

**AN ACT TO CONSOLIDATE AND REVISE THE LAW RESPECTING THE  
INCORPORATION, MANAGEMENT AND CONTROL OF COMPANIES.**

**Act No.18 of 1992**

**(as amended by Act No.24 of 1993, Act No.28 of 1994**

**and Act No.30 of 1995)**

**(Date of commencement-1st August, 1992)**

**Enacted by the Parliament of The Bahamas.**

**PART I**

**PRELIMINARY**

**Short title**

1. (1) This Act may be cited as the Companies Act, 1992.

**and commencement.**

(2) This Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

**Interpretation.**

2. In this Act -

"affiliate" or "affiliated company" includes, in relation to another company, a company that directly or indirectly controls, is controlled by, or is under common control with, such other company; and hence is considered to be a member of the same group of companies;

"approved form" means such forms as the Minister approves for the purposes of this Act;

"articles" means the articles of association of a company which prescribe the regulations of that company;

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

"Bahamian" means -

(a) a citizen of The Bahamas' or

(b) as regards a company, a company registered under this Act, in which not less than sixty per cent of its shares are beneficially owned by Bahamians;

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"capital", in relation to a company, means the sum of the aggregate par value of all the outstanding shares with par value of a company plus -

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

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

"company" unless the context otherwise requires, means a company that is

incorporated or registered under this Act;

"court" means the Supreme Court;

"debenture" includes debenture stock, bonds and any other securities of a company whether consisting of a charge on the assets of the company or not;

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"existing company" means a company that was incorporated or registered under an Act in force in The Bahamas prior to the commencement of this Act but does not include a company incorporated under the International Business Company Act, 1989;

**2 of 1990.**

**Ch.279.**

"former Act" means the Companies Act which was repealed by this Act;

"individual" means a natural person who has attained the age of majority in accordance with the relevant law;

"member" means a member of a non-profit company or a member of a company limited by guarantee or a shareholder of a company limited by shares or by shares and guarantee;

"memorandum" means the memorandum of association of a company;

"non-profit company" means a company which satisfies the requirements of section 170;

"officer" in relation to a company, means -

- (a) the chairman or deputy chairman of the board of directors;
- (b) the president, vice-president, managing director, general manager, comptroller, secretary or treasurer; and
- (c) any other individual who performs for the body corporate functions similar to those normally performed by the holder of any office specified in paragraph (a) or (b);

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"parent company" means a company that owns at least fifty per cent of the outstanding voting shares of each class or series of shares in another company:

Provided that for the purposes of section 163 it means a company that owns more than ninety percent of such shares as aforesaid;

"private company" means a company which is not a public company;

"prospectus" means prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

"public company" means a company whose shares or any class of whose shares are intended for distribution to the public;

"Registrar" means the Registrar of Companies;

"Registrar of Companies" means the Registrar General;

"resolution of directors" means -

- (a) a resolution approved by a duly constituted meeting of

directors or a committee of directors of a company by affirmative vote of a simple majority, or such larger majority as may be specified in the articles, of the directors present at the meeting who voted and did not abstain; or

- (b) a resolution consented to in writing by a simple majority, or such larger majority as may be specified in the articles, of all the directors or all of 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 a majority by the number of votes he casts;

"resolution of members" or "resolution of the company" means -

- (a) a resolution approved at a duly constituted meeting of a company by the affirmative vote of -
  - (i) a simple majority, or such larger majority as may be specified in the articles, of the votes of the members voting at the meeting either in person or by proxy, or
  - (ii) a simple majority, or such larger majority as may be specified in the articles, of the votes of the holders of each class or series of shares voting at the meeting either in person or by proxy;
- (b) a resolution consented to in writing and supported by -
  - (i) a simple majority, or such larger majority as may be specified in the articles, of the votes of the members, or
  - (ii) a simple majority, or such larger majority as may be specified in the articles, of the votes of the holders of each class or series of shares;

"share" includes stock;

"shareholder" means a person who has acquired shares in a company incorporated under this Act that is limited by shares;

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"subsidiary company" means a company at least fifty per cent of whose outstanding voting shares of each class or series of shares are owned by another company:

Provided that for the purposes of section 163 it means a company more than ninety per cent of whose shares as aforesaid are owned by another company.

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"surplus" in relation to a company, means the excess, if any, at the time of the determination of total assets of the company over the sum of its total

liabilities as shown in the books of account plus its issued and outstanding share capital.

**PART II**  
**CONSTITUTION AND INCORPORATION OF COMPANIES**  
**LEGAL FORMALITIES**

**Method of  
incorporation.  
28 of 1994.**

3. (1) Subject to subsection (2), two or more persons may incorporate a company with or without limited liability by signing a memorandum and submitting it to the Registrar save that in the case of a non-profit company such signing of the memorandum shall be by two or more individuals.

(2) No person who -

- (a) is under the age of majority;
- (b) has been found to be of unsound mind by a tribunal in The Bahamas or elsewhere; or
- (c) is an undischarged bankrupt,

may join in the incorporation of a company under this Act.

(3) If the memorandum submitted to the Registrar is accompanied by a statutory declaration by a counsel and attorney that to the best of his knowledge and belief no signatory to the memorandum is an individual described in subsection (2), the declaration is, for the purposes of this Act, conclusive of the facts declared therein.

**Mode of  
limiting  
liability of  
members.**

4. The liability of the members of a company incorporated under this Act may, according to the memorandum, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.

**Memorandum  
of company  
with limited  
liability.**

5. Subject to section 13, where a company is incorporated on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum shall state -

- (a) the name of the proposed company with the addition of the word "Limited" or "Ltd." as the last word in such name;
- (b) the location in The Bahamas of the registered office;
- (c) that the liability of the members is limited;
- (d) the amount of capital with which the company proposes to be registered and subject to section 35(3), its division into a stated number of shares of a certain fixed amount;
- (e) that no subscriber may take less than one share;
- (f) that each subscriber to the memorandum shall write opposite his name the number of shares he takes; and

- (g) the number of shareholders, the amount of share capital as indicated by the number of shares and (where applicable) the value of each share with which the company proposes to be registered.

**Memorandum  
of company  
with unlimited  
liability.**

6. Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited liability company, the memorandum shall state -

- (a) the name of the proposed company;
- (b) the location in The Bahamas of the registered office;
- (c) where the company has a share capital -
  - (i) that the liability of the members is unlimited, and
  - (ii) that each subscriber is obliged to write opposite his name the number of shares he takes; and
- (d) the number of members and the amount of share capital (if any) with which the company proposes to be registered.

**Memorandum  
of company  
limited by  
guarantee.**

7. Subject to section 13, where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of a winding up, hereinafter referred to as a company limited by guarantee, the memorandum shall state -

- (a) the name of the proposed company with the addition of the word "Limited" or "Ltd." as the last word in such name;
- (b) the location in The Bahamas of the registered office;
- (c) that each member undertakes to contribute to the assets of the company, in the event of a winding up during the time that he is a member, or within one year afterwards, for 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 winding up the company and for the adjustment of the rights of the contributories amongst themselves, such amounts as may be required, not exceeding an amount to be specified therein; and
- (d) the number of members with which the company proposes to be registered.

**Company  
limited both  
by shares and  
by guarantee.**

8. (1) Without affecting anything contained in this Act, a company may be limited both by shares and by guarantee and any reference in this Act to a company limited by shares or to a company limited by guarantee shall so far as appropriate include a company limited both by shares and by guarantee.

- (2) The memorandum of a company limited both by shares and by

guarantee shall state the number of shares and the value of each share with which the company proposes to be registered.

**Signature**

9. (1) The memorandum shall be signed by each subscriber in the

**etc. of**

presence of at least one witness who shall attest his signature.

**memorandum.**

(2) The memorandum shall, when registered, bind the company and the shareholders to the same extent as if -

(a) each shareholder had subscribed his name and affixed his seal thereto; and

(b) there were contained in the memorandum on the part of himself, his heirs, executors and administrators, a covenant to observe all the conditions of such memorandum, subject to this Act.

(3) Where a company referred to in section 5, 6, 7 or 8 increases the number of its shareholders or members or the amount of its share capital beyond the registered number or amount as contained in the memorandum, notification of the increase shall be given to the Registrar within fourteen days of the resolution authorizing the increase and the Registrar shall thereupon record the increase.

**Articles of**

10. (1) Subject to subsection (2), articles signed by the subscribers to the

**association.**

memorandum shall be filed with the Registrar in respect of each company not later than six months after the issue of the certificate of incorporation of the company.

(2) A company limited by shares may, instead of filing articles, notify the Registrar in writing at the time of submission of its memorandum that it adopts the First Schedule either with or without modification.

**First Schedule.**

(3) Modifications to the First Schedule shall be filed with the Registrar.

