a mortgage or charge of registered shares, there may be entered in the share register of the company:

- (a) a statement that the shares are mortgaged or charged;
- (b) the name of the mortgagee or chargee; and

- (c) the date on which the statement and name are entered in the share register.

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

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

51. (1) Unless the bylaws 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, duress or similar action; or
- (b) by or in connection with the imposition of any confiscatory tax, assessment or other governmental charge;

takes or seizes any shares or other interest in an international business company, the company itself or a member, whether or not 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 the 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.

## **PART IV**

### **MEMBERS**

52. In this Act:

“guarantee member”, in relation to a company, means a person:

- (a) whose name is entered in the register of guarantee members;
- (b) who holds no shares in the company;

(c) who has signed the declaration to the company in the terms set out in section 14(1)(f), and

(d) who may not participate in the income, profits, gains or assets of the company or receive any distribution or payment from the company other than on an *ex gratia* basis at the sole discretion of the directors or on the basis of a contract existing between him and the company;

“shareholder”, in relation to a company, means a person whose name is entered in the register of shareholders as the holder of one or more shares, or fractional shares, in the company;

“unlimited member”, in relation to a company, means a person whose name is entered in the register of unlimited members as a member who has unlimited liability for the liabilities of the company.

53. (1) Except during the period between its incorporation and the appointment of its first directors pursuant to section 88, a company shall at all times have one or more members.

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

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

54. (1) An international business company may maintain the following registers of members:

- (a) in the case of a company authorised to issue shares, a register of shareholder members showing -
  - (i) the name and latest known address of each person who holds a registered share in the company,
  - (ii) the number of each class and series of registered shares held by each shareholder,
  - (iii) the date on which the name of each person was entered on the register as a shareholder,
  - (iv) the date on which any person ceased to be a shareholder,
  - (v) in the case of shares issued to bearer, the total number of each class and series of shares issued to bearer, and
  - (vi) with respect to each certificate for shares issued to bearer, the identifying number of the certificate, the number of each class or series of shares issued to bearer specified therein, and the date of issue of the certificate;
- (b) in the case of a company with guarantee members, a register of guarantee members showing the names and addresses of the persons who are guarantee members of the company;
- (c) in the case of a company with unlimited members, a register of unlimited members showing the names and addresses of the persons who are unlimited members;

but the company may delete from a register information relating to persons who are no longer members or information relating to shares issued to bearer that have been cancelled.

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

(3) Copies of the registers of members, commencing from the date of the registration of the international business company, shall be kept at the registered office of the company or at such other place as the directors may determine.

(4) The registers of members are *prima facie* evidence of any matters directed or authorised by this Act to be contained in them.

55. (1) If:

- (a) information that is required to be entered in any of the registers of members under section 54 is omitted from it or inaccurately entered in it; or
- (b) there is unreasonable delay in entering the information in any of the registers of members;

a member of the international business company, or any interested party who is aggrieved by the omission, inaccuracy or delay, may apply to the Court for an order that the registers 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 registers, and may direct the company to pay all costs of the application and any damages the applicant may have sustained.

(2) In any proceedings under subsection (1), the Court may 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 registers, whether the question arises between:

- (a) two or more members or alleged members; or
- (b) between members or alleged members 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 registers.

56. (1) The liability of a shareholder to the company, as shareholder, is limited to:

- (a) any amount unpaid on a share held by the shareholder;
- (b) any liability expressly provided for in the articles or bylaws of the company; and
- (c) any liability to repay a distribution under section 47(4).

(2) The liability of a guarantee member to the company, as guarantee member, is limited to:

- (a) the amount that the guarantee member is liable to contribute as specified in the articles in accordance with section 14(1)(f); and
- (b) any other liability expressly provided for in the articles or bylaws of the company.

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

57. (1) Unless otherwise specified in this Act or in the articles or bylaws of a company, the exercise by the members of a company of a power which is given to them under this Act or the articles or bylaws shall be by a resolution;

- (a) passed at a meeting of members held pursuant to section 58; or
- (b) passed as a written resolution in accordance with section 61.

(2) A resolution is passed if approved by a majority in excess of 50% or, if a higher majority is required by the articles or bylaws, that higher majority, of the votes of those members entitled to vote and voting on the resolution.

(3) For the purposes of subsection (2), unless the articles or bylaws provide otherwise:

- (a) votes of shareholders shall be counted according to the votes attached to the shares held by the shareholder voting;
- (b) a guarantee member shall not be entitled to vote on any resolution; and
- (c) a member of an unlimited company without shares shall be entitled to one vote on any resolution on which he is entitled to vote.

58. (1) Subject to the articles or bylaws, the directors of an international business company may convene meetings of the members of the company at the times and in the manner and places within or outside the State that the directors consider necessary or desirable.

(2) Subject to the articles or bylaws, upon the written request of members holding more than 50% of the votes in the international business company, the directors shall convene a meeting of members.

(3) Subject to the articles or bylaws, a member is deemed to be present at a meeting of members if:

- (a) he participates by telephone or other electronic means; and
- (b) all members participating in the meeting are able to hear each other.

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

(5) Subject to the articles, the following shall apply in respect of joint ownership of shares:

- (a) if 2 or more persons hold shares jointly, each of them may be present in person or by proxy at a meeting of members and may speak as a shareholder;
- (b) if only 1 of them is present in person or by proxy, he may vote on behalf of all of them; and
- (c) if 2 or more are present in person or by proxy, they must vote as one.

59. (1) Subject to any requirement in the articles to give longer notice, the directors or other person convening a meeting of members, shall give not less than 7 days notice of meetings of members to those persons whose names on the date the notice is given appear as members in the registers of members referred to in section 54 and are entitled to attend the meeting.

(2) Notwithstanding subsection (1), a meeting of members held in contravention of the requirement to give notice is valid if members holding a 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 members 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 member at the meeting is deemed to constitute a waiver on his part.

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

60. (1) The quorum for a meeting of members for purposes of a resolution of members is that fixed by the articles or bylaws but, where no quorum is so fixed, a meeting of members is properly constituted for all purposes if at the commencement of the meeting there are present in person or by proxy at least one-half of the votes of the shares of each class or series of shares and the same proportion of the votes of the remaining shares entitled to vote on the resolution.

(2) Where a company has only one member that member present in person or by proxy is a quorum at meetings of the member.

61. (1) Subject to the articles or bylaws, an action that may be taken by members at a meeting of members may also be taken by a resolution of members consented to in writing by all members or by telex, telecom, cable or other written electronic communication without the need for notice or waiver of notice.

(2) Any action to be taken by members other than as described in subsection (1) shall require notice served upon the requisite majority of members specified in the articles or bylaws.

62. (1) Except as otherwise provided in the articles or bylaws, all shares vote as one class.

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

63. (1) One or more holders of registered shares in an international business company may by an agreement in writing transfer registered shares to any person authorised to act as trustee for the purpose of vesting in such person, who may be

designated voting trustee, the right to vote thereon and the following provisions shall apply:

- (a) a copy of the agreement shall be deposited at the registered office of the company and shall be open to the inspection of members of the company-
  - (i) in the case of any beneficiary of the trust under the agreement, daily during business hours, and
  - (ii) in the case of members of the company, subject to the provisions of section 74;
- (b) where certificates for registered shares have been issued for shares that are to be transferred to a trustee pursuant to this section, new certificates shall be issued to the voting trustee to represent the shares so transferred and the certificates formerly representing the shares that have been transferred shall be surrendered and cancelled;
- (c) where a certificate is issued to a voting trustee, an endorsement shall be made on the certificate that the shares represented thereby are held by the person named therein pursuant to an agreement;
- (d) there shall be noted in the register of shareholder members of the company against the record of the shares held by the trustee, the fact that such an agreement exists;
- (e) the voting trustee may vote the shares so issued or transferred during the period specified in the agreement;
- (f) shares registered in the name of the voting trustee may be voted either in person or by proxy and, in voting the shares, the voting trustee shall not incur any liability as member or trustee, except in so far as he may be liable for his own conduct or acts;
- (g) where two or more persons are designated as voting trustees and the right and method of voting any shares registered in their names at any meeting of members or on any resolution of members are not fixed by the agreement appointing the trustees, the right to vote shall be determined by a majority of the trustees, or if they are equally divided as to the right and manner of voting the shares in any particular case, the votes of the shares in such case shall be divided equally among the trustees;
- (h) at any time prior to the time of expiration of any voting trust agreement as originally fixed or as last extended as provided in this subsection, one or more beneficiaries of the trust under the voting trust agreement may, by written agreement and with the written consent of the voting trustee, extend the duration of the voting trust agreement for such additional period as stated in the agreement; and
- (i) the voting trustee shall, prior to the time of expiration of a voting trust agreement, as originally fixed or as previously extended, as the case may be, deposit at the registered office of the company a copy of the extension

agreement and of his consent thereto, and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement, but no extension agreement shall affect the rights or obligations of persons not parties thereto.

(2) Two or more shareholders of a company may by agreement in writing provide that in exercising any voting rights the shares held by them shall be voted:

- (a) as provided by the agreement; or
- (b) as the parties may agree.

(3) No agreement made pursuant to subsection (2) shall be effective for a period of more than 10 years from the date it is made, but at any time within the two years immediately preceding the date of the expiration of the agreement the parties may extend its duration for an additional period, not exceeding 10 years at any one time, as they may desire.

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

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

- (a) it is impracticable to call or conduct a meeting of the members of a company in the manner specified in this Act or in the articles and bylaws of the company; or
- (b) it is in the interests of the members of the company that a meeting of members is held.

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

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

65. The Regulations may specify provisions for proceedings of members' meetings which shall apply in respect of a company, except to the extent that the articles or bylaws of the company provide otherwise.

66. Any notice, information or written statement required under this Act to be given by an international business company to members must be served:

- (a) in the manner provided in the articles or bylaws, as the case may be; or
- (b) in the absence of a provision in the articles or bylaws, by personal service or by mail addressed to each member at the address shown in the relevant register of members; and
- (c) in the case of owners of bearer shares by personal service on, or by mail addressed to the approved custodian of such bearer shares.

**PART V**  
**COMPANY ADMINISTRATION**

**Division 1 - Registered Office and Registered Agent**

67. (1) An international business company shall at all times have a registered office in the State, which may also be the office of its registered agent.

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

(3) An international business company whose directors have resolved to change the location of its registered office shall do so by filing amended articles with the Registrar.

(4) The change of registered office takes effect upon the registration of the amended articles by the Registrar.

68. (1) An international business company shall at all times have a registered agent in the State.

(2) On the registration of an international business company, its registered agent is as specified in the articles.

(3) An international business company whose directors have resolved to change its registered agent shall do so by filing amended articles with the Registrar.

(4) The change of registered agent takes effect upon the registration of the amended articles by the Registrar.

(5) (a) The registered agent of an international business company must be a person who holds a relevant licence.

(b) Notwithstanding any statutory provision to the contrary, the registered agent of an international business company shall be empowered to issue a certificate (“certificate of incumbency”) specifying *inter alia* the names and addresses of any person acting as director to a company incorporated under this Act.

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

(7) Subject to subsection (8), a person who, not being the holder of a relevant licence, acts as the registered agent of an international business company commits an offence and is liable as specified in the Schedule.

(8) If a person who acts as the registered agent of an international business company ceases to hold a relevant licence, he does not commit an offence under subsection (7) if, upon ceasing to hold the licence, he forthwith notifies the company that he no longer holds a relevant licence and that the company must change its registered agent in accordance with subsection (6).

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

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

- (a) to a director or officer of the company at the address of the director or officer last known to the registered agent; or
- (b) if the registered agent is not aware of the identity of any director or officer of the company, to the person from whom he last received instructions concerning the company.

(3) The registered agent must, within 7 days of resigning, notify the Registrar of this fact, in writing.

(4) A registered agent who contravenes subsection (3) commits an offence and is liable as specified in the Schedule.

## **Division 2 - Company Records**

70. An international business company shall keep the following documents at the office of its registered agent:

- (a) the articles;
- (b) the documents appointing the first directors of the company; and
- (c) copies of all notices and other documents filed by the registered agent pursuant to section 30.

71. A company shall keep the following records at the office of its registered agent or at such other place or places, within or outside the State as the directors may determine:

- (a) minutes of meetings and resolutions of members and of classes of members; and
- (b) minutes of meetings and resolutions of directors and committees of directors .

72. (1) An international business company shall keep such accounts and records as the directors consider necessary or desirable in order to reflect the true financial position of the company and sufficient to demonstrate whether the company is likely to:

- (a) be unable to pay its debts as they fall due; and
- (b) make an unlawful distribution.

(2) No person, other than a member of the company may question the relevance or quality of the accounts or records maintained by an international business company pursuant to subsection (1).

73. The records required to be kept by a company under this Act shall be kept:

- (a) in written form; or
- (b) either wholly or partly as electronic records.

74. (1) A member of an international business 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 registers of members, register of directors and the books, records, minutes and consents kept by the company and to make copies or extracts therefrom.

(2) A member of an international business company is, upon request, entitled:

- (a) to one copy of each of the documents referred to in subsection (1); and
- (b) to additional copies of each document and any amendments thereto, upon the payment of such fee as the directors may determine to be reasonably necessary to defray the costs of preparing and furnishing them.

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

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

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

(6) Upon refusal by the company of a request under subsection (1) or (2), the member 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 requested under subsection (1) or to require the company to comply with subsection (2), as appropriate, and the Court may make such order as it thinks fit.

75. (1) Any summons, notice, order, document, process, information or written statement to be served on an international business company may be served:

- (a) by leaving it, or by sending it by registered mail addressed to the company, at its registered office; or
- (b) 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 sufficient 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.

76. An international business company may adopt a common seal or stamp if the directors so resolve.

### **Division 3 - General Provisions**

77. (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 international business company and its successors and all other parties to the contract.

(3) Without affecting paragraph (1)(a), a contract, agreement or other instrument executed by or on behalf of an international business 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.

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

- (a) sealed with the common seal of the company and witnessed by a director of the company or such other person who is authorised by the articles to witness the application of the company's seal; or
- (b) it is expressed to be, or is expressed to be executed as, or otherwise makes clear on its face that it is intended to be, a deed and it is signed by a director or by a person acting under the express or implied authority of the company.

78. (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 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 an international business 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.

79. (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 located, 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, the 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.

80. A promissory note or bill of exchange is deemed to have been made, accepted or 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.

81. (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 issue and sign share certificates, execute contracts, agreements, deeds and other instruments on behalf of the company.

(2) A share certificate, 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.

(3) An instrument appointing an attorney under subsection (1) may be either:

(a) executed as a deed; or

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

82. 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.

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

## **PART VI**

### **DIRECTORS**

#### **Division 1 - Management by Directors**

84. (1) Subject to its articles or bylaws, 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.

(2) Where any act or thing is required to be done by an international business company under this Act, such act or thing is to be done by the directors of that company acting on behalf of the company.

85. (1) The directors may by resolution designate one or more committees, each consisting of one or more directors.

(2) Subject to the articles or bylaws, each committee has such powers and authority of the directors, including the power and authority to affix the common seal of the international business company, as are set out in the resolution of directors establishing the committee, except that no committee has any power or authority to

amend the articles or bylaws or with respect to the matters requiring a resolution of directors under section 88 or 108.

### **Division 2 - Appointment, Removal and Resignation of Directors**

86. (1) An individual who is disqualified under section 67 of the Companies Act from being a director of a company incorporated or continued under that Act, may not, during the period of his disqualification, be a director of an international business company.

(2) An individual who contravenes subsection (1) commits an offence and is liable as specified in the Schedule.

87. A person shall not be appointed as the director of a company unless he has consented by signed writing to be a director.

88. (1) The first registered agent of an international business company shall, within 28 days of the date of incorporation of the company, appoint one or more persons as the first directors of the company.

(2) Where the articles or bylaws permit, the directors may, by resolution, appoint directors for such term as they may determine, but unless notice of such appointment is given to the members of the company, such appointment shall be ineffective.

(3) Each director holds office until his successor takes office or until his death, resignation or removal, whichever is the earliest.

(4) A vacancy in the board of directors may be filled by a resolution of members or of a majority of the remaining directors.

89. (1) An international business company shall have at least one director.

(2) Subsection (1) does not apply during the period between the incorporation of the company and the appointment of the first directors by the registered agent under section 88 (1).

(3) Subject to subsection (1), the number of directors shall be fixed by or in the manner provided in the articles or bylaws and the articles or bylaws may be amended to change the number of directors.

(4) If at any time a company does not have a director, any person who manages or otherwise directs or supervises the management of the business and affairs of the company is deemed to be a director of the company for the purposes of this Act.

90. (1) Subject to the articles or bylaws of a company, a director of the company may be removed from office by resolution of the members of the company.

(2) Subject to the articles or bylaws, a resolution under subsection (1) may only be passed:

(a) at a meeting of the members called for the purpose of removing the director or for purposes including the removal of the director; or

(b) by a written resolution passed by at least seventy five per cent of the members of the company entitled to vote.

(3) The notice of a meeting called under subsection (2)(a) shall state that the purpose of the meeting is, or the purposes of the meeting include, the removal of a director.

(4) Where expressly permitted by the articles or bylaws of a company, a director of the company may be removed from office by a resolution of the directors of the company.

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

(2) A director of a company shall resign forthwith if he is, or becomes, disqualified to act as a director under section 86 or under the Companies Act.

92. A director who vacates office remains liable under any provisions of this Act that impose liabilities on a director in respect of any acts or omissions or decisions made whilst he was a director.

93. The acts of a person as a director are valid notwithstanding that:

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

(b) the person is disqualified to act as a director under section 86.

94. (1) A company shall keep a register to be known as a register of directors containing:

- (a) the names and addresses of the persons who are directors of the company;
- (b) the date on which each person whose name is entered in the register was appointed as a director of the company;
- (c) the date on which each person named as a director ceased to be a director of the company; and
- (d) such other information as may be prescribed.

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

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

95. Subject to the articles or bylaws, the directors may by a resolution fix the emoluments of directors in respect of services to be rendered in any capacity to an international business company.

### **Division 3 - Duties of Directors and Conflicts**

96. (1) Subject to this section, a director of a company, in exercising his powers or performing his duties, shall act honestly and in good faith and in what the director believes to be in the best interests of the company.

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

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

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

97. The directors have all the powers of management of an international business company that are not reserved to the members under this Act or by the articles or bylaws.

98. A director shall exercise his powers as a director for a proper purpose and shall not act, or agree to the company acting, in a manner that contravenes this Act or the articles or bylaws of the company.

99. (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 bylaws 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 this Act.

100. Every director, officer, agent and liquidator of an international business company in performing his functions is entitled to rely upon the registers of members, the books of accounts, records and minutes, copies of consents to resolutions, 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 as such are required to be kept by the company under this Act.

101. (1) Subject to the articles or bylaws, 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 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 or liquidator is present at the meeting of directors or liquidators, or at the meeting of the committee of directors, 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 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 are 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 members entitled to vote at a meeting of members; and
- (b) the agreement or transaction is approved or ratified by a resolution of members.

(4) Subject to the articles or bylaws, a director or liquidator who has an interest in any particular business to be considered at a meeting of directors, liquidators or members may be counted for purposes of determining whether the meeting is duly constituted in accordance with section 105 or otherwise.

#### **Division 4 -**

#### **Proceedings of Directors and Miscellaneous Provisions**

102. (1) Within 28 days, after the issue of a certificate of incorporation of an international business company, a meeting of the directors of the company shall be held at which the directors may:

- (a) make bylaws unless bylaws have been made by the incorporators pursuant to section 17;
- (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;
- (g) adopt a common seal or stamp; and
- (h) transact any other business.

(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.

103. (1) Subject to the articles or bylaws, any one or more directors of an international business company may convene a meeting of the directors at the times and in the manner and places within or outside the State that the directors may determine to be necessary or desirable.

(2) A director is 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.

104. (1) Subject to a requirement in the articles or bylaws to give longer notice, a director shall be given not less than one day's notice of a meeting of directors.

(2) Notwithstanding subsection (1), but subject to its articles or bylaws, a meeting of directors held in contravention of that subsection is valid if all of the directors, or such majority of the directors as may be specified in the articles or bylaws 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 is 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.

105. (1) The quorum for a meeting of directors is that fixed by the articles or bylaws 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.

(2) Where a company has only one director:

- (a) that director present in person or by his alternate shall be a quorum at meetings of the director; and
- (b) where the director takes any decision that has effect as a resolution of the directors, he shall, unless the decision is taken by way of a written resolution, provide the company with a written record of the resolution.

106. Subject to the articles or bylaws, 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.

107. (1) Subject to the articles or bylaws, 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 in the place of the director.

108. (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 or bylaws, 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 out in the articles or bylaws or in the resolution of directors appointing the officer or agent, except that no officer or agent has any power or authority:

- (a) to amend the articles or bylaws; or
- (b) with respect to any matter that, in accordance with this Act, requires a resolution of directors.

(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).

109. (1) Subject to subsection (2) and to the articles or bylaws, an international business company may indemnify against all expenses, including legal fees, and against all judgments, 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, an agent or a liquidator of the company;
- (b) is or was, at the request of the company, serving as director, officer, an agent or liquidator of, or in any other capacity is or was acting for, another body corporate or partnership, joint venture, trust or other enterprise;
- (c) is or was a trustee of a trust established under the International Trust Act 1996 and the majority of the voting shares in the company are or were held in that trust; or
- (d) is or was a trustee of a unit trust referred to in section 36.

(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 judgment, 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 judgments, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

110. An international business company may purchase and maintain insurance in relation to any person who is or was a member, a director, an officer, an agent or a liquidator of the company, or who at the request of the company is or was serving as a director, an officer, an agent or a liquidator, of, or in any other capacity is or was acting for, another body corporate 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 section 109 (1).

## **PART VII**

### **SEGREGATED CELL COMPANIES**

#### **Division 1 - Approval and Registration**

111. (1) In this Part:

“general assets” of a segregated cell company has the meaning specified in section 120(3);

“cell liquidator” means the person appointed as a cell liquidator under a cell liquidation order;

“cell liquidation order” means an order made under section 129;

“segregated cell “ means a segregated cell created by a segregated cell company under section 115 for the purpose of segregating the assets and liabilities of the company in accordance with this Part;

“segregated cell assets” has the meaning specified in section 120(2);

“segregated cell distribution” means a distribution made in respect of segregated cell shares and “segregated cell dividend” shall be construed accordingly;

“segregated cell shares” means shares issued in respect of a segregated cell in accordance with section 116(1);

“segregated cell transfer order” means an order of the Court made under section 126(4);

(2) This Act applies to a segregated cell company subject to the provisions of this Part and to such modifications as are necessary.