(4) A company limited by shares which does not file articles within six months from the date of filing its memorandum shall be deemed to have adopted the First Schedule.

**Signature**

11. The articles, when registered, bind the company and the members

**and effect**

thereof to the same extent as if each member had subscribed his name and affixed his

**of articles.**

seal thereto, and there were contained in such articles a covenant, on the part of himself, his heirs, executors and administrators to conform to all the regulations contained in such articles subject to this Act; and all monies payable by any member to the company, in pursuance of the conditions or regulations, shall be deemed to be a debt due from such member of the company.

**Restriction**

12. (1) No company shall be incorporated under this Act under a name

**on name of**

that -

**company.**

(a) is identical with that under which an existing company is already incorporated under the former Act or any other Act

concerned with the incorporation of companies or which so nearly resembles such other name as to be calculated to deceive or confuse except where the company in existence is in the course of being dissolved or signifies its consent in such manner as the Registrar approves;

(b) contains, without express prior permission of the Registrar which permission may be withheld without assigning a reason, the words "Assurance", "Bank", "Building Society", "Chamber of Commerce", "Chartered", "Cooperative", "Imperial", "Insurance", "Municipal", "Royal", or a word conveying a similar meaning, or any other word that, in the opinion of the Registrar, suggests or is calculated to suggest -

(i) the patronage of the Government of The Bahamas or a Minister of the Government of The Bahamas,

(ii) a connection with any Ministry or Department of the Government of The Bahamas,

(iii) a connection with any local authority or a statutory board; or

(c) is indecent, offensive or, in the opinion of the Registrar, is otherwise objectionable.

(2) Where a company is incorporated under a name that -

(a) is identical with a name under which a company in existence is already incorporated; or

(b) so nearly resembles the name of another company in existence which is already incorporated, as to be calculated to deceive or confuse,

the Register may, whether or not the consent of the company in existence has been obtained pursuant to paragraph (a) of subsection (1), give notice to the last registered company to change its name and if it fails to do so within sixty days from the date of the notice, the Registrar shall direct the company to change its name to such name as the Registrar deems appropriate and the Registrar shall publish a notice of the change in the Gazette.

**28 of 1994.** (3) A company may amend its memorandum to change its name.

**28 of 1994.** (4) Subject to subsections (1) and (2), where a company changes its name the Registrar shall enter the new name in the register of companies in place of the former name and shall issue a new certificate of incorporation indicating the change of name.

**28 of 1994.** (5) A change of name shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company and all legal proceedings that have been commenced by or against the company in its former name may

be continued in its new name.

**Requirements  
as to name.**

13. Subject to section 14, the word "Limited", or the abbreviation "Ltd." must be part of the name of every company incorporated under this Act with limited liability, but a company may use and may be legally designated by either the full or the abbreviated form.

**Exclusion of  
"Limited"  
from name of  
companies.**

14. (1) Where the Minister is satisfied that an association is about to be incorporated as a limited liability company for the purpose of promoting objects that are religious, charitable, educational, scientific, historical, fraternal, literary, sporting, artistic or athletic, and that the profits (if any) and other income are to be applied to the promotion of those objects, or that there is a prohibition of any dividend or refund of contribution to its members, the Minister may by licence authorize that the association be incorporated without the word "Limited" in its name.

**28 of 1994.**

(1a) Where it is proved to the satisfaction of the Minister -

(a) that the objects of a company incorporated as a limited liability company are restricted to those specified in subsection (1) and to objects incidental or conducive thereto; and

(b) that, by its constitution, the company is required to apply its profits, if any, or other income in promoting its objects, and is prohibited from paying any dividend to its members,

the Minister may by licence authorize the company to make, by resolution, a change in its name, including or omitting the word "limited" and subsection (1b) shall apply to a change of name under this subsection.

(1b) Where a company changes its name under subsection (1a) the company shall notify the Registrar of such change and the Registrar shall enter the new name in the register of companies in place of the former name, and shall issue a new certificate of incorporation indicating the change of name.

(2) A licence by the Minister under this section may be granted on such conditions and subject to such regulations as the Minister thinks fit, and those conditions and regulations shall be binding on the company, and shall, if the Minister so directs, be inserted in the memorandum and articles or in one of those documents.

(3) An association to which a licence is granted, on incorporation, is entitled to enjoy all the privileges of limited companies and be subject to all their obligations, except those of using the "Limited" as any part of its name and of publishing its name and of sending lists of members and directors and other officers to the Registrar.

(4) A licence under this section may at any time be revoked by the Minister, and upon revocation the Registrar shall enter the word "Limited" at the end of the name of the company as it appears in the register and the exemptions and privileges granted by this section shall cease to apply to the company, but before a licence is revoked by the



Minister, he shall inform the company of his intention and shall afford the company an opportunity of being heard in opposition to the intended revocation.

(5) This section applies to a non-profit company as incorporated in accordance with Part VI of this Act.

**Reserving  
name.**

15. (1) A person may apply in the approved form to the Registrar for the reservation of a name set out in the application as -

- (a) the name of an intended company; or
- (b) the name to which an existing company proposes to change its name.

(2) If the Registrar is satisfied as to the bona fides of the application and that the proposed name by which the intended company or existing company could be registered is not such as to contravene the provisions of this Act, he shall reserve the proposed name for a period of six weeks from the date of the lodging of the application.

(3) If at any time while the name is so reserved, application is made to the Registrar for an extension of that period and the Registrar is satisfied as to the bona fides of the application, he may grant an extension for a further period of six weeks.

(4) During the period for which a name is reserved, no company, other than the intended company or an existing company in respect of which the name is reserved, may be registered under this Act, whether originally or on change of name, under the reserved name or under any other name that, in the opinion of the Registrar, so closely resembles the reserved name as to be calculated to deceive or confuse.

(5) The reservation of a name under this section in respect of an intended company or an existing company does not in itself entitle the intended company or existing company to be registered by that name, either originally or on change of name.

**Incorporation**

**Certificate of  
incorporation  
and  
consequences  
thereof.**

16. (1) Upon receipt of a memorandum in conformity with the requirements of this Act, the Registrar shall issue a certificate of incorporation in the approved form; and such a certificate shall be conclusive proof of the incorporation of the company named in the certificate.

(2) From the date of incorporation mentioned in the certificate, the subscribers to the memorandum together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum capable of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of a company in the event of its being wound up.

(3) A copy of a memorandum or articles filed and registered in accordance with this Act or any extract therefrom certified under the hand and seal of the

Registrar as a true copy shall be received in evidence in any court in The Bahamas without further proof.

- Registered office.** 17. (1) A company incorporated under this Act shall at all times maintain a registered office in The Bahamas.
- 28 of 1994.** (2) The address of the registered office if not submitted for registration with the memorandum shall be submitted to the Registrar for registration within thirty days from the date of incorporation of the company.
- 28 of 1994.** (3) The directors of the company may change the address of the registered office of the company which change shall be notified to the Registrar.
- Company records.** 18. (1) A company shall prepare and maintain at its registered office records containing -
- (a) a copy of the memorandum and articles and all amendments thereto;
  - (b) minutes of meetings and resolutions of shareholders of the company;
  - (c) copies of any notice that is required under this Act; and
  - (d) any register or such like document that is required under this Act.
- Register of companies.** 19. The Registrar shall maintain a register in which shall be entered the following particulars -
- (a) the name of the company;
  - (b) the location in The Bahamas of the registered office;
  - (c) the amount of capital of the company, the number of shares into which it is divided and either the nominal value of each share or that the shares are shares of no par value;
  - (d) the names, addresses and occupations of the subscribers to the memorandum and the number of shares taken by each subscriber;
  - (e) the date of execution of the memorandum;
  - (f) the date of the filing of the memorandum;
  - (g) the number assigned to the company; and
  - (h) in the case of a company limited by guarantee or which has no limit placed on the liability of its members, a statement that such a company is limited by guarantee or is unlimited, as the case may be.
- Copies of memorandum and articles to be given** 20. (1) A company shall send to every member at his request and, on payment of such sum as the company may prescribe, a copy of, the memorandum and articles.
- (2) Where any alteration is made in the memorandum or articles,

**to members.**  
**Publication**  
**of name.**

every copy issued after the date of alteration shall be in accordance with such alteration.

21. Every company incorporated or registered under this Act shall have its name -

- (a) painted or affixed and shall keep such name painted or affixed on the outside of every office or place in which the business of the company is carried on, or in any corridor, passage or hallway adjacent or proximate thereto, in a conspicuous position, in letters easily legible;
- (b) engraved in legible characters on its seal;
- (c) typed, printed or stamped in legible characters on all notices, advertisements and other official publications of the company;
- (d) typed, printed or stamped in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such company; and
- (e) typed, printed or stamped on all bills of parcels, invoices, receipts and letters of credit of the company.