112. (1) A company limited by shares may, with the written approval of the Authority given under subsection (2):

- (a) be incorporated as a segregated cell company; or
- (b) if it has already been incorporated, be registered by the Registrar as a segregated cell company.

(2) The Authority may give its written approval to the incorporation of a company, or the registration of an existing company, as a segregated cell company only if the company:

- (a) is, or on its incorporation will be, licensed as an insurer under the International Insurance (Amendment and Consolidation) Act 1998;
- (b) is, or on its incorporation will be, recognised as an accredited or private fund or registered as a public fund under the Mutual Funds (Amendment) Act 1998; or
- (c) is being established for a purpose which is authorised by the Authority;
- (d) is, or on its incorporation will be, of such class or description as may be prescribed by the Regulations made under section 136.

(3) The Registrar shall not incorporate or register a company as a segregated cell company unless the Authority has given its written approval under subsection (1).

113. (1) An application for approval to incorporate or register a company as a segregated cell company shall be made to the Authority in the approved form and shall be accompanied by such documentation as may be prescribed by the Regulations.

(2) The Authority may require an applicant under subsection (1) to furnish it with such other documentation and information as it considers necessary to determine the application.

(3) A company that carries on business as a segregated cell company without first obtaining approval under subsection (1) commits an offence and is liable as specified in the Schedule.

114. (1) On receipt of an application under section 113, if it is satisfied that the company has, or has available to it, the knowledge and expertise necessary for the proper management of segregated cells, the Authority may give its approval to the incorporation or registration of a company as a segregated cell company subject to such conditions as it considers appropriate.

(2) The Authority may, at any time:

- (a) vary or revoke any condition subject to which an approval under subsection (1) was given; and
- (b) impose any condition in respect of any such approval.

## **Division 2 -**

### **Attributes and Requirements of Segregated Cell Companies**

115. (1) Subject to subsection (4), a segregated cell company may create one or more segregated cells for the purpose of segregating the assets and liabilities of the company held within or on behalf of a segregated cell from the assets and liabilities of the company held within or on behalf of any other segregated cell of the company or the assets and liabilities of the company which are not held within or on behalf of any segregated cell of the company.

(2) A segregated cell company is a single legal entity and a segregated cell of or within a segregated cell company does not constitute a legal entity separate from the company.

(3) Each segregated cell shall be separately identified or designated and shall include in such identification or designation the words "Segregated Cell".

(4) Where pursuant to the Regulations made under section 136, a segregated cell company is required to obtain the approval of the Authority for the creation of a segregated cell, the company shall not create a segregated cell unless it has obtained the prior written approval of the Authority.

(5) A segregated cell company that contravenes subsection (4) commits an offence and is liable as specified in the Schedule.

116. (1) A segregated cell company may, in respect of a segregated cell, issue shares, the proceeds of which shall be included in the segregated cell assets of the segregated cell in respect of which the segregated cell shares are issued.

(2) Segregated cell shares may be issued in one or more classes and a class of segregated cell shares may be issued in one or more series.

(3) Unless the context otherwise requires, references in Part III to shares include references to segregated cell shares.

117. The proceeds of the issue of shares in a segregated cell company, other than segregated cell shares, shall be included in the company's general assets.

118. (1) Subject to this section, a segregated cell company may pay a dividend or otherwise make a distribution in respect of segregated cell shares.

(2) Segregated cell dividends may be paid, and segregated cell distributions made, by reference only to the segregated cell assets and liabilities attributable to the segregated cell in respect of which the segregated cell shares were issued.

(3) In determining whether a segregated cell company is solvent for the purposes of section 46, in respect of a segregated cell distribution, no account shall be taken of:

(a) the assets and liabilities of or attributable to any other segregated cell of the company; or

(b) the company's general assets and liabilities.

(4) The Regulations may prescribe restrictions on the power of a segregated cell company to make distributions, including segregated cell distributions, where the

company or any segregated cell of or within the company does not satisfy the solvency test.

119. Any act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement which is to be binding on or to enure to the benefit of a segregated cell or cells shall be executed by the segregated cell company for and on behalf of such segregated cell or cells which shall be identified or specified and, where in writing, it shall be indicated that such execution is in the name of, or by, or for the account of, such segregated cell or cells.

120. (1) The assets of a segregated cell company shall be either segregated cell assets or general assets.

(2) The segregated cell assets comprise the assets of the segregated cell company held within or on behalf of the segregated cells of the company.

(3) The general assets of a segregated cell company comprise the assets of the company which are not segregated cell assets.

(4) The assets of a segregated cell comprise:

- (a) assets representing the consideration paid or payable for the issue of segregated cell shares and reserves attributable to the segregated cell; and
- (b) all other assets attributable to or held within the segregated cell.

(5) It shall be the duty of the directors of a segregated cell company to establish and maintain or cause to be established and maintained procedures:

- (a) to segregate, and keep segregated, segregated cell assets separate and separately identifiable from general assets;
- (b) to segregate, and keep segregated, segregated cell assets of each segregated cell separate and separately identifiable from segregated cell assets of any other segregated cell; and
- (c) where relevant, to apportion or transfer assets and liabilities between segregated cells, or between segregated cells and general assets of the company.

(6) Notwithstanding subsection (5), the directors of a segregated cell company may cause or permit segregated cell assets and general assets to be held:

- (a) by or through a nominee; or
- (b) by a company, the shares and capital interests of which may be segregated cell assets or general assets or a combination of both.

(7) The directors of a segregated cell company do not breach the duties imposed on them under subsection (5) by reason only that they cause or permit segregated cell assets or general assets, or a combination of both, to be collectively invested, or collectively managed by an investment manager, provided that the assets remain separately identifiable in accordance with subsection (5).

121. (1) The rights of creditors of a segregated cell company shall correspond with the liabilities provided for in section 123 and no creditor of a segregated cell company shall have any rights other than the rights specified in this section and in sections 122 and 123.

(2) Subject to subsection (3), the following terms shall be implied in every transaction entered into by a segregated cell company:

- (a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wheresoever, to make or attempt to make liable any segregated cell assets attributable to any segregated cell of the company in respect of a liability not attributable to that segregated cell;
- (b) that if any party shall succeed by any means whatsoever or wheresoever in making liable any segregated cell assets attributable to any segregated cell of the company in respect of a liability not attributable to that segregated cell, that party shall be liable to the company to pay a sum equal to the value of the benefit thereby obtained by him;
- (c) that if any party shall succeed in seizing or attaching by any means or otherwise levying execution against any segregated cell assets attributable to any segregated cell of the company in respect of a liability not attributable to that segregated cell, that party shall hold those assets or their proceeds on trust for the company and shall keep those assets or proceeds separate and identifiable as such trust property; and
- (d) that the governing law to be applied to every transaction entered into by a segregated cell company shall be the law of St Vincent and the Grenadines.

(3) Subsection (2) does not apply to the extent that it is excluded in writing.

(4) All sums recovered by a segregated cell company as a result of any trust referred to in subsection (2)(c) shall be credited against any concurrent liability imposed pursuant to the implied term set out in subsection (2)(b).

(5) Any asset or sum recovered by a segregated cell company pursuant to the implied term set out in subsection (2)(b) or (2)(c) or by any other means whatsoever or wheresoever in the events referred to in those subsections shall, after the deduction or payment of any costs of recovery, be applied by the company so as to compensate the segregated cell affected.

(6) In the event of any segregated cell assets attributable to a segregated cell of a segregated cell company being taken in execution in respect of a liability not attributable to that segregated cell, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the segregated cell affected, the company shall:

- (a) cause or procure its auditor, acting as expert and not as arbitrator, to certify the value of the assets lost to the segregated cell affected; and
- (b) transfer or pay, from the segregated cell assets or general assets to which the liability was attributable to the segregated cell affected, assets or sums

sufficient to restore to the segregated cell affected the value of the assets lost.

(7) Where under subsection (6)(b) a segregated cell company is obliged to make a transfer or payment from segregated cell assets attributable to a segregated cell of the company, and those assets are insufficient, the company shall so far as possible make up the deficiency from its general assets.

122. Segregated cell assets:

- (a) shall only be available and used to meet liabilities to the creditors of the segregated cell company who are creditors in respect of that segregated cell and who shall thereby be entitled to have recourse to the segregated cell assets attributable to that segregated cell for such purposes; and
- (b) shall not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the segregated cell company who are not creditors in respect of that segregated cell, and who accordingly shall not be entitled to have recourse to the segregated cell assets attributable to that segregated cell.

123. (1) Where a liability of a segregated cell company to a person arises from a matter, or is otherwise imposed, in respect of or attributable to a particular segregated cell:

- (a) such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to-
  - (i) firstly the segregated cell assets attributable to such segregated cell,
  - (ii) secondly the segregated cell company's general assets, to the extent that the segregated cell assets attributable to such segregated cell are insufficient to satisfy the liability and to the extent that the assets attributable to such segregated cell company's general assets exceed any minimum capital amounts lawfully required by the Authority; and
- (b) such liability shall not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to the segregated cell assets attributable to any other segregated cell.

(2) Where a liability of a segregated cell company to a person:

- (a) arises otherwise than from a matter in respect of a particular segregated cell or particular segregated cells; or
- (b) is imposed otherwise than in respect of a particular segregated cell or particular segregated cells such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the company's general assets.

124. (1) Liabilities of a segregated cell company not attributable to any of its segregated cells shall be discharged from the company's general assets.

(2) Income, receipts and other assets or rights of, or acquired by, a segregated cell company not otherwise attributable to any segregated cell shall be applied to and comprised in the company's general assets.

125. The financial statements of a segregated cell company shall take into account the segregated nature of the company and shall include an explanation of:

- (a) the nature of the company;
- (b) how the segregation of the assets and liabilities of the company impacts upon members of the company and persons with whom the company transacts; and
- (c) the effect that any existing deficit in the assets of one or more segregated cells of the company has on the general assets of the company.

126. (1) Subject to subsection (3), the segregated cell assets attributable to any segregated cell of a segregated cell company, but not the general assets of the company, may be transferred to another person, wherever resident or incorporated, and whether or not a segregated cell company.

(2) A transfer, pursuant to subsection (1), of segregated cell assets attributable to a segregated cell of a segregated cell company shall not, of itself, entitle creditors of that company to have recourse to the assets of the person to whom the segregated cell assets were transferred.

(3) No transfer of the segregated cell assets attributable to a segregated cell of a segregated cell company may be made except under the authority of, and in accordance with the terms and conditions of, an order of the Court under this section.

(4) The Court shall not make a segregated cell transfer order in relation to a segregated cell of a segregated cell company:

- (a) unless it is satisfied-
  - (i) that creditors of the company entitled to have recourse to the segregated cell assets attributable to the segregated cell consent to the transfer, or
  - (ii) that those creditors would not be unfairly prejudiced by the transfer; and

(b) without hearing the representations of the Authority on the matter.

(5) The Court, on hearing an application for a segregated cell transfer order, may:

(a) make an interim order or adjourn the hearing, conditionally or unconditionally;

(b) dispense with any of the requirements of subsection (4)(a).

(6) The Court may attach such conditions as it thinks fit to a segregated cell transfer order, including conditions as to the discharging of claims of creditors entitled to have recourse to the segregated cell assets attributable to the segregated cell in relation to which the order is sought.

(7) The Court may make a segregated cell transfer order in relation to a segregated cell of a segregated cell company notwithstanding that:

(a) a voluntary liquidator has been appointed in respect of the company;

(b) a cell liquidation order has been made in respect of the segregated cell or any other segregated cell of the company.

(8) The provisions of this section are without prejudice to any power of a segregated cell company lawfully to make payments or transfers from the segregated cell assets attributable to any segregated cell of the company to a person entitled, in conformity with the provisions of this Act, to have recourse to those segregated cell assets.

(9) Notwithstanding the provisions of this section, a segregated cell company shall not require a segregated cell transfer order to invest, and change investment of, segregated cell assets or otherwise to make payments or transfers from segregated cell assets in the ordinary course of the company's business.

### **Division 3 -**

#### **Liquidation, Cell Liquidation Orders and Administration**

127. In this Division, "liquidator" means a voluntary liquidator and "liquidation" shall be construed accordingly.

128. (1) Notwithstanding the provisions of Part XI of this Act, the Companies Act, or any other statutory provision or rule of law to the contrary, in the liquidation of a segregated cell company, the liquidator:

(a) shall be bound to deal with the company's assets in accordance with the requirements set out in section 120(5); and

(b) in discharge of the claims of creditors of the segregated cell company, shall apply the company's assets to those entitled to have recourse thereto in conformity with the provisions of this Part.

(2) Part XI of this Act, the Companies Act, or any other relevant Act, as the case may be, shall apply to the liquidation of a segregated cell subject to such modifications as are necessary to give effect to subsection (1) and in the event of any conflict between the

provisions in Part XI and the provisions in any other enactment relating to the liquidation of companies, the provisions within Part XI shall prevail.

129. (1) Subject to the provisions of this section, if in relation to a segregated cell company the Court is satisfied:

- (a) that the segregated cell assets attributable to a particular segregated cell of the company (when account is taken of the company's general assets, unless there are no creditors in respect of that segregated cell entitled to have recourse to the company's general assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that segregated cell, and
- (b) that the making of an order under this section would achieve the purposes set out in subsection (3),

the Court may make a cell liquidation order under this section in respect of that segregated cell.

(2) A cell liquidation order may be made in respect of one or more segregated cells.

(3) A cell liquidation order is an order directing that the business and segregated cell assets of or attributable to a segregated cell shall be managed by a cell liquidator specified in the order for the purposes of:

- (a) the orderly closing down of the business of or attributable to the segregated cell; and
- (b) the distribution of the segregated cell assets attributable to the segregated cell to those entitled to have recourse thereto.

(4) Where the Court makes a cell liquidation order it shall, at the same time, appoint the Official Receiver within the terms set out in the Companies Act or any other relevant Act, as the case may be.

(5) A cell liquidation order:

- (a) shall not be made if a liquidator is appointed in respect of the segregated cell company; and
- (b) shall cease to be of effect upon the appointment of a liquidator in respect of the segregated cell company, but without prejudice to the prior acts of the cell liquidator or his agents.

(6) The members of a segregated cell company shall not pass a resolution to appoint a liquidator of the company, whether under Part XI of this Act, or under the Companies Act, or any other relevant Act, if any segregated cell is subject to a cell liquidation order, without the prior leave of the Court.

(7) Any resolution passed contrary to subsection (6) shall be void and of no effect.

130. (1) An application for a cell liquidation order in respect of a segregated cell of a segregated cell company may be made by:

- (a) the company;
- (b) the directors of the company;
- (c) any creditor of the company in respect of that segregated cell;
- (d) any holder of segregated cell shares in respect of that segregated cell; or
- (e) the Authority.

(2) Notice of an application to the Court for a cell liquidation order in respect of a segregated cell of a segregated cell company shall be served upon:

- (a) the company;
- (b) the Authority; and
- (c) such other persons, if any, as the Court may direct, each of whom shall be given an opportunity of making representations to the Court before the order is made.

(3) The Court, on hearing an application:

- (a) for a cell liquidation order; or
- (b) for leave, pursuant to section 129(6), to pass a resolution appointing a liquidator;

may, instead of making the order sought or dismissing the application, make an interim order or adjourn the hearing, conditionally or unconditionally.

(4) The Court may make a cell liquidation order subject to such terms and conditions as it considers appropriate.

131. (1) The cell liquidator of a cell of a segregated cell company:

- (a) may do all such things as may be necessary for the purposes set out in section 129(3); and
- (b) shall have all the functions and powers of the directors in respect of the business and segregated cell assets of, or attributable to the segregated cell.

(2) The cell liquidator may at any time apply to the Court:

- (a) for directions as to the extent or exercise of any function or power;
- (b) for the cell liquidation order to be discharged or varied; or
- (c) for an order as to any matter arising in the course of the liquidation of the cell.

(3) In exercising his functions and powers the cell liquidator shall be deemed to act as agent of the segregated cell company, and shall not incur personal liability except to the extent that he is fraudulent, reckless, negligent, or acts in bad faith.

(4) Any person dealing with the cell liquidator in good faith is not required to inquire whether the cell liquidator is acting within his powers.

(5) When an application has been made for, and during the period of operation of, a cell liquidation order:

- (a) no proceedings may be instituted or continued by or against the segregated cell company in relation to the segregated cell in respect of which the cell liquidation order was made; and
- (b) no steps may be taken to enforce any security or in the execution of legal process in respect of the business or segregated cell assets of, or attributable to, the segregated cell in respect of which the cell liquidation order was made;

except by leave of the Court, which may be conditional or unconditional.

(6) During the period of operation of a cell liquidation order:

- (a) the powers, functions and duties of the directors in respect of the business of, or attributable to, and the segregated cell assets of or attributable to, the segregated cell in respect of which the order was made continue to the extent specified in this Part or in Regulations made under section 136 or to the extent that the cell liquidator or the Court shall direct; and
- (b) the cell liquidator of the segregated cell shall be entitled to be present at all meetings of the segregated cell and to vote at such meetings, as if he were a director of the segregated cell company, in respect of the general assets of the company, unless there are no creditors in respect of that segregated cell entitled to have recourse to the company's general assets.

132. (1) Subject to subsection (2) and to any agreement between the segregated cell company and any creditor of the company as to the subordination of the debts due to that creditor or to the debts due to the company's other creditors, the cell liquidator of a segregated cell shall, in the winding up of the business of that segregated cell, apply the segregated cell assets in satisfaction of the company's liabilities attributable to that segregated cell *pari passu*.

(2) Creditors of a segregated cell that is subject to a cell liquidation order shall be regarded as preferential creditors of the segregated cell to the extent that they would be preferential creditors under the Companies Act or any other relevant Act if:

- (a) the segregated cell was a company; and
- (b) the cell liquidator was the Official Receiver.

(3) Subject to the articles or bylaws, any surplus shall be distributed among the holders of the segregated cell shares or the persons otherwise entitled to the surplus, in each case according to their respective rights and interests in or against the company.

(4) Where there are no segregated cell shares and no persons otherwise entitled to the surplus, any surplus shall be paid to the segregated cell company and shall become a general asset of the company.

133. (1) The Court shall not discharge a cell liquidation order unless it appears to the Court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

(2) Subject to subsection (1), the Court, on hearing an application for the discharge or variation of a cell liquidation order, may make such order as it considers appropriate, may dismiss the application, may make any interim order or may adjourn the hearing, conditionally or unconditionally.

(3) Upon the Court discharging a cell liquidation order in respect of a segregated cell on the ground that the purpose for which the order was made has been achieved or substantially achieved, the Court may direct that any payment made by the cell liquidator to any creditor of the company in respect of that segregated cell shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that segregated cell, and the creditor's claims against the company in respect of that segregated cell shall be thereby deemed extinguished.

(4) Nothing in subsection (3) shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the segregated cell company.

(5) The Court may, upon discharging a cell liquidation order in respect of a segregated cell of a segregated cell company, direct that the segregated cell shall be dissolved on such date as the Court may specify.

(6) When a segregated cell of a segregated cell company has been dissolved under subsection (5), the company may not undertake business or incur liabilities in respect of that cell.

134. The remuneration of a cell liquidator shall be fixed by the Court and shall be payable, in priority to all other claims, from:

- (a) the segregated cell assets attributable to the segregated cell in respect of which the cell liquidator was appointed; and

- (b) to the extent that these may be insufficient, from the general assets of the company;

but not from any the segregated cell assets attributable to any other segregated cell.

135. (1) In this section, a “relevant segregated cell company” is a company in respect of which the Court would have the power to make an administration order or other analogous order under the Companies Act or any other relevant Act, if it was satisfied, in respect of that company, as to the matters specified in the applicable Act.

(2) Application may be made to the Court for an administration order or other analogous order in respect of a segregated cell of a relevant segregated cell company.

(3) The Companies Act or any other relevant Act, as the case may be, applies to:

- (a) an application made under subsection (2); and
- (b) if the Court makes an administration or other analogous order, to the administration of the segregated cell;

subject to any Regulations made under section 136 and subject to such other modifications as are necessary to give effect to the Companies Act or any other relevant Act, as the case may be, with respect to the administration of a segregated cell.

#### **Division 4 - General Provisions**

136. (1) The Minister may, on the advice of the Authority, make Regulations concerning segregated cell companies.

(2) Without limiting subsection (1), Regulations made under that subsection may:

- (a) provide that the provisions of this Act shall apply in relation to any class or description of company specified by or prescribed under section 112(2)(d) subject to such exceptions, adaptations and modifications as may be specified in the Regulations;
- (b) make provision in respect of any of the following matters-
  - (i) the classes or descriptions of segregated cell companies which shall obtain the approval of the Authority for the creation of segregated cells, or circumstances in which such approval is required to be obtained,
  - (ii) where the Authority’s approval is required for the creation of segregated cells under subparagraph (i), the procedure for the application for, and the granting of, the Authority’s approval,
  - (iii) the conduct of the business of segregated cell companies,
  - (iv) the manner in which segregated cell companies may carry on, or hold themselves out as carrying on business,
  - (v) the form and content of the accounts of segregated cell companies,
  - (vi) the cell liquidation of segregated cells under Division 3, and

- (vii) the fees payable by segregated cell companies and by applicants for an approval under section 113;
  - (c) provide for modifications to the Companies Act and any other relevant Act, necessary to apply those enactments to the liquidation and administration of segregated cells and of segregated cell companies;
  - (d) generally give effect to this Part; and
  - (e) provide for the fees and penalties payable by segregated cell companies which may be in addition to, or in substitution for, the fees and penalties specified in respectively the Regulations and the Schedule.
- (3) Regulations made under this section may make different provision in relation to different persons, circumstances or cases.

## **PART VIII**

### **REGISTRATION OF CHARGES**

137. (1) In this Part:

“charge” means any form of security interest, whether fixed or floating, over property, wherever situated, other than an interest arising by operation of law;

“commencement date” means the 7<sup>th</sup> October 1996;

“liability” includes contingent and prospective liabilities;

“property” includes future property;

“relevant charge” means a charge created on or after the commencement date.

(2) A reference in this Part to the creation of a charge includes a reference to the acquisition of property, wherever situated, which is the subject of a charge and for this purpose, the date of creation of the charge is deemed to be the date of acquisition of the property.

138. (1) Subject to its articles, an international business company may, by an instrument in writing, create a charge over its property.

(2) A charge created by an international business company shall be governed:

(a) by such law as may be agreed between the company and the chargee; or

(b) if the company and the chargee do not agree on a governing law, by the law of Saint Vincent and the Grenadines.