**Pre-incorporation**  
**contracts.**

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

(2) Within a reasonable time after the company is incorporated, it 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 was incorporated.

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

- (a) the company is bound by the contract and is entitled to the benefits thereof as if the company had been in existence at the date of the contract and been a party to it; and
- (b) a person who purported to act in the name of the company or on its behalf ceases, except as provided in subsection (4), to be bound by or entitled to the benefits of the contract.

(4) Except as provided in subsection (5), whether or not a written contract made before the incorporation of the company is adopted by the company, a party to the contract may apply to the court for an order under which obligations under the contract may be fixed or being joint or joint and several for apportioning liability between the company and a person who purported to act in the name of the company or on its behalf; and the court may, make any order it thinks fit.

(5) If it is expressly so provided in a written contract, a person who purported to act for or on behalf of a company before it was incorporated is not in any event bound by the contract or entitled to the benefits of the contract.

**Service of documents on company.**

23. Any writ, notice, order or other document required to be served upon a company may be served by leaving the same, or sending it through the post in a prepaid letter, addressed to the company at its registered office.

**Capacity and Powers**

**Capacity and powers.**

24. (1) Subject to this Act, a company incorporated under this Act has the capacity and all the rights, powers and privileges of an individual of full capacity.

(2) A company incorporated under this Act has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside of The Bahamas to the extent that the laws of The Bahamas and of that jurisdiction so permit.

(3) Any limitations in the memorandum or articles on the objects or powers of the company or any limitations whether in the memorandum or articles or resulting from a decision of the company in general meeting on the authority of the board of directors or officers of the company, shall not affect a third party, unless that party actually knows of such limitations or the lack of such authority relating to the relevant transaction.

(4) This section shall not authorize a company to carry on any business or activity in breach of -

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

**Contracts.**

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

- (a) if not otherwise invalid, shall be valid; and
- (b) may be varied or discharged in the like manner that it is authorized by this section to be made.

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

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

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

**Company seals.**

26. (1) Every company shall have a common seal with its name engraved thereon in legible characters.

(2) If authorized by its articles, a company may have for use in any country, other than The Bahamas, or for use in any district or place not situated in The

Bahamas, an official seal, which shall be a facsimile of the common seal of the company with the addition on its face of the name of every country, district or place where it is to be used.

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

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

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

**Bills and notes.**

**28 of 1994.**

27. (1) A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed, on behalf of a company, if made, accepted or endorsed in the name of the company by a person acting under the authority of the company, or if expressed to be made, accepted or endorsed on behalf or on account of the company by a person acting under the authority of the company.

**28 of 1994.**

(2) If any director, manager or officer of a company or any person on its behalf signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorizes to be issued any bills of parcels, invoice, receipt or letter of credit of the company wherein its name is not mentioned, he is guilty of an offence and shall be liable on summary conviction to a fine of five hundred dollars and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque or order for money or goods for the amount thereof, unless the same is duly paid by the company.

**Power of attorney.**

28. (1) A company may, in writing under seal, empower any person, either generally or in respect of any specified matter, as its attorney to execute deeds or any other document, agreement or instrument on its behalf in any place within or outside The Bahamas.

(2) A deed or any other document, agreement or instrument executed by a person empowered as provided in subsection (1) shall bind the company and has the same effect as if it were under the company's seal.

**Alteration of memorandum and articles.**

**28 of 1994.**

29. (1) Subject to this Act, a company may by resolution of the members alter the contents of its memorandum.

(2) Subject to this Act and to any conditions contained in its memorandum, a company may by resolution of its members alter or add to its articles.

(3) A company that alters its memorandum under subsection (1) or

alters or adds to its articles under subsection (2) shall submit to the Registrar a copy of the resolution of members altering its memorandum or altering or adding to its articles, as the case may be, signed by a director, the secretary or an authorized officer of the company, as a true copy of such resolution and the Registrar shall retain and register such copy of the resolution.

**Permitted loans.**

30. Subject to section 31, a company may give financial assistance to any person by means of a loan, guarantee or otherwise -

- (a) in the ordinary course of business, if the lending of money by such a company is not prohibited by any Act in force in The Bahamas;
- (b) on account of expenditures incurred or to be incurred on behalf of the company;
- (c) to a parent company, if the company that intends to make the loan or give a guarantee is a subsidiary company of the parent company;
- (d) to a subsidiary company of the parent company; and
- (e) to employees of the company or any of its affiliates for any purpose including -
  - (i) to enable or assist them to purchase or erect living accommodation for their own occupation,
  - (ii) in accordance with a plan for the purchase of shares of the company or any of its affiliates to be held by a trustee, or
  - (iii) to enable or assist them to improve their education or skills or to meet reasonable medical expenses.

**Prohibited loans.**

31. (1) When circumstances prejudicial to the company exist, the company or any company to which it is affiliated shall not, except as permitted by section 30, directly or indirectly give financial assistance, by means of a loan, guarantee or otherwise -

- (a) to a member, director, officer, or employee of the company or affiliated company, or to an associate of any such person for any purpose; or
- (b) to any person for the purpose of, or in connection with, a purchase of a share issued or to be issued by the company or a company with which it is affiliated.

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

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

or

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

**Enforcement of prohibited loans.**

32. A contract made by a company contrary to section 31 may be enforced by the company or by a borrower for value in good faith without notice of the contravention.

**Power to refer matters to arbitration.**

33. A company may, from time to time, in writing under its common seal, agree to refer and may refer to arbitration any existing or future difference, question of other matter in dispute between itself and any other company or person; and the parties to the arbitration may delegate to the person to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves or by the directors of other officers of such companies.

**Authentication of summons, notice or proceeding.**

34. Any summons, notice, order, document or proceedings requiring authentication by a company may be signed by any director, secretary or other authorized officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

**PART III**

**SHARE CAPITAL, SHAREHOLDERS**

**AND RELATED MATTERS**

**Share Capital**

**Nature of shares and of certain transfers.**

35. (1) The shares or other interest of a shareholder in a company incorporated under this Act are personal property capable of being transferred in the manner prescribed by the articles, and are not of the nature of real property, and each share, unless the articles otherwise provide, shall, in the case of a company having its share capital divided into shares, be distinguishable by its given number.

(2) Any transfer of a share or other interest of a deceased shareholder of a company under this Act made by his personal representative shall, notwithstanding such personal representative may not himself be a shareholder, be of the same validity as if he had been a shareholder at the time of the execution of the instrument of transfer.

(3) Shares may have a nominal or par value or may be of no par value.

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(4) Subject to any limitations in its memorandum or articles, a company may issue fractions of a share and unless and to the extent otherwise provided in the memorandum or articles, a fractional share has the corresponding fractional liabilities,

limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a share of the same class or series of shares.



**Classes of shares and issue thereof.**

36. (1) The articles may provide for the issue of more than one class of shares; and if they so provide, the rights, privileges, restrictions and conditions attaching to each share shall be set out in such articles.

(2) Where there is no such provision in the articles, a company may by resolution of shareholders resolve that all of its shares or, if its capital be divided into shares of different classes, that all of its shares of a particular class rank *pari passu* for all purposes, and in either case either already issued and being fully paid up or thereafter to be issued as fully paid up, need not thereafter have a distinguishing number.

(3) If the articles of a company so provide, no shares of a class of shares may be issued unless the shares have first been offered to the shareholders of the company holding shares of that class; and those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at such price and on such terms as those shares are to be offered to others.

(4) Notwithstanding that the articles provide for the pre-emptive rights referred to in subsection (3), the shareholders of the company have no pre-emptive right in respect of shares to be issued by the company -

- (a) for a consideration other than money;
- (b) as a share dividend; or
- (c) pursuant to the exercise of conversion privileges, options or rights previously granted by the company.

**Variation of shareholders' rights.**

37. (1) If, in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorizing the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of such provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

(2) An application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by one or more of their number as they may appoint in writing for the purpose.

(3) On any such application, the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow and shall, if not so satisfied, confirm the variation.

(4) The decision of the court on any such application shall be final.

(5) The company shall within fifteen days after the making of an order by the court on any such application forward a copy of the order to the Registrar, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a civil penalty of ten dollars for each day during which the default continues.

(6) In this section, "variation" includes abrogation and "varied" shall be construed accordingly.

**Share issue.**

38. Subject to the articles, shares may be issued at such times and to such persons and for such consideration as the directors may determine.

**Consideration.**

39. (1) A share may not be issued until it is fully or partly paid -

(a) in money; or

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

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

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

**Restrictions as to allotment.**

40. (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the following conditions have been complied with, namely -

(a) the amount, if any, fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(b) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription,

has been subscribed and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription has been paid to and received by the company.

(2) The amount so fixed and named and the whole amount referred to in subsection (1) shall be reckoned exclusive of any amount payable otherwise than in cash and in this Act referred to as the minimum subscription.