(3) Where a company acquires property subject to a charge:

(a) subsection (1) does not require the acquisition of the property to be by instrument in writing, if the acquisition is not otherwise required to be by instrument in writing; and

- (b) unless the company and the chargee agree otherwise, the governing law of the charge is the law that governs the charge immediately before the acquisition by the company of the property subject to the charge.

139. (1) An international business company must keep a register of all relevant charges created by the company showing:

- (a) if the charge is a charge created by the company, the date of its creation or, if the charge is a charge existing on property acquired by the company, the date on which the property was acquired;
- (b) a short description of the liability secured by the charge;
- (c) a short description of the property charged;
- (d) the name and address of the trustee for debenture holders or, if there is no such trustee, the name and address of the chargee;
- (e) unless the charge is a security to bearer, the name and address of the holder of the charge; and
- (f) details of any prohibition or restriction (if any) contained in the instrument creating the charge on the power of the company to create any future charge ranking in priority to or equally with the charge.

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

(3) A copy of the register of charges must be kept at the registered office of the company or at the office of its registered agent.

(4) An international business company that contravenes this section commits an offence and is liable as specified in the Schedule.

140. (1) Sections 141 to 146 apply to a company that makes an election under subsection (2).

(2) A company may elect to be subject to the provisions of sections 141 to 145:

- (a) by making an election in its articles of incorporation; or
- (b) at any time after its incorporation by filing with the Registrar a notice of election in the prescribed form.

(3) A notice of election filed under paragraph (2)(b) takes effect upon its registration by the Registrar.

(4) A company may revoke an election made under this section if:

- (a) no charge has been registered in respect of the company under section 141; or
- (b) all charges registered against the company have ceased to affect the property of the company and, in respect of each charge registered, the appropriate notice has been registered under section 143.

- (5) A notice of revocation must be filed with the Registrar in the prescribed form.
- (6) Where a company revokes an election made under this section:
  - (a) it ceases to be subject to sections 141 to 145 from the registration of the notice of revocation by the Registrar;

but—

- (b) sections 144 and 146 apply in respect of all charges created by the company in the period during which an election made under subsection (2) was in force.

141. (1) Where an international business company to which this section applies creates a relevant charge, an application to register the charge may be made by:

- (a) the company, or a person authorised to act on its behalf; or
- (b) the chargee, or a person authorised to act on his behalf.

(2) An application under subsection (1) is made by filing with the Registrar:

- (a) an application containing the information and in the form prescribed;
- (b) a certified copy of the charge; and
- (c) if the charge is in a language other than English, a certified translation of the charge.

(3) The Registrar must keep a register of registered charges containing such information as may be prescribed.

(4) If he is satisfied that the requirements of this Part as to registration have been complied with, upon receipt of an application under subsection (2), the Registrar:

- (a) must forthwith—
  - (i) register the charge in the register of registered charges kept by him for that company, and
  - (ii) issue a certificate of registration of the charge and send a copy of the charge to the company and to the chargee; and

- (b) must retain a copy of the charge.

(5) The Registrar must state in the register of registered charges and on the certificate of registration the date and time on which a charge was registered.

(6) A certificate issued under subsection (4) is conclusive proof that the requirements of this Part as to registration have been satisfied and that the charge referred to in the certificate was registered on the date and time stated in the certificate.

142. (1) Where there is a variation in the terms of a charge registered under section 141, application for the variation to be registered may be made by:

- (a) the company, or a person authorised to act on its behalf; or

(b) the chargee, or a person authorised to act on his behalf.

(2) An application under subsection (1) is made by filing with the Registrar:

(a) an application containing the information and in the form prescribed;

(b) a certified copy of the instrument varying the charge; and

(c) if the instrument varying the charge is in a language other than English, a certified translation of the instrument.

(3) Upon receipt of an application complying with subsection (2), the Registrar:

(a) must forthwith—

(i) register the variation of the charge, and

(ii) issue a certificate of variation and send a copy of the certificate to the company and to the chargee; and

(b) must retain a copy of the instrument varying the charge.

(4) The Registrar must state in the register of registered charges and on the certificate of variation the date and time on which a variation of charge was registered.

(5) A certificate issued under subsection (3) is conclusive proof that the variation referred to in the certificate was registered on the date and time stated in the certificate.

143. (1) Where a charge registered under section 141 ceases to affect the property of an international business company, the company must file with the Registrar a notice specifying the property that has ceased to be affected by the charge and containing the information and in the form prescribed.

(2) A notice filed under subsection (1) must be signed by or on behalf of the company and the chargee.

(3) If the Registrar is satisfied that a notice filed under subsection (1) is correctly completed and has been signed in accordance with subsection (2), the Registrar:

(a) must forthwith—

(i) register the notice, and

(ii) issue a certificate and send a copy of the certificate to the company and to the chargee; and

(b) must retain a copy of the notice.

(4) The Registrar must state in the register of registered charges and on the certificate issued under subsection (3) the date and time on which the notice filed under subsection (1) was registered.

(5) From the date and time stated in the certificate issued under subsection (3), the charge is deemed not to be registered in respect of the property specified in the notice filed under subsection (1).

144. (1) A relevant charge on property of a company that is registered in accordance with section 141 has priority over:

- (a) a relevant charge on property that is subsequently registered in accordance with section 141; and
- (b) a relevant charge on property that is not registered in accordance with section 141.

(2) Charges created on or after the commencement date which are not registered shall rank among themselves in the order in which they would have ranked had this section not come into force.

(3) Charges created prior to the commencement date shall continue to rank in the order in which they would have ranked had this section not come into force and, where they would have taken priority over a charge created on or after the commencement date, they shall continue to take such priority after the commencement date.

145. Notwithstanding section 144:

- (a) the order of priorities of charges is subject to—
  - (i) any consent (express or implied) of the holder of a charge that varies the priority of that charge in relation to one or more other charges that it would, but for the consent, have had priority over, or
  - (ii) any agreement between chargees that affects the priorities in relation to the charges held by the respective chargees; and
- (b) a registered floating charge is postponed to a subsequently registered fixed charge unless the floating charge contains a prohibition or restriction on the power of the company to create any future charge ranking in priority to or equally with the charge.

146. Notwithstanding any other law to the contrary, a person may only inspect the certified copy of a registered charge and a certified translation of that charge filed with the Registrar with the written authority of that company or its registered agent.

## **PART IX**

### **MERGER, CONSOLIDATION, SALE OF ASSETS, FORCED REDEMPTIONS, ARRANGEMENTS AND DISSENTERS**

147. In this Part:

“consolidation” means the uniting of two or more constituent companies into a new company;

“consolidated company” means the new company that results from the consolidation of 2 or more constituent companies;

“constituent company” means an existing company that is participating in a merger or consolidation with one or more other existing companies;

“merger” means the merging of 2 or more constituent companies into one of the constituent companies;

“parent company” means a company that owns at least 90% of the outstanding shares of each class and series of shares in another company;

“subsidiary company” means a company at least 90% of whose outstanding shares of each class and series of shares are owned by another company;

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

148. (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 section 7.

(3) The directors of each constituent company that proposes to participate in a merger or con-solidation must approve a written plan of merger or consolidation containing, as the case may be:

- (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 bylaws 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 bylaws so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the articles or bylaws, 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 or bylaws for an international business company,
  - (ii) the date on which the articles or bylaws of each constituent company were registered by the Registrar, and
  - (iii) the manner in which the merger or consolidation was authorised with respect to each constituent company;
- (e) the articles of merger or consolidation in prescribed form must be filed with the Registrar who, if he is satisfied that the relevant requirements of this Part have been complied with, must retain and register them in the Register;
- (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; and
- (g) a certificate 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.

149. (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 members 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 7.

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

- (a) the name of each constituent international business 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 member of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that member.

(5) Articles of merger 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 in prescribed form must be filed with the Registrar who, if he is satisfied that the relevant requirements of this Part have been complied with, 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.

150. (1) A merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on the date subsequent thereto, not exceeding 30 days, that 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 bylaws, 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 bylaws of the surviving company are deemed to be amended to the extent, if any, that changes in its articles and bylaws are contained in the articles of merger;
- (c) in the case of a consolidation, the articles and bylaws filed with the articles of consolidation of a company under this Act, are the articles and bylaws of the consolidated company;
- (d) property of every description, including *choses in action* and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and
- (e) the surviving company or the consolidated company is liable for all claims, debts, liabilities and obligations of each of the constituent companies.

(3) Where a merger or consolidation occurs:

- (a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any member, director, officer or agent thereof, is released or impaired by the merger or consolidation; and
- (b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any member, director, officer or agent thereof, are abated or discontinued by the merger or consolidation, but—
  - (i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, officer or agent thereof, as the case may be, or
  - (ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.

(4) The Registrar shall strike off the Register:

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

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

151. (1) One or more international business companies authorised to issue shares may merge or consolidate with one or more companies authorised to issue shares 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 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 file with 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 member of a 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 members 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 members, and

(iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated, or, if no certificate of merger or consolidation is issued by the appropriate authority of the foreign jurisdiction, then, such evidence of the merger or consolidation as the Registrar considers acceptable.

(3) The effect under this section of a merger or consolidation is the same as in the case of a merger or consolidation under section 148 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 148 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.

152. Any sale, transfer, lease, exchange or other disposition, other than a mortgage, charge or other encumbrance 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 resolution of the directors;
- (b) upon approval of the proposed sale, transfer, lease, exchange or other disposition, the directors must submit the proposal to the members for it to be authorised by a resolution of members;
- (c) if a meeting of members is to be held, notice of the meeting accompanied by an outline of the proposal, must be given to each member, whether or not he is entitled to vote on the sale, transfer, lease, exchange or other disposition; and
- (d) if it is proposed to obtain the written consent of members, an outline of the proposal must be given to each member, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.

153. (1) Subject to the articles or bylaws:

- (a) shareholders holding 90% of the votes of the outstanding shares entitled to vote; and
- (b) shareholders holding 90% 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 148 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 member whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.

154. (1) Where a compromise or arrangement is proposed between an international business company and its creditors of any class, or between the company and any of its members, the Court may, on the application of the company or of any creditor or member

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 members of the company or class of members, as the case may be.

(2) If a majority representing 75% in value of the creditors or class of creditors, or members 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 and the Court by order approves the compromise or arrangement, it shall be binding on all creditors or class of creditors or on the members 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 the order shall be annexed to copies of the articles of the company issued after the making of the order.

(4) In this section “arrangement” includes a reorganization 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.

155. (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 cumulatively amounting to more than 50% 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, or
  - (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 153.

(2) A shareholder who desires to exercise his entitlement under subsection (1) must give to the company written objection to the action:

- (a) before the meeting of members at which the action is submitted to a vote;  
or
- (b) at the meeting but before the vote;

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 members authorising the action is taken, or the date on which written consent of members 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 149 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 149.

(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 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 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 2 designated appraisers together shall designate a third appraiser;
  - (c) the 3 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 members authorising the action was taken or the date on which written consent of members without a meeting was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting shareholder for all purposes; and
  - (d) the company shall pay to the 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 X**

### **CONTINUATION**

156. (1) An entity incorporated as a company or registered as an external company under the Companies Act, or a company or comparable juridical entity incorporated under the laws of a jurisdiction outside the State may, if it complies with section 7, 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 be in prescribed form and contain—
    - (i) the name of the company and the name under which it is being continued,
    - (ii) the jurisdiction under which it is incorporated or registered,
    - (iii) the date on which it was incorporated or registered,
    - (iv) the information required to be included in the articles of incorporation under section 14, and

(v) the amendments to its articles and bylaws 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 bylaws 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 filed with the Registrar who, if he is satisfied that the relevant requirements of this section have been complied with, 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 may continue as an international business company even if the laws of the jurisdiction in which it is incorporated do not expressly permit its continuation or expressly prohibit it.

(3) Notwithstanding any provision of the Companies Act, a company incorporated or registered as an external company under that Act may by resolution of the directors, continue as a company under this Act.

157. (1) A company incorporated under the laws of a jurisdiction outside the State that is permitted under section 156 to continue as an international business company may, after complying with section 156(1)(a) and (b), file the following documents with the Registrar:

- (a) articles of continuation, accompanied by a copy of its articles and bylaws, 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, telefax, 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, if he is satisfied that the relevant requirements of this Part have been complied with:

- (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) filed, or purported to be filed, 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 filed with the Registrar, the articles of continuation are rescinded.

(7) A company entitled to file with the Registrar the documents referred to in subsection (1) may authorise the Registrar to accept as refiled the documents referred to in that subsection, before or after the documents previously filed referred to in subsection (1) have been rescinded.

158. A certificate of continuation issued by the Registrar under section 157 or under section 156 is *prima facie* evidence of compliance with all requirements of this Act in respect of continuation.

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

- (a) the company to which the certificate relates—
  - (i) is continued as 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 or registered under the Companies Act or the law that applied to it immediately prior to its continuation;
- (b) the articles and bylaws of the company, or their equivalent, as amended by the articles of continuation, are the articles and bylaws of the company;
- (c) property of every description, including *choses in action* and the business of the company, continue to be vested in the company; and
- (d) the company continues to be liable for all of its claims, debts, liabilities and obligations.

(2) Where a company is continued under this Act:

- (a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as an international business company under this Act; and
- (b) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as an international business company under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.

(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 are 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 of the company, any provisions of the articles and bylaws of the company do not in any respect accord with this Act:

- (a) the provisions of the articles and bylaws continue to govern the company until the provisions are amended to accord with this Act or for a period of

2 years immediately following the date of the issue of the certificate of continuation, whichever is the sooner;

(b) any provisions of the articles and bylaws 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 2 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 bylaws as may be necessary to accord with this Act within a period that is not later than 2 years immediately following the date of the issue of the certificate of continuation.

160. (1) Subject to its articles or bylaws, an international business company may, by a resolution of directors or of members, 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 proposing to leave the State must file a certificate of departure signed by the directors and containing the prescribed information for approval by the Registrar.

(3) A company that:

(a) has filed a certificate of departure under subsection (2); and

(b) has been continued under the law of a foreign jurisdiction, may apply to the Registrar for a certificate of discontinuance.

(4) An application under subsection (3) must be accompanied by evidence acceptable to the Registrar that the company has been continued under the laws of a foreign jurisdiction.

(5) If he is satisfied that:

(a) all fees payable under this Act have been paid;

(b) all returns and notices required to be filed under this Act have been filed; and

(c) the requirements of this section have been complied with;

the Registrar must issue a certificate of discontinuance in the prescribed form to the company and strike it off the Register.

(6) A certificate of discontinuance issued under subsection 5 is *prima facie* evidence that:

(a) all the requirements of this Act in respect of the continuation of a company under the laws of a foreign jurisdiction have been complied with; and

(b) the company was discontinued on the date specified in the certificate of discontinuance.

(7) The Registrar must publish a notice of the discontinuance and striking off in the Gazette.

(8) Subject to subsection (9), the company ceases to be an international business company domiciled in the State from the date of the certificate of discontinuance issued by the Registrar.

(9) 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.

(10) 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, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside the State; and
- (c) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside the State, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.

161. (1) An international business company may continue as a company incorporated under the Companies Act notwithstanding any contrary provisions of that Act.

(2) Upon the continuation of a company under the Companies Act, the Registrar shall strike the name of the company off the Register and, with effect from the date of the company's continuation it shall cease to be a company registered under this Act.

## **PART XI**

### **WINDING UP, DISSOLUTION AND STRIKING OFF**

#### **Division 1 -Winding up and Dissolution**

162. An international business company shall begin to wind up and dissolve by a resolution of directors upon:

- (a) the expiration of such time as may be prescribed by its articles or bylaws for its existence; or

(b) the happening of an event which has been specified in the articles as an event that shall terminate the existence of the company.

163. (1) An international business company other than a company that has previously issued shares may voluntarily begin to wind up, dissolve and appoint a liquidator, by a resolution of the directors.

(2) Subject to its articles or bylaws, an international business company that has previously issued shares may voluntarily begin to wind up and dissolve by a resolution of members.

164. Upon the commencement of a winding up and dissolution under section 162 or 163, the directors' powers are limited to:

(a) authorising a liquidator, by a resolution, to carry on the business of the company if the liquidator determines that to do so is necessary or would be in the best interests of the creditors or members of the company; and

(b) rescinding the articles of dissolution as permitted under section 168.

165. (1) If for any reason whatever there is no liquidator acting in the case of a winding up, the Court may, on the application of a member, creditor or other interested party appoint a liquidator or liquidators, and the Court may on due cause being shown remove any liquidator and appoint another liquidator to act in the matter of a winding up.

(2) A liquidator shall, upon his appointment in accordance with this Part and upon the commencement of a winding up and dissolution, proceed to:

(a) identify all assets of the company;

(b) identify all creditors of and claimants against the company;

(c) pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the company;

(d) distribute any surplus assets of the company to the members in accordance with the articles and bylaws;

(e) prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and

(f) send a copy of the statement of account to all members if so required by the plan of dissolution required by section 167.

(3) A transfer of all or substantially all of the assets of an international business company for the benefit of the creditors and members of the company is sufficient to satisfy the requirements of paragraphs (2)(c) and (d).

166. (1) In order to perform the duties imposed on him under section 165, a liquidator has all powers of the company that are not reserved to the members under this Act or in the articles or bylaws, including, but not limited to, the power to:

- (a) take custody of the assets of the company and, in connection therewith, to register any property of the company in the name of the liquidator or that of his nominee;
- (b) sell any assets of the company at public auction or by private sale without any notice;
- (c) collect the debts and assets due or belonging to the company;
- (d) borrow money from any person for any purpose that will facilitate the winding up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;
- (e) negotiate, compromise and settle any claim, debt, liability or obligation of the company;
- (f) prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;
- (g) retain lawyers, solicitors, accountants and other advisers and appoint agents;
- (h) carry on the business of the company, if the liquidator has received authorisation to do so in the plan of liquidation or by a resolution of directors permitted under section 164, as the liquidator may determine to be necessary or to be in the best interests of the creditors or members of the company;
- (i) execute any contract, agreement or other instrument in the name of the company or name of the liquidator; and
- (j) make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

(2) Notwithstanding paragraph (1)(h), a liquidator shall not, without the permission of the Court, carry on for a period in excess of 2 years the business of a company that is being wound up and dissolved under this Act.

167. (1) The directors of an international business company required under section 162 or proposing under section 163 to wind up and dissolve the company must approve a plan of dissolution containing:

- (a) a statement of the reasons for the winding up and dissolving;
- (b) a statement that the company is, and will continue to be, able to discharge or pay or provide for the payment of all claims, debts, liabilities and obligations in full;

- (c) a statement that the winding up will commence on the date when articles of dissolution are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution;
- (d) a statement of the estimated time required to wind up and dissolve the company;
- (e) a statement as to whether the liquidator is authorised to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company;
- (f) a statement of the name and address of each person to be appointed a liquidator and the remuneration proposed to be paid to each liquidator; and
- (g) a statement as to whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.

(2) If a winding up and dissolution is being effected in a case where section 163(2) is applicable:

- (a) the plan of dissolution must be authorised by a resolution of members, and the holders of the outstanding shares of a class or series of shares are entitled to vote on the plan of dissolution as a class or series only if the articles or bylaws so provide;
- (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of dissolution, must be given to each member, whether or not entitled to vote on the plan of dissolution; and
- (c) if it is proposed to obtain the written consent of members, a copy of the plan of dissolution must be given to each member, whether or not entitled to consent to the plan of dissolution.

(3) After approval of the plan of dissolution by the directors and, if required, by the members in accordance with subsection (2), articles of dissolution must be executed by the company and must contain:

- (a) the plan of dissolution; and
- (b) the manner in which the plan of dissolution was authorised.

(4) Articles of dissolution in prescribed form must be filed with the Registrar who, if he is satisfied that the relevant requirements of this Act have been complied with, must retain and register them in the Register and within 30 days immediately following the date on which the articles of dissolution are registered by the Registrar, the company must cause to be published, in the Gazette, a notice stating:

- (a) that the company is in dissolution;
- (b) the date of commencement of the dissolution; and
- (c) the names and addresses of the liquidators.

(5) A winding up and dissolution commences on the date the articles of dissolution are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution.

(6) A liquidator shall, upon completion of a winding up and dissolution, file with the Registrar a statement that the winding up and dissolution has been completed and, if he is satisfied that the requirements of this Act in respect of winding up and dissolution have been complied with, upon receiving the notice, the Registrar shall:

- (a) strike the company off the Register; and
- (b) issue a certificate of dissolution under his hand and seal certifying that the company has been dissolved.

(7) Where the Registrar issues a certificate of dissolution under his hand and seal certifying that the company has been dissolved:

- (a) the certificate is *prima facie* evidence of compliance with all requirements of this Act in respect of dissolution; and
- (b) the dissolution of the company is effective from the date of the issue of the certificate.

(8) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (6), the liquidator shall cause to be published in the Gazette, in a publication of general circulation in the State and in a publication of general circulation in the country or place where the company has its principal office, a notice that the company has been dissolved and has been struck off the Register.

(9) An international business company that contravenes subsection (4) commits an offence and is liable as specified in the Schedule.

168. (1) In the case of a winding up and dissolution permitted under section 163, an international business company may, prior to filing with the Registrar a notice specified in section 167(6), rescind the articles of dissolution by:

- (a) a resolution of directors in the case of a winding up and dissolution under section 163(1); or
- (b) a resolution of members in the case of a winding up and dissolution under section 163(2).

(2) A copy of a resolution referred to in subsection (1) must be filed with the Registrar who must retain and register it in the Register.

(3) Within 30 days immediately following the date on which the resolution referred to in subsection (1) has been filed with the Registrar, the company must cause a notice stating that the company has rescinded its intention to wind up and dissolve to be published in the Gazette, in a publication of general circulation in the State and in a publication of general circulation in the country or place where the company has its principal office.

169. (1) Where:

- (a) the directors or, as the case may be, members of an international business company that is required under section 162 or permitted under section 163 to wind up and dissolve, at the time of the passing of the resolution to wind up and dissolve the company, have reason to believe that the company will not be able to pay or provide for the payment of or discharge all claims, debts, liabilities and obligations of the company in full; or
- (b) the liquidator after his appointment has reason so to believe;

then, the directors, the members or the liquidator, as the case may be, shall immediately give notice of the fact to the Registrar.

(2) Where a notice has been given to the Registrar under subsection (1), all winding up and dissolution proceedings after the notice has been given shall be in accordance with the provisions of the Companies Act or any other relevant Act relating to winding up and dissolution and those provisions shall apply with appropriate modifications as the circumstances require to the winding up and dissolution of the company.

(3) A person who contravenes subsection (1) commits an offence and is liable as specified in the Schedule.