(3) The amount payable on application on each share shall not be less than five per cent of the nominal value of the share.

(4) Where the conditions specified in subsection (1) have not been complied with on the expiration of forty days after the first issue of the prospectus, all

money received from applicants for shares shall be immediately repaid to them without interest and, if any such money is not repaid within forty-eight days after the issue of the prospectus, the directors of the company are jointly and severally liable to repay that money with interest at the current prime rate of interest from the expiration of the forty-eight days; but a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section is void.

(6) This section, except subsection (3), shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(7) In the case of the first allotment of share capital payable in cash of a company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any shares offered to the public for subscription, no allotment may be made unless the minimum subscription, that is to say -

- (a) the amount, if any, fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or
- (b) if no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash,

has been subscribed and an amount, not less than five per cent of the nominal amount of each share payable in cash, has been paid to and received by the company.

(8) This section shall not apply to a private company.

**Effect of  
irregular  
allotment.**

41. (1) An allotment made by a company to an applicant contrary to section 40 is voidable at the instance of the applicant within thirty days of the holding of the statutory meeting of the company and is so voidable notwithstanding that the company is in the course of being wound up.

(2) A director of a company who knowingly contravenes or permits or authorizes the contravention of any requirement of section 40 with respect to an allotment shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred as a result of such contravention.

(3) Proceedings for the recovery of any such loss, damages or costs may not be commenced after the expiration of two years from the date of the allotment.

(4) For the purposes of this section "statutory meeting of the company" means a meeting held in accordance with section 70(2).

**Restriction on commencement of business.**

42. (1) A company shall not commence business or exercise any borrowing powers unless -
- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;
  - (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription or, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, a proportion equal to the proportion payable on application and allotment on the shares payable in cash;
  - (c) there has been filed with the Registrar a statutory declaration by the secretary or one of the directors in the approved form that the conditions specified in section 40 have been complied with; and
  - (d) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been delivered to the Registrar a statement in lieu of prospectus.

(2) The Registrar shall, on filing of the statutory declaration, certify that the company is entitled to commence business, and the certificate shall be conclusive evidence that the company is so entitled; but in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the Registrar may not issue such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) A contract made by a company before the date at which it is entitled to commence business is provisional only and shall not be binding on the company until that date on which date it shall become binding.

(4) Nothing in this section precludes the simultaneous offer for subscription or allotment of any shares and debentures on the receipt of any money payable on application for debentures.

(5) This section shall not apply to a private company.

**Returns as to allotment.**

43. (1) Where a public company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within three months thereafter deliver to the Registrar -

- (a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and description of the allottees and the amount, if

any, paid or due and payable on each share; and

- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a written contract constituting the title of the allottee to the allotment together with any contract of sale for services or other consideration in respect of which that allotment was made and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up and the consideration for which they have been allotted.

(2) Where such a contract as is referred to in subsection (1) is not in writing, the company shall within three months after the allotment file with the Registrar the prescribed particulars of the contract.

(3) In case of a default in delivering to the Registrar within three months after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the court for relief and the court, if satisfied that the omission to file the document was accidental due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such time as it considers proper.

**Acquisition of holding of own shares.**

44. (1) Subject to this section and to its memorandum, a company may purchase or otherwise acquire shares issued by it.

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

- (a) the company is unable, or would after that payment, be unable to pay its liabilities as they become due, or
- (b) the realisable value of the company's assets would, after that payment, be less than the aggregate of its liabilities and issued share capital of all classes.

(3) A purchase or acquisition of shares under this section shall not be a reduction of share capital within the meaning of this Act.

**Cancellation of shares.**

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

**Effect of purchase contract.**

46. (1) A contract with a company providing for the purchase of shares of a company is specifically enforceable against the company except to the extent that the company cannot perform the contract without thereby being in breach of section 44.

(2) In any action brought on a contract referred to in subsection (1), the company shall have the burden of proving that the performance of the contract is prevented by section 44.

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

- (a) to be paid as soon as the company is lawfully able to do so, or
- (b) to be ranked in a liquidation subordinate to the rights of creditors but in priority to the shareholders.

**Commission  
for share  
purchase.**

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

(2) A commission authorized under subsection (1) shall not exceed ten per cent of the amount paid or to be paid for the shares.

**Matters  
respecting  
issue of  
share warrants.  
Ch.330.**

48. (1) Subject to the Exchange Control Regulations Act, a company limited by shares, if so authorized by its articles, may, with respect to fully paid up shares or to stock, issue under its common seal a warrant stating that the bearer is entitled to the shares or stock therein specified and may provide, by coupons or otherwise, for the payment of future dividends on the shares or stock included in the warrant, in this Act referred to as a share warrant.

(2) A share warrant entitles the bearer thereof to shares or stock therein specified, and the shares or stock may be transferred by delivery, of the warrant.

(3) The bearer of a share warrant is, subject to the articles, entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members, and the company is responsible for any loss incurred by any person by reason of the company entering in its register the name of the bearer of a share warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

(4) The bearer of a share warrant may, if the articles so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles, except that he is not qualified in respect of shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.

(5) On the issue of a share warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member and shall enter in the register the following particulars -

- (a) the fact of the issue of the warrant;
- (b) a statement of the shares or stock included in the warrant, distinguishing each share by its number;
- (c) the date of the issue of the warrant.

(6) Until the warrant is surrendered, the particulars specified in

subsection (5) shall be deemed to be the particulars required by this Act to be entered in the register of members and on the surrender the date of the surrender shall be entered as if it were the date at which a person ceased to be a member.

**Alteration  
of share  
capital.**

49. (1) A company having a share capital may, if so authorized by its articles, by a resolution of shareholders -

- (a) increase its share capital by the creation of new shares of such amount as it considers expedient;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) convert all or any of its paid-up shares into stock and re-convert that stock into paid-up shares of any denomination;
- (d) subdivide its shares or any of them into shares of a smaller amount than is fixed by the memorandum so that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (e) cancel shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person or which have been forfeited and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) A cancellation of shares under this section shall not be a reduction of share capital within the meaning of this Act.

**Reduction  
of share  
capital.**

50. A company limited by shares and a company limited by guarantee and having a share capital, may, if so authorized by its articles, by a resolution of shareholders reduce its share capital in any way, and in particular without prejudice to the generality of the foregoing power, may -

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

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

**Application**

51. (1) Where a company has passed a resolution reducing its share

**to court for** capital, it shall apply to the court for an order confirming the reduction.

**confirming order,** (2) Subject to subsection (3), where the proposed reduction of share

**objections by** capital involves either diminution of liability in respect of unpaid share capital or the

**creditors and** payment to any shareholder of any paid-up share capital, and in any other case if the

**settlement of** court so directs -

**objecting**

**creditors.**

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(a) every creditor of the company who at the date fixed by the court shall be entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company shall be entitled to object to the reduction;

(b) the court, unless satisfied on affidavit that there are no such creditors, shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day within which creditors not entered on the list are to be excluded from the right of objecting to the reduction;

(c) Where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount -

(i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it then the full amount of the debt or claim,

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

(3) The court may, having regard to any special circumstances of the case, direct that subsection (2) shall not apply as regards any class or any classes of creditors.

**Order confirming  
reduction and  
powers of court  
on making such**

52. (1) The court, if satisfied with respect to every creditor of the company who under section 51 is entitled to object to the reduction that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured may make any order confirming the reduction on such



**order.** terms and conditions as it thinks fit.

- (2) Where the court makes any such order, it may -
  - (a) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words "and reduced"; and
  - (b) make an order requiring the company to publish as the court directs the reasons for reduction or such other information in regard thereto as the court may think expedient with a view to giving proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words "and reduced" those words shall, until the expiration of the period, if any, specified in the order, be deemed to be part of the name of the company.

**Registration  
of confirming  
order and  
minute of  
reduction.**

53. (1) The Registrar, on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and a minute approved by the court showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of registration deemed to be paid-up on each share, shall register the order and minute.

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court directs.

(4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall constitute conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section 29 of this Act.

**Liability of  
shareholders  
in respect**

54. (1) Subject to subsection (2), in the case of a reduction of share capital, a shareholder of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between

**of reduced shares.**

the amount of the share as fixed by the minute and the amount paid, or the reduced amount if any, which is to be deemed to have been paid, on the share, as the case may be.

(2) If any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and immediately after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then -

- (a) every person who was a shareholder of the company at the date of the registration of the order for reduction and the minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount, if any, which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and
- (b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance, may if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders, on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(3) Nothing in this section shall affect the rights of the contributories among themselves.

**Notice to Registrar concerning changes in share capital.**

55. Where a company having a share capital has -

- (a) consolidated and divided its share capital into shares of larger amounts than its existing shares;
- (b) converted shares into stock;
- (c) re-converted its shares or any of them;
- (d) subdivided its shares or any of them;
- (e) purchased or otherwise acquired any of its own shares; or
- (f) cancelled any shares, otherwise than in connection with a reduction of share capital under section 50,

the company shall within thirty days after so doing give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, purchased or otherwise acquired or cancelled or the stock re-converted, and the Registrar shall register any such particulars.

### **Members**

**Register of**

56. (1) Subject to this section, a company incorporated under this Act

**members.**

shall cause to be kept in writing at its registered office on one or more sheets whether bound or unbound a register of its shareholders, and there shall be entered therein the following particulars -

- (a) the names and addresses and occupations, if any, of the members of the company, with the addition in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number; and of the amount paid, or agreed to be considered as paid, on the shares of each shareholder;
- (b) the date at which the name of any person was entered on the register as a member; and
- (c) the date on which any person ceased to be a member.

(2) The register of members, subject to such restrictions as may be imposed by the directors, may be inspected by members of the company and any member of the general public upon payment of such fee as may be determined by the directors.

(3) A member of a company may receive a copy of the register, or any part thereof, or of the summary referred to in subsection (1) upon payment to the company of such fee as the directors determine.

(4) The register of members constitutes prima facie evidence of any matters which by this Act are directed or authorized to be inserted therein.

(5) The register of members 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.

**Rectification  
of register of  
members.**

57. (1) If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company incorporated under this Act, or if default is made or unnecessary delay takes place in entering on the register the fact that a person has ceased to be a member of the company, the person, the member aggrieved, any other member of the company or the company itself, may by way of motion apply to the court for an order that the register be rectified and the court may in either case grant or refuse the application with or without costs, to be paid by the applicant.

(2) Where the court is satisfied as to the justice of an application pursuant to this section, it may make an order for the rectification of the register, and may direct the company to pay all costs of such motion, application or petition and any damages the party aggrieved may have sustained.

(3) The court may in proceedings under this section decide on any question relating to the title of any person who is a party to such proceedings to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the court may in any such proceedings decide any question that it

may be necessary or expedient to decide for the rectification of the register.

(4) Without prejudice to anything contained in subsection (3), the court may direct an issue to be tried in which any question of law may arise or be raised.

(5) Where an order for rectification of the register is made, the court may order that a copy be forwarded to the Registrar.

**Annual list of members and return of capital, shares, call, etc.**

58. (1) Every company incorporated under this Act and having its capital divided into shares, shall cause to be made once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary general meeting in each year, the first such ordinary general meeting is held, are members of the company; and such list shall state the names and addresses and occupations of all the members therein mentioned and the number of shares held by each of them, and shall contain a summary specifying the following particulars -

- (a) the amount of capital of the company, and the number of shares into which it is divided;
- (b) the number of shares taken from the commencement or the company up to the date of the summary;
- (c) the amount of calls made on each share;
- (d) the total number of calls received;
- (e) the total number of calls unpaid;
- (f) the total number of shares forfeited;
- (g) the names, addresses and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them; and
- (h) the registered number of the company.

(2) The list and summary referred to in subsection (1) shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day, and a copy shall be forwarded to the Registrar to be kept by him in his office with the original memorandum.

**Returns in respect of beneficial ownership of shares.**

59. (1) Every company incorporated under this Act, shall, before 1st January in each year after the year in which the company first commenced business, submit to the Registrar a return declaring whether or not sixty per cent of its shares are beneficially owned by Bahamians.

(2) A return under subsection (1) shall be signed by two directors or one director and the secretary.

(3) The Registrar may in any particular case grant an extension of time in order to permit compliance with subsection (1) if he is satisfied that the non-compliance is not wilful, due to circumstances beyond the control of the directors of the company.

### **Dividends**

**Payment of dividends.**

60. (1) A company may pay a dividend by issuing fully paid up shares of the company and, subject to section 61, a company may pay a dividend in money or property.

(2) Subject to any limitations in its memorandum or articles a company may by a resolution of directors, include in the computation of surplus for the payment of a dividend, the net unrealized appreciation of assets of the company, and, in the absence of fraud, the decision as to the value of the assets is conclusive unless a question of law is involved.

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

**Prohibited dividend.**

61. A company may not declare or pay a dividend if there are reasonable grounds for believing that -

- (a) the company is unable or would after the payment of the dividend, be unable to meet its liabilities as they become due; or
- (b) the realisable value of the assets of the company will be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its issued and outstanding share capital.

**Immunity of shareholders.**

62. Unless otherwise provided in this Act, the shareholders of a company shall not, as shareholders, be liable for any act or default of the company.

**Lien on shares.**

63. Subject to this Act, the articles may provide that the company has a lien on a share registered in the name of the shareholder or his legal representative for a debt of that shareholder to the company.

**Liability of present and past members.**

64. (1) Subject to subsection (2), where a company incorporated under this Act is being wound up, the present and past members of that company shall be liable to contribute to the assets of the company to an amount sufficient for the payment of debts and liabilities of the company, and the costs, charges and expenses of the winding up and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, subject to the following qualifications -

- (a) no past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up;
- (b) no past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member;
- (c) no past member shall be liable to contribute to the assets of

the company unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them under this Act;

- (d) in the case of a company limited by shares, no contribution shall be required from any shareholder exceeding the amount, if any, unpaid on the shares in respect of which he shall be liable as a present or past shareholder;
- (e) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum;
- (f) nothing contained in this Act shall invalidate any provision in a policy of insurance or other contract whereby the liability of individual members upon such policy or contract is restricted or whereby the funds of the company are alone made liable in respect of such policy or contract; and
- (g) no sum due to any member, in his capacity as a member, by way of dividends, profits or otherwise, may be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken unto account, for the purposes of the final adjustment of the rights of the contributories amongst themselves.

(2) Where a company is limited both by shares and by guarantee, any person who is a contributory by reason of a holding of shares in the company and of an undertaking entered into on his behalf by the memorandum shall be liable to contribute to the assets of the company notwithstanding subsection (1)(d) and (e) and such contributions shall be calculated in the aggregate.

#### **Public Companies: Prospectus**

#### **Filing of prospectus.**

65. (1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and the date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, shall be filed for registration with the Registrar on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The Registrar may not register any prospectus unless it is dated

and the copy thereof signed in the manner required by this section.

(4) Every prospectus shall state ex facie that a copy has been filed for registration as required by this section.

**Particulars  
of prospectus.**

66. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company shall state -

- (a) the contents of the memorandum, with the names, descriptions and addresses of the signatories, and the number of shares or debentures subscribed for by them respectively and the number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company;
- (b) the number of shares, if any, fixed by the articles as the qualification of a director and any provision in the articles as to the remuneration of the directors;
- (c) the names, descriptions and addresses of the directors or proposed directors;
- (d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share, and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted and the amount, if any, paid on the shares so allotted;
- (e) the number and amount of shares and debentures which within the last two preceding years have been issued, or agreed to be issued, as fully or partly paid-up otherwise than in cash and in the latter case the extent to which they are so paid-up in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued;
- (f) the names and addresses of the vendors of any property purchased or acquired by the company or proposed to be so purchased or acquired which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures to the vendor and where there is more than one separate vendor, or the

- company is a sub-purchaser, the amount payable to each vendor; but where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors;
- (g) the amount, if any, paid or payable as purchase money in cash, shares or debentures, for any such property specifying the amount, if any, payable for goodwill;
  - (h) the amount, if any, paid within the two preceding years or payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares in, or debentures of, the company, or the rate of any such commission; but it is not necessary to state the commission payable to sub-underwriters;
  - (i) the amount or estimated amount of preliminary expenses;
  - (j) the amount paid within the two preceding years or intended to be paid to any promoter and the consideration for any such payment;
  - (k) the dates of and parties to every material contract and a reasonable time and place at which any material contract or a copy thereof may be inspected; but this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or to any contract entered into more than two years before the date of issue of the prospectus;
  - (l) the names and addresses of the auditors, if any, of the company;
  - (m) full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid, or agreed to be paid by him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director or otherwise for services rendered by him or by a firm in connection with the promotion or foundation of the company;
  - (n) where the company is a company having shares of more than one class, the right of voting at meetings of the company, conferred by the several classes of the shares respectively; and
  - (o) the facts as to the company's financial situation prepared by



an accountant licensed to practice as such under the Public Accountants Act.

**8 of 1991.**

(2) For the purposes of this section, every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option to purchase property to be acquired by the company in any case where -

- (a) the purchase money is not fully paid at the date of issue of the prospectus;
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or
- (c) the contract depends for its validity or fulfilment on the result of that issue.

(3) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease and the expression "sub-purchaser" included a sub-lessee.

(4) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement of this section; or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus shall be void.

(5) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto or the number of shares subscribed for by them.