170. (1) An order for the liquidation and dissolution of an international business company may be made by the Court if:

- (a) the company carries on business in breach of section 7 of this Act;
- (b) the company carries on business without having a member;
- (c) the company has seriously or persistently failed to comply with this Act;

- (d) the company is unable to pay its debts; or
- (e) the Court considers that it would be just and equitable for the company to be liquidated and dissolved.

(2) An application to the Court for an order under subsection (1) may be made by the Registrar or, if the application is made under paragraph (1) (d) or (e), by any interested person.

(3) Where the Court makes an order under this section, the provisions of the Companies Act or any other relevant Act, as the case may be, shall apply as if the international business company was a company being liquidated and dissolved by the Court under the appropriate Act.

171. The provisions of the Companies Act relating to receivers and managers govern with appropriate changes as the circumstances require the appointment, duties, powers and liabilities of receivers and managers of the assets of any international business company.

### **Division 2 -Striking Off**

172. (1) If an international business company:
- (a) fails to file with the Registrar any, notice or document required to be filed under this Act;
  - (b) fails to pay any fee or penalty required to be paid under this Act or under any regulations made under this Act;
  - (c) carries on business in breach of section 7; or
  - (d) authorises in writing that its registered agent procures its striking off;

the Registrar may strike the company off the Register.

(2) Where the Registrar intends to strike an international business company off the Register under this section, he shall serve notice upon the company at its registered office of his intention and give the company a reasonable opportunity to show cause why it should not be struck off the Register.

(3) After the expiration of time mentioned in the notice the Registrar may, unless cause to the contrary has been shown by the company, strike the company off the Register whereupon it is dissolved, and the Registrar shall publish a notice of the striking off and dissolution of a company under this section in the Gazette.

(4) The striking of a company off the Register and its dissolution is effective from the date of its removal from the Register, notice of which shall be published in the Gazette.

173. (1) Any person who is aggrieved by the striking off of an international business company from the Register under section 172 may, within 90 days of the date of the notice published in the Gazette, appeal to a Judge in Chambers.

(2) Notice of an appeal to the Judge in Chambers under subsection (1) must be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(3) An appeal against the decision of the Registrar shall not operate as a suspension of that decision.

174. (1) Where the name of an international business company has been struck off the Register, the Registrar may, upon considering all the relevant facts and upon receipt of an application in the prescribed form and payment of the prescribed fee, and any outstanding fees, restore the international business company to the Register and issue a certificate of restoration in the prescribed form.

(2) The company or a creditor, member or liquidator of the company may, within 90 days, appeal to the Court from a refusal of the Registrar to restore the company to the Register and, if the Court is satisfied that it would be just for the company to be restored to the Register, the Court may direct the Registrar to do so upon such terms and conditions as it may consider appropriate.

(3) Notice of an appeal to the Court under subsection (2) must be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

175. (1) Where an international business company has been struck off the Register, neither the company nor any director, member, liquidator or receiver of the company, may:

- (a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;
- (b) defend any legal proceedings commenced after the date the company is struck off the Register, 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 an international business company has been struck off the Register, the company or a director, member, liquidator or receiver of the company, may:

- (a) make application 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 an international business company is struck off the Register does not pre-vent:

- (a) the company from incurring liabilities;
- (b) any creditor from making a claim against the company and pursuing the claim through to judgment or execution; or
- (c) the appointment by the Court of an official liquidator for the company under section 176.

176. The Court may appoint a person to be the official liquidator in respect of an international business company:

- (a) where that company has been struck off the Register; or
- (b) where the Court makes a cell liquidation order under section 129(4).

177. (1) The duties of an official liquidator appointed under section 176 are limited to:

- (a) identifying and taking possession of all assets of the company;
- (b) calling for claims by advertisement in the Gazette and in such other manner as he deems appropriate, requiring all claims to be submitted to him within a period of not less than 90 days immediately following the date of the advertisement; and
- (c) applying those assets that he recovers in the following order of priority—
  - (i) in satisfaction of all outstanding fees, licence fees and penalties due to the Registrar, and
  - (ii) in satisfaction *pari passu* of all other claims admitted by the official liquidator.

(2) In order to perform the duties with which he is charged under subsection (1), the official liquidator may exercise such powers as the Court considers reasonable to confer on him.

(3) The official liquidator may require such proof as he considers necessary to substantiate any claim submitted to him and he may admit, reject or settle claims on the basis of the evidence submitted to him.

(4) When the official liquidator has completed his duties, he shall file with the Registrar a written report of his conduct of the liquidation proceedings.

(5) The official liquidator is entitled to such remuneration out of the assets of the company for his services as the Court approves.

(6) No liability attaches to an official liquidator:

- (a) to account to creditors of the company who have not submitted claims within the time allowed by him; or
- (b) for any failure to locate any assets of the company after having used best endeavours to do so.

### **Division 3 - Property of Dissolved Company**

178. (1) Subject to section 175, any property of an international business company that has not been disposed of at the date of the company's dissolution vests in the Authority.

(2) When an international business company is restored to the Register under section 174, any property (other than money) that was vested in the Authority under subsection (1) on the dissolution of the company and that has not been disposed of must be returned to the company upon its restoration to the Register.

179. (1) In this section, “onerous property” means:

(a) an unprofitable contract; or

(b) property of the company that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act.

(2) Subject to subsection (3), the Authority may, by notice in writing published in the Gazette, disclaim its title to onerous property which vests under section 178.

(3) A statement in a notice disclaiming property under this section that the vesting of the property in the Authority first came to the notice of the Authority on a specified date shall, in the absence of proof to the contrary, be evidence of the fact stated.

(4) Unless the Court, on the application of the Authority, orders otherwise, the Authority is not entitled to disclaim property unless the property is disclaimed:

(a) within 12 months of the date upon which the vesting of the property under section 178 came to the notice of the Authority; or

(b) if any person interested in the property gives notice in writing to the Authority requiring the Authority to decide whether it will or will not disclaim the property, within 3 months of the date upon which he received the notice;

whichever occurs first.

(5) Property disclaimed by the Authority under this section is deemed not to have vested in the Authority under section 178.

(6) A disclaimer under this section:

(a) operates so as to determine, with effect from immediately prior to the dissolution of the company, the rights, interests and liabilities of the company in or in respect of the property disclaimed; and

(b) does not, except so far as is necessary to release the company from liability, affect the rights or liabilities of any other person.

(7) A person suffering loss or damage as a result of a disclaimer under this section:

(a) shall be treated as a creditor of the company for the amount of the loss or damage, taking into account the effect of any order made by the Court under subsection (8); and

(b) may apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

(8) The Court may, on an application made under paragraph (7)(b), make an order under that paragraph if it is satisfied that it is just for the disclaimed property to be delivered to or vested in the applicant.

## **PART XII**

## **EXEMPTIONS FROM TAXES AND DUTIES**

180. (1) Notwithstanding any provisions of the Income Tax Act an international business company which complies with the provisions of section 7(1) 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.

(2) Notwithstanding subsection (1) an international business company which complies with the provisions of section 7(1) may irrevocably elect in its articles filed with the Registrar upon its incorporation or continuation, to be liable to income tax at a rate of 1% on its annual gains and profits.

(3) An international business company which exercises the election under subsection (2) shall also be subject to sections 149 and 154 of the Companies Act and to the Income Tax Act.

(4) For purposes of this section, no company shall be considered as making its goods or services available to residents in its ordinary course of business solely because it engages in one or more of the following activities:

- (a) maintaining bank accounts in the State;
- (b) holding meetings of directors or shareholders in the State;
- (c) maintaining corporate or financial records in the State;
- (d) maintaining an administrative or managerial office in the State with respect to assets or activities outside the State;
- (e) maintaining a registered agent in the State;
- (f) investing in entities incorporated, established or 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.

(5) No estate, inheritance, succession or gift tax 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 an international business company.

(6) Notwithstanding any provisions of the Stamp Act (Cap 318) to the contrary, the following are exempt from the payment of stamp duty in respect of an international business company that complies with the provisions of section 7(1):

- (a) any instrument relating to a transfer of property other than real property situate in the State to or by an international business company;
- (b) any instrument relating to transactions in respect of the shares, debt obligations or other securities of a company incorporated under this Act;
- (c) any instrument relating in any way to the assets or activities of an international business company; and

(d) any instrument relating to the legalisation of any document pertaining to an international business company.

(7) Notwithstanding any contrary provisions of the Customs and Duties Act, an international business company shall be exempt from import duties pertaining to the importation into the State of any office furniture or equipment necessary for conducting its business.

(8) An international business company shall, upon its incorporation or continuation, at no additional costs to the company, receive from the Registrar, the following certificates as appropriate:

(a) in the case of every international business company, a certificate confirming that the company shall be totally exempt from the import duties specified in this section;

(b) in the case of an international business company that has not made the election under subsection (2), a certificate confirming that the company shall be totally exempt from all taxes specified in this section.

(9) Nothing in this section shall exempt an international business company from fees or increases in fees charged under or pursuant to this Act or from any taxes arising by virtue of the company owning real property situate in the State.

181. Any dividend or distribution by an international business company to persons who are not residents shall be exempt from any tax or withholding provisions otherwise applicable under the laws of the State.

### **PART XIII**

#### **ADMINISTRATION AND MISCELLANEOUS**

182. (1) The Authority:

(a) shall appoint a suitably experienced person to be Registrar of International Business Companies; and

(b) may appoint one or more Deputy Registrars of International Business Companies and one or more Assistant Registrars of International Business Companies;

on such terms and conditions as it considers appropriate.

(2) The Registrar and any Deputy and Assistant Registrars are employees of the Authority.

(3) Subject to the control of the Authority, the Registrar is responsible for the administration of this Act.

(4) Subject to the control of the Registrar, a Deputy Registrar and an Assistant Registrar have and may exercise the powers, duties and functions of the Registrar and the fact that a Deputy or Assistant Registrar exercises those powers, duties and functions is conclusive evidence of his authority to do so.

183. (1) The Registrar shall maintain:
- (a) a Register of Companies in respect of companies incorporated or continued under this Act;
  - (b) a Register of Charges in respect of charges registered under Part VIII.

(2) The Registers maintained by the Registrar and the information contained in any document filed may be kept in such manner as the Registrar considers fit including, either wholly or partly, by means of a device or facility:

- (a) that records or stores information magnetically, electronically or by other means; and
- (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(3) The Regulations may provide for the keeping of Registers by the Registrar in electronic form, the filing of documents in both paper and electronic form, including the approval by the Registrar of systems and the inspection of Registers kept in electronic form.

(4) The Registrar:

- (a) shall retain every qualifying document filed; and
- (b) shall not retain any document filed that is not a qualifying document.

(5) For the purposes of subsection (4), a document is a qualifying document if:

- (a) the Act or the Regulations, or another enactment, require or expressly permit the document to be filed; and
- (b) the document complies with the requirements of, and is filed in accordance with, the Act, the Regulations or the other enactment that requires or permits the document to be filed.

184. (1) An international business company:

- (a) may elect to register details of its directors; and
- (b) may elect to register details of its members;

with the Registrar.

(2) Notice of an election under subsection (1) must be filed with the Registrar in the prescribed form and shall be accompanied by a notice:

- (a) in the case of an election made under paragraph (1)(a), setting out a list of its current directors; or
- (b) in the case of an election made under paragraph (1)(b), setting out a list of its current members;

in each case containing the information in the form prescribed.