(6) In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of non-compliance, if he proves that -

- (a) as regards any matter not disclosed, he was not cognisant thereof; or
- (b) the non-compliance arose from an honest mistake of fact on his part; but in the event of non-compliance with the requirement of subsection (1)(m) no director or other person shall incur any liability in respect of the non-compliance unless it is proved that he had knowledge of the matters not disclosed.

(7) This section shall not apply to a circular or notice inviting existing members or debenture holders of the company to purchase shares or debentures of the company, whether with or without the right to renounce in favour of other persons, but this

section shall apply to any prospectus whether issued on or with reference to the formation of the company, or subsequently.

(8) The requirements of this section as to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors and the amount or estimated amount of preliminary expenses shall not apply in case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

(9) Nothing in this section limits or diminishes any liability which any person may incur under the general law or this Act apart from this section.

**Obligation of company where no prospectus issued.**

67. A company which does not issue a prospectus on or with reference to its formation may not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with Registrar a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing in an approved form.

**28 of 1994.**  
**Restriction in respect of alteration of prospectus.**  
**28 of 1994.**

68. A company may not, prior to the first general meeting, vary the contract referred to in the prospectus or statement in lieu of prospectus, except with the approval of the general meeting.

**Liability for statements in prospectus.**

69. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company -

- (a) every person who is a director of the company at the time of the issue of the prospectus;
- (b) every person who has authorised the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) every promoter of the company; and
- (d) every person who has authorised the issue of the prospectus,

shall be liable to pay compensation to all person who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith, unless it is proved -

- (i) with respect to every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable cause to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true,

- (ii) with respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy or valuation of an expert, that it fairly represented the statement or was a correct and fair copy of or extract from the report or valuation, but the director, person named as director, promoter or person who authorized the issue of the prospectus shall be liable to pay such compensation if it is proved that he had no reasonable cause to believe that the person making the statement, report or valuation was competent to make it, and
- (iii) with respect to every untrue statement purporting to be a statement by an official person or contained in what purports to be a copy of or extract from a public official document; that it was a correct and fair representation of the statement or copy of or extract from the document;

or unless it is proved -

- (iv) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus and that it was issued without his consent or authority,
- (v) that the prospectus was issued without his knowledge or consent and that on becoming aware of its issue he immediately gave reasonable public notice that it was issued without his consent, or
- (vi) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdraw his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor.

(2) Where the prospectus contains the name of a person as a director of the company or as having agreed to become a director thereof and he has not consented to become a director or has withdrawn his consent before the issue of the prospectus and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person so named against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or in defending himself against any action or legal

proceedings brought against him in respect thereof.

(3) Every person who, by reason of his being a director or named as a director or as having agreed to become a director or of his having authorized the issue of the prospectus, shall become liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who if sued separately would have been liable to make the same payment unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(4) For the purposes of this section, the expression -  
"promoter" means a person who was a party to the preparation of the prospectus or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company;  
"expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

**Application of sections 65 to 69. 28 of 1994.**

69A. Sections 65 to 69 shall not apply to private companies.

#### **Meetings and Proceedings**

**General meetings. 28 of 1994.**

70. (1) Subject to subsection (2), a general meeting of every company incorporated under this Act shall be held once at the least in every year.

(2) Every company limited by shares and every company limited by guarantee and having a share capital shall, within three months from the date of incorporation, hold a general meeting of the members of the company which shall be called "the statutory meeting".

(3) Any such meeting shall be called by the directors of the company.

**Extraordinary general meeting.**

71. (1) Notwithstanding anything contained in the articles, the directors of a company shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of the paid-up capital of the company which as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the date of the deposit of the requisition a right to vote at general meetings of the company, immediately proceed duly to convene an extraordinary general meeting of the company.

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

(3) Where the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists

or a majority of them in value, may themselves or by the secretary of the company convene the meeting, but the meeting so convened may not be held after three months from the date of the deposit.

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

**Meetings called by the court.**

72. (1) Upon the application to the court by a director of a company or a member of a company who is entitled to vote at a meeting of the company, or by the Registrar, the court may -

(a) when for any reason it is impracticable -

(i) to call a meeting of members in the manner in which meetings of members can be called, or

(ii) to conduct the meeting in the manner prescribed by the articles and this Act, or

(b) for any other reason the court considers fit,

order a meeting of members to be called, held and conducted in such a manner as the court may direct.

(2) Without restricting the generality of subsection (1), the court may order that the quorum required by the articles or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

(3) A meeting of the members of a company called, held and conducted pursuant to this section is for all purposes a meeting of members of the company duly called, held and conducted.

**Place of meetings.**

73. (1) Meetings of members of a company shall be held at such place as is provided by the articles, or, in the absence of any such provision, at a location within The Bahamas as the directors determine.

(2) A member who attends a meeting of members held outside The Bahamas agrees to its being so held unless he attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully held.

**Meetings outside The Bahamas.**

74. Notwithstanding section 73, if the articles so provide, meetings of members of a company may be held outside The Bahamas.

**Quorum at meetings.**

75. (1) Unless the articles otherwise provide, a quorum of members shall be present at a meeting of members if the holders of a majority of the shareholders entitled to vote at the meeting are present in person or represented by proxy.

(2) If a quorum is present at the opening of a meeting of members, those so present may, unless the articles otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(3) If a quorum is not present within thirty minutes of the time

appointed for the meeting of members, the meeting stands adjourned to the same day two weeks thereafter, at the same time, and place; and, if at the adjourned meeting, a quorum is not present within thirty minutes of the appointed time, the members present constitute a quorum.

**Voting at  
meetings and  
evidence of  
meetings.**

76. (1) Unless the articles otherwise provide, voting at a meeting of members shall be by a show of hands, except when a poll is demanded by a member or an appointed proxy holder entitled to vote at the meeting.

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

(3) A company incorporated under this Act shall cause minutes of all resolutions and proceedings of general or extraordinary meetings of the company and of directors or managers to be kept in writing, and any such meetings, if purported to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next meeting may be received as evidence in all legal proceedings.

(4) Until the contrary is proved, every general meeting of the company, or meeting of the directors or managers in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly held and convened and all resolutions passed of proceedings had, to have been duly passed and had and -

- (a) all appointments of directors, managers, or liquidators; and
- (b) all acts done by directors, managers or liquidators,

shall be valid, notwithstanding any defect that may afterwards be discovered in their appointment or qualification.

**Representative  
of another  
body and  
joint  
shareholders.**

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

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

(3) Unless the articles otherwise provide, where two or more persons hold shares jointly, one of those holders present at the meeting of shareholders may, in the absence of the other, vote the shares; but if two or more persons who are present, in person or by proxy, vote, they shall vote as one on the share held jointly by them.

**Unanimous  
shareholder  
agreement.**

78. (1) All the shareholders of a company among themselves or all the shareholders of a company and a person who is not a shareholder of a company, may by a written agreement restrict in whole or in part, the powers of the directors of the company to manage the business and affairs of the company, and such agreement if not otherwise invalid, shall be valid.

(2) A shareholder who is a party to any unanimous shareholder

agreement has all the rights, powers and duties, and incurs all the liabilities of a director of the company to which the agreement relates, to the extent that the agreement restricts the discretion or powers of the directors to manage the business and affairs of the company; and the directors are thereby relieved of their duties and liabilities to the same extent.

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

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

(5) In this section "shareholder" includes members.

**Proxies.**

79. (1) Subject to subsection (2), any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person, whether a member or not, as his proxy to attend and vote in his stead and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting.

(2) Unless the articles otherwise provide -

- (a) subsection (1) shall not apply in the case of a company not having a share capital;
- (b) a member of a company shall not be entitled to appoint more than one proxy to attend on the same occasion; and
- (c) a proxy shall not be entitled to vote except on a poll.

**Special requirement regarding notice of meeting.**

80. In every notice calling a meeting of a public company having a share capital there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead of him, and that a proxy need not also be a member; and if default is made in complying with this section as respects the meeting, every officer of the company who is in default shall be liable to a civil penalty of ten dollars for each day during which the default continues.

**Provision relating to validity of proxy appointment.**

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

**Revocation of proxy.**

82. A shareholder of a company may revoke a proxy -

- (a) by depositing an instrument in writing executed by him or his attorney authorized in writing -

- (i) at the registered office of the company at any time, up to and including the last business day preceding the day of the meeting, or any adjournment of that meeting, at which the proxy is to be used, or
  - (ii) with the chairman of the meeting on the day of the meeting or any adjournment of that meeting; or
- (b) in any other manner permitted by law.

**Application  
of Sections  
79 to 82.**

83. Sections 79 to 82 shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

**PART IV  
MANAGEMENT OF COMPANIES AND PROTECTION  
OF CREDITORS AND INVESTORS**

**The Directors**

**Duty to manage  
company.**

84. Subject to any unanimous shareholder agreement the directors of a company shall -

- (a) exercise the powers of the company directly or indirectly through the employees and agents of the company; and
- (b) direct the management of the business and affairs of the company.