(3) Upon receipt of a notice of an election made under subsection (1), the Registrar must enter into a Register of Members and a Register of Directors:

- (a) the election made by the company; and
- (b) the details of the directors or members of the company, as appropriate, as set out in the list accompanying the notice.

(4) The election takes effect from the date that the notice is filed with the Registrar.

(5) A company that has made an election under subsection (1) must, within 14 days of:

- (a) any change in its directors or its members, as the case may be; or
- (b) any change in the information last provided to the Registrar in respect of any director or members, as the case may be;

file a notice of a change of registered particulars with the Registrar in the prescribed form, and the Registrar shall enter the changed particulars into the Register of Directors and Register of Members.

(6) A company may, by filing a notice with the Registrar in the prescribed form, cancel an election made under subsection (1).

(7) Upon receipt of a notice filed under subsection (6), the Registrar must enter the cancellation of the election in the Register of Members and the Register of Directors.

(8) The obligation of a company to file a notice of change of registered particulars ceases in respect of changes that occur after the date that the cancellation of the company's election is entered in the Register of Members and the Register of Directors pursuant to subsection (7).

(9) An international business company may not:

- (a) assert against any other persons that a person entered in the Register of Directors and the Register of Members under a notice it has filed under subsection (2) or (5) is not or, at the relevant time, was not a director of or member in the company, as the case may be; or
- (b) rely on a change of particulars that, in breach of this section, it failed to file notice of with the Registrar.

(10) An international business company that contravenes subsection (5) commits an offence.

185. (1) Unless otherwise provided in this Act, 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 or

continued under this Act, or a copy or an extract 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 or continued 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.

186. (1) The Registrar may approve the content and form of certificates or other documents required or permitted to be issued by him under this Act.

(2) The Registrar shall publish all certificates or other documents approved by him under subsection (1) in the Gazette.

(3) The Registrar may not approve forms of certificates or other documents under this section if forms of such documents have been prescribed in Regulations made under section 198.

187. (1) The Registrar shall, upon request by any person, issue a certificate of good standing under his hand and seal certifying that an international business company is of good standing if he is satisfied that:

- (a) the company is on the Register; and
- (b) the company—
  - (i) has paid all fees and penalties due and payable under this Act, and
  - (ii) is not otherwise in breach of this Act.

(2) The certificate of good standing issued under subsection (1) shall contain a statement as to whether:

- (a) the company has filed with the Registrar articles of merger or consolidation that have not yet become effective;
- (b) the company has filed with the Registrar articles of arrangement that have not yet become effective;
- (c) the company is in the process of voluntary liquidation; or
- (d) any proceedings to strike the name of the company off the Register have been instituted.

188. (1) A person who makes or assists in making a report, return, notice or other document:

- (a) that is required by this Act or the Regulations to be filed with the Registrar or to be sent to any other person; and
- (b) that—

- (i) contains an untrue statement of a material fact, or
- (ii) omits to state a material fact required in the report, return, notice or other document, or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made;

commits an offence.

(2) A person does not commit an offence under subsection (1) if the making of the untrue statement or the omission of the material fact was unknown to him and with the exercise of reasonable diligence could not have been known to him.

189. (1) A person who commits an offence set out in Column 1 of the Schedule is liable on summary conviction to the penalty set out in Column 3 thereof and where specified, to the daily default fine (if any) set out opposite the offence in Column 4 of the Schedule for each day during which the default continues.

(2) Where an offence set out in Column 1 of the Schedule is committed by a body corporate, a director or officer who authorised, permitted or acquiesced in the commission of the offence also commits an offence punishable in accordance with subsection (1).

(3) The Proceeds of Crime and Money Laundering (Prevention) Act applies to an offence that is set out in Column 1 of the Schedule.

190. Every person who is guilty of an offence under this Act or the Regulations is, if no punishment is provided for that offence elsewhere in this Act, liable to an administrative fine payable to the Accountant General which shall be paid into the Consolidated Fund.

191. When a person is convicted of an offence under this Act or the Regulations, the Court may in addition to any punishment it may impose, order that person to comply with the provision of this Act or the Regulations for the contravention of which he has been convicted.

192. Any fee or penalty payable under this Act or the Regulations that remains unpaid for 30 days immediately following the date on which demand for payment is made by the Registrar is recoverable at the instance of the Attorney General before a Court in civil proceedings as a debt due to the Authority notwithstanding the amount sought to be recovered.

193. An international business company continues to be liable for all fees, licence fees and penalties payable under this Act notwithstanding that the company has been struck off the Register and all those fees, licence fees and penalties have priority to all other claims against the assets of the company.

194. (1) All fees and penalties to be paid under this Act or the Regulations shall be paid into the Consolidated Fund.

(2) Unless this Act or the Regulations provide otherwise, the registered agent is the only person authorised to pay a fee to the Registrar under this section, and the Registrar shall not accept a fee paid by any other person.

195. (1) The Registrar may refuse to take any action required of him under this Act for which a fee is prescribed until all fees have been paid.

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

196. (1) In this Act:

“business of a professional nature” includes the relationship between a professional person and his principal, by whatever term the latter may be described, and also the relationship between a person conducting banking business and its customer;

“confidential information” includes information concerning any property, or relating to any business of a professional nature or commercial transaction which has taken place, or which any party concerned contemplates may take place, which the recipient thereof is not, otherwise than in the normal course of business or professional practice authorised by the principal to divulge;

“entitled to possession of confidential information” means so entitled, in the normal course of business or professional practice or by the specific consent of the party who but for the giving of such consent, would be entitled to require the preservation of the confidentiality of that information;

“normal course of business or professional practice” means the ordinary and necessary routine involved in the efficient carrying out of the instructions of a principal including compliance with such laws and legal processes as arises out of or in connection therewith and the routine exchange of information between professional persons;

“principal” means a person who has imparted to another person confidential information in the course of his business or professional relationship with that other person, and includes a customer or a bank in relation to his business transactions with that bank;

“professional person” includes a registered agent, an accountant, a lawyer (or other legal practitioner by whatever name called), a broker or other kind of commercial agent or adviser, a bank or other financial institution, any public officer or other government official or employee, and such other persons as may be prescribed as being professional persons for the purposes of this Act and whether or not any such person was licensed or authorised, under any law for the time being in force, to act in that capacity; and also includes any person subordinate to or in the employment or under the control of any such person for the purpose of his professional activities;

“property” includes every present, contingent or future interest or claim, direct or indirect, legal or equitable, positive or negative, in any money or

money's worth, real or personal, moveable or immovable, rights, charges and securities thereover and all documents and things evidencing or relating thereto.

(2) Subject to the provisions of subsection (3) and the Privacy Act, this Act shall apply to all confidential information with respect to business of a professional nature pertaining to an international business company or an international trust or unit trust to which section 36 applies, where such business arises in or is brought into the State, and to all persons who come into possession of such information at anytime thereafter, whether within or without the State.

(3) This Act shall not apply to confidential information given to or received by:

- (a) any professional person acting in the normal course of business or professional practice or with the consent, express or implied, of the relevant principal;
- (b) any person in the course of the taking or giving of evidence, whether within or without the State, for the purpose of or in the course of the trial or any person in respect of an alleged criminal offence triable within the State or which would have been triable if it had been committed within the State;
- (c) a police officer in the execution of his duties whether within or without the State, investigating any criminal offence alleged to have been committed within the State or which, if it had been committed within the State, would have been a criminal offence under the law of the State, or where acting in response to a request for mutual legal assistance on the direction of the Attorney General;
- (d) the Authority or the Financial Intelligence Unit, including circumstances where acting on behalf of a counterpart institution in a foreign jurisdiction investigating an actual or suspected criminal offence;
- (e) any person exercising powers of examination or investigation under any of the provisions of this Act; or
- (f) a public authority to which the Freedom of Information Act applies.

(4) Subject to the provisions of subsection (3) any person who:

- (a) being in possession of confidential information, however obtained-
  - (i) divulges it to any person not entitled to possession thereof, or
  - (ii) attempts, offers or threatens to divulge it to any person not entitled to possession thereof;
- (b) obtains or attempts to obtain confidential information to which he is not entitled, shall be guilty of an offence:

(5) It shall be a defence for a person charged with an offence under subsection (6) if he proves to the satisfaction of the court that, at the time when he divulged, attempted,

offered or threatened to divulge or obtained or attempted to obtain (as the case may be), the confidential information in question, he did not know and did not have reasonable grounds to suspect that so doing would be a breach of an express or implied duty to preserve confidentiality or would be contrary to the provisions of this Act.

(6) Notwithstanding any provision to the contrary in any other enactment, any person who, being in possession of information which he knows or has reason to suppose is confidential information, makes use thereof, without the consent of the principal, for the benefit of himself or any other person, shall be guilty of an offence.

197. (1) For the purposes of determining matters relating to title and jurisdiction but not for the purposes of taxation, the *situs* of the ownership of shares, debt obligations or other securities of an inter-national business company is in the State.

(2) A Judge of the Court may exercise in Chambers any jurisdiction that is vested in the Court by this Act and in the exercise of that jurisdiction, the Judge may award such costs as he thinks fit.

198. The Minister may make Regulations as are required for the better administration of this Act and in particular for:

- (a) prescribing any matter required or authorised by this Act to be prescribed;
- (b) requiring the payment of a fee in respect of the filing, examination or copy of any documents or in respect of any action that the Registrar is required or authorised to take under this Act and prescribing the amount thereof;
- (c) prescribing the contents of notices, or other documents required to be filed with the Registrar or to be taken by him.

199. A prosecution for an offence under this Act or the Regulations shall be instituted within 2 years from the time when the subject-matter of the prosecution arose.

200. (1) All international business companies incorporated or continued under the International Business Companies Act 1996 and in good standing immediately prior to the coming into force of this Act shall without any further action on the part of such company, be deemed to be incorporated or continued under this Act.

(2) International business companies not in good standing immediately prior to the coming into force of this Act shall, in order to be restored to good standing, file articles of continuation with the Registrar and pay all arrears of fees and penalties then due thereto.

## SCHEDULE

(section 189)

### OFFENCES AND PENALTIES\

<b>COLUMN 1</b>  Section of Act creating Offence	<b>COLUMN 2</b>  General nature of offence	<b>COLUMN 3</b>  Penalty (US\$)	<b>COLUMN 4</b>  Daily Fine (US\$)
7 (3)	International business company failing to comply with requirements	10,000	
10 (5)	International business using name that has been changed by the Registrar	10,000	
16 (4)	International business company failing to file articles of amendment with Registrar	n/a	10
29(4)	Unauthorized issue of, or conversion to or exchange for bearer share by an international business company	10,000	
29 (4)	Unauthorized issue of, or conversion to or exchange for bearer share by segregated cell company	20,000	
30 (10)	Failure to notify Registrar of companies, failing or refusing to comply with immobilisation provisions	10,000	
47 (2)	International business company making an unlawful distribution	50,000	
68 (7)	Person acting as registered agent without being holder of a relevant licence	20,000	
69 (4)	Registered agent failing to notify Registrar on ceasing to act as registered agent to a company	10,000	



## **OBJECTS AND REASONS**

The object of this Bill is to consolidate and amend the International Business Companies Act to provide ease of reference and more comprehensive provisions to facilitate the growth of the industry.

Dr. the Hon. Ralph Gonsalves  
Prime Minister, Minister of  
Finance, Economic Planning,  
National Security, Legal  
Affairs and Grenadines Affairs