**Number of  
directors and  
remuneration  
thereof.**

85. (1) A company shall have at least two directors, but a public company shall have no fewer than three directors, at least two of whom are not officers or employees of the company or any of its affiliates.

(2) Unless the articles otherwise provide, a director need not hold shares issued by the company.

(3) Subject to the articles, the directors of a company may fix the remuneration of the directors, officers and employees of the company.

**28 of 1994.**

(4) Every company shall keep at its registered office a register of directors and managers containing their names, addresses and occupations and shall send a list of such names, addresses and occupations to the Registrar and any amendments thereto.

**Duty of care.**

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

- (a) act honestly and in good faith with a view to the best interests of the company; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) The duty imposed by subsection (1) on the directors of a company is owed by them to the company alone; and the duty shall be enforceable in the same way as



any other fiduciary duty owed to a company by its directors.

(3) Every director and officer of a company shall comply with this Act and with the articles of the company.

(4) The burden of proving that a director or an officer of the company did not act in accordance with any provision of this section shall lie on the person making the allegation.

**Disqualified directors.**

87. (1) An individual who is prohibited by section 3(2) from forming or joining in the formation of a company may not be a director of any company.

(2) When a person is disqualified under section 88 from being a director of a company, that person may not, during that period of disqualification, be a director of any company.

**Directors disqualified by court.**

88. (1) When, on the application of the Registrar, it is made to appear to the court that a person is unfit to be concerned in the management of a public company, the court may order that, without prior leave of the court, he may not be a director of the company, or, in any way, directly or indirectly, be concerned with the management of the company for such period -

(a) beginning -

(i) with the date of the order,

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

(iii) if the person has been adjudged a bankrupt and the court so directs, with the date of his discharge as a bankrupt; and

(b) not exceeding five years,

as may be specified in the order.

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

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

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

be represented by a counsel and attorney.

**Notice of directors.**

89. (1) At the time of sending articles of incorporation of a public company to the Registrar, the incorporators shall send him, in the approved form, a notice of the names of the persons who have consented to become directors of the company; and the Registrar shall file the notice.

(2) Each director named in the notice referred to in subsection (1) holds office as director of the company from the issue of the certificate of incorporation of the company until the first meeting of the members of the company.

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

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

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

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

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

**Termination of office.**

90. A director of a company shall cease to hold office when -

- (a) he dies or resigns;
- (b) he is removed in accordance with section 92; or
- (c) he becomes disqualified under section 87 or 88.

**Resignation of director.**

91. The resignation of a director of a company shall become effective at the time his written resignation is sent to the company or at the time specified in the resignation, whichever is later.

**Removal of director.**

92. (1) The members of a company may, by a resolution at an extraordinary general meeting, remove any directors from office.

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

(3) Subject to subsection 103(b), a vacancy created by the removal of

a director may be filled at the meeting of the members at which the director is removed, or if the vacancy is not so filled, it may be filled pursuant to section 94.

**Right to notice.**

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

(2) A director -

(a) who resigns;

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

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

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

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

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

**Filling vacancy.**

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

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

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

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

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

thereof for the purpose of filling the vacancy.

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

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

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

**Change in  
number of  
directors.**

95. Subject to section 84, the members of a company may amend the articles of the company to increase, or, subject to section 100 to decrease, the number of directors, or the minimum or maximum number of directors; but no decrease shortens the term of an incumbent director.

**Notice  
of change.**

96. (1) Within fifteen days after a change is made among its directors, a company shall send to the registrar a notice in the approved form setting out the change; and the Registrar shall file the notice.

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

**Directors'  
meetings.  
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97. (1) Unless the articles otherwise provide, meetings of directors of a company may be held within or outside The Bahamas, and upon such notice as the directors may determine.

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

**Notice of  
waiver.**

98. (1) A notice of a meeting of the directors of a company shall specify any matter relevant to subsection (2) of section 93 that is to be dealt with at the meeting; but unless the articles of the company otherwise provide the notice need not otherwise specify the purpose of or the business to be transacted at the meeting.

(2) A director may, in any manner, waive a notice of a meeting of directors; and attendance of a director at a meeting of directors shall be a waiver of notice of the meeting by the director except when he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

**Adjourned  
meeting.**

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

**Two director**

100. Where a private company has only two directors those directors

- board.** may constitute a meeting.
- Telephone participation.** 101. (1) Subject to the articles, a director may, if all the directors of the company consent, participate in a meeting of directors of the company or of a committee of the directors by means of a telephone or such other communication facilities that permit all persons participating in the meeting to hear each other and recognise each other's voice.
- (2) A director who participates in a meeting of directors by such means as are described in subsection (1), shall be for the purposes of this Act, present at the meeting.
- Delegation.** 102. Directors of a company may appoint from their number a managing director of a committee of directors and delegate to the managing director or committee any of the powers of the directors:
- Provided that such delegation shall not affect the liability of the delegating directors.
- Limitation of delegated powers.** 103. Notwithstanding section 102, no managing director and no committee of directors of a company may -
- (a) submit to the members any question or matter requiring the approval of the members;
  - (b) fill a vacancy among the directors by the office of auditor;
  - (c) issue shares except in the manner and on the terms authorized by the directors;
  - (d) declare dividends;
  - (e) purchase, redeem or otherwise acquire shares issued by the company;
  - (f) pay a commission referred to in section 47;
  - (g) approve any financial statements referred to in section 123; or
  - (h) adopt, amend or repeal the articles.
- Validity of acts.** 104. An act of a director or officer shall be valid notwithstanding any irregularity in his election of appointment, or any defect in his qualification.
- Directors' resolution in writing.** 105. (1) When a resolution in writing is signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors -
- (a) the resolution shall be valid as if it has been passed at a meeting of directors or a committee of directors; and
  - (b) the resolution shall satisfy all the requirements of this Act relating to meetings of directors or committees of directors.
- (2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the proceedings of the directors or committee of directors.
- Liabilities of Directors**
- Liability for** 106. Directors of a company who vote for or consent to a resolution

**share issue.** authorizing the issue of a share under section 39 for a consideration other than money are jointly and severally liable to the company to make good any amount by which the consideration received is less than fair equivalent of the money that the company would have received if the share had been issued for money on the date of the resolution.

**Liability for other acts.** 107. Directors of a company who vote for, or consent to, a resolution authorizing -

- (a) a loan prohibited by section 31;
- (b) a purchase, redemption or other acquisition of shares contrary to section 44(2);
- (c) a commission contrary to section 47; or
- (d) a payment of a dividend contrary to section 61 or 63,

shall jointly and severally be liable to restore to the company any amount so distributed or paid and not otherwise recovered by the company.

**Contribution for judgement.** 108. A director who has satisfied a judgement founded on a liability under section 106 or 107 shall be entitled to contribution from the other directors who voted for or consented to the unlawful act upon which the judgement was found.

**Recovery by action.** 109. (1) A director who is liable under section 107 may apply to the court for an order compelling a member or other recipient to pay or deliver to the director any money or property that was paid or distributed to the member or other recipient contrary to section 31, 44, 47, 61 or 63.

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

- (a) order a member or other recipient to pay or deliver to a director any money or property that was paid or distributed to the member or other recipient contrary to any of the provisions of section 31, 44, 47, 61, or 63;
- (b) order a company to return or issue shares to a person from whom the company has purchased, redeemed or otherwise acquired shares; or
- (c) make any further order it thinks fit.

**Defence to liability.** 110. A director of a company shall not be liable under section 106 if he did not know and could not reasonably have known that the share was issued for consideration less than the fair equivalent of the money that the company would have received if the share had been issued for money.

**Time limit on liability.** 111. An action to enforce a liability imposed under section 106 or 107 may not be commenced after two years from the date of the resolution authorizing the action complained of.

### **Contractual Interest**

**Interests in  
contracts and  
declaration  
thereof.**

112. (1) A director or officer of a company -

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

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

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

- (a) at the meeting at which a proposed contract is first considered;
- (b) if the director was not then interested in a proposed contract, at the first meeting after he becomes so interested;
- (c) if the director becomes interested after a contract is made, at the first meeting after he becomes interested; or
- (d) if a person who is interested in a contract later becomes a director of the company, at the first meeting after he becomes a director.

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

- (a) immediately after he becomes aware that the contract or proposed contract is to be considered, or has been considered at a meeting of directors of the company;
- (b) if the officer becomes interested after a contract is made, immediately after he becomes so interested; or
- (c) if a person who is interested in a contract later becomes an officer of the company, immediately after he becomes an officer.

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

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

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

or an affiliate of the company;

- (b) is a contract that relates primarily to his remuneration as a director, officer, employee or agent of the company or affiliate of the company;
- (c) is a contract for indemnity or insurance under sections 118 to 122;
- (d) is a contract with an affiliate of the company; or
- (e) is a contract other than one referred to in paragraphs (a) to (d),

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

(6) For the purpose of this section, a general notice to the directors of a company by a director or an officer of the company declaring that he is a director or officer of, or has a material interest in, another body, and is to be regarded as interested in any contract with that body shall be a sufficient declaration of interest in relation to any such contract.

**Validity of certain contracts.**

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

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

if the director or officer disclosed his interest in accordance with subsection 112 (2), (3), (4) or (6) as the case may be, and the contract was approved by the directors or the members and was reasonable and fair to the company at the time it was approved.

**Setting aside contract.**

114. When a director or officer of a company fails to disclose, in accordance with section 112 his interest in a material contract made by the company, the court may, upon the application of the company or member of the company, set aside the contract on such terms as the court thinks fit.

**Officers of the Company**

**Designation of officer etc.**

115. Subject to the articles or any unanimous shareholder agreement -

- (a) the directors of the company may designate the offices of the company, appoint as officers persons of full capacity, specify their duties and delegate to them powers to manage the



business and affairs of the company, except powers to do anything referred to in section 103;

- (b) a director of a private company may be appointed to any office of the company;
- (c) and subject to section 85(1), a director of a public company may be appointed to any office of the company; and
- (d) two or more offices of the company may be held by the same person.

### **Borrowing Powers of Directors**

#### **Borrowing powers.**

116. (1) Unless the articles or any unanimous shareholder agreement relating to the company otherwise provide, the articles are presumed to provide that the directors of the company may, on behalf of the company, without authorization of the members -

- (a) borrow money upon the credit of the company;
- (b) issue, re-issue, sell or pledge debentures of the company;
- (c) give a guarantee to secure performance of an obligation of any person; and
- (d) mortgage, charge, pledge, or otherwise create to secure any obligation of the company a security interest in all or any property of the company that is owned or subsequently acquired by the company.

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(2) Unless the articles, or any unanimous shareholder agreement relating to a company otherwise provide, the directors of the company may by resolution delegate the powers mentioned in subsection (1) to a director, a committee of directors or an officer of the company.

(3) For the purposes of this Act "security interest" means any actual or contingent interest in or charge upon any property of a company, by way of mortgage, bond, lien, pledge, or other means, that is created or taken to secure the payment of an obligation of the company.

### **Procedural Matters and Indemnities**

#### **Dissenting to resolutions.**

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

- (a) he requests that his dissent be or his dissent is entered in the minutes of the meeting;
- (b) he sends his written dissent to the secretary of the meeting before the meeting is adjourned; or

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

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

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

- (a) causes his dissent to be placed with the minutes of the meetings; or
- (b) sends his dissent by registered post or delivers it to the registered office of the company.

(4) A director shall not be liable under section 106 or 108 if he relies in good faith upon -

- (a) financial statements of the company represented to him by an officer of the company; or
- (b) a report of a counsel and attorney, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him.

**Indemnifying  
directors.**

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

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

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

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

- (a) acted honestly and in good faith with a view to the best interest of the company; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his conduct was lawful.

**Indemnifying  
other persons.**

119. A company may with the approval of the court indemnify a person referred to in section 118 in respect of an action -

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

(b) to which he is made a party by reason of being or having been a director or an officer of the company or body corporate, against all costs, charges and expenses reasonably incurred by him in connection with the action, if he fulfils the conditions set out in subsection 118(2).

**Right to indemnify.**

120. Notwithstanding anything in section 118 or 119, a person described in section 118 shall be entitled to indemnity from the company in respect of all costs, charges and expenses reasonably incurred by him in connection with the defence of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of the company or body corporate, if the person seeking indemnity -

- (a) was substantially successful on the merits in his defence of the action or proceeding;
- (b) qualified in accordance with the standards set out in section 118 or 119; and
- (c) is fairly and reasonably entitled to indemnity.

**Indemnity approved by court.**

121. (1) A company or person referred to in section 118 may apply to the court for an order approving an indemnity under section 119, and the court may so order and make any further order it thinks fit.

(2) An applicant under subsection (1) shall give the Registrar notice of the application; and the Registrar may appear and be heard in person or by a counsel and attorney.

(3) Upon an application under subsection (1), the court may order notice to be given to any interested person; and that person may appear and be heard in person or by a counsel and attorney.

**Insurance of directors, etc.**

122. A company may purchase and maintain insurance for the benefit of any person referred to in section 118 against any liability incurred by him in his capacity as a director or officer of the company.

**Financial Disclosure**

**Annual financial returns.**

123. (1) Subject to this section, the directors of a company shall place before the members at every annual general meeting of the members of the company -

- (a) comparative financial statements in the approved form relating separately to -
  - (i) the period that began on the date the company came into existence and ended not more than twelve months after that date, or the period that began immediately after the end of the last period for which the financial

statements were prepared and ended not more than twelve months after the beginning of that period, and

(ii) the immediately preceding financial year;

(b) the report of the auditor; and

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

(2) The financial statement required by subsection (1)(a)(ii) may be omitted if the reason for the omission is set out in the financial statement, or in a note thereto, to be placed before the members at an annual meeting.

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

**Exemption of certain matters.**

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

**Approval of financial statements.**

125. The directors of a company shall approve the financial statements referred to in section 123, and the approval shall be evidenced by the signature of one or more directors.

**Auditors' report to be appended to financial statements.**

126. Copies of the financial statements of a company may not be published or circulated without the auditors' report on the company's accounts being appended thereto.

**Members' copies.**

127. Not less than twenty-one days before each annual meeting of members of a company, the company shall send a copy of the document referred to in section 123 to each member, except to a member who has informed the company in writing that he does not want a copy of those documents.

**Registrar's copies.**

128. (1) The Registrar may, at any time, in writing, request from a company a copy of the annual financial statement referred to in section 123 or a copy of the consolidated financial statement referred to in section 125.

(2) A request by the Registrar pursuant to subsection (1) shall be complied with within two days after the receipt of the written request.

(3) A request under subsection (1) shall be in the approved form.

**Application of sections 123 to 128.**

129. Sections 123 to 128 shall not apply to private companies.

### **Auditors**

**Appointment  
of auditor.**

130. (1) Subject to section 131, the members of a company shall, in each year, by a resolution of members, appoint an auditor to hold office for that year.
- (2) Notwithstanding subsection (1), if an auditor is not appointed by the members, the incumbent auditor may continue in office until his successor is appointed.
- (3) Where a company does not have an auditor, the court may upon application of a member or the Registrar, appoint and fix remuneration of an auditor, and such as auditor holds office until an auditor shall be appointed under subsection (1).
- (4) Subsection (3) shall not apply if the members have resolved under section 131 to dispense with auditors.
- (5) The remuneration of the auditor shall be fixed by the directors.

**Dispensing with  
auditors.**

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131. (1) At least ninety percent of the registered shareholders of a private company may resolve not to appoint an auditor.
- (2) A resolution passed under subsection (1) shall be valid until a contrary resolution is passed by at least ninety percent of the registered shareholders of the company.

**Disqualified  
auditors.**

132. (1) An individual shall not be qualified to be an auditor of a company if he is not independent of the company, its affiliated companies, and of the directors and officers of the company and its affiliated companies.
- (2) For the purposes of this section, whether or not an individual is independent is a question of fact to be determined having regard to all the circumstances.
- (3) An individual shall be presumed not to be independent of a company if he or his business partner -
- (a) is a business partner, a director, an officer or an employee of the company or any of its affiliates, or a business partner of any director, officer or employee of any such company or its affiliates;
  - (b) beneficially owns or controls, directly or indirectly, a material interest in the shares or debentures of the company or its affiliates; or
  - (c) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the company or any of its affiliates within two years of his proposed appointment as auditor of the company.
- (4) The provision of corporate secretarial services by or on behalf of an individual or his business partner does not by itself deprive an individual or his partner of his independence for the purposes of this section.
- (5) An auditor who becomes disqualified under this section shall subject to subsection (6), resign immediately after he becomes aware of his disqualification.
- (6) An interested person may apply to the court for a declaration that

an auditor is disqualified under this section and that the office of auditor is vacant.

**Auditor's  
qualifications.**

133. (1) Subject to section 130, an individual who satisfies the requirements of subsection (2) shall be qualified for appointment as an auditor.

(2) An individual shall be qualified for appointment as an auditor, if -

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- (a) he is a professionally qualified auditor; or
- (b) he is an accountant licensed to practice as such under the Public Accounts Act.

(3) The Minister may, after consultation with a recognised professional body of chartered accountants in The Bahamas, by instrument in writing, authorize any person to be appointed as an auditor of companies, if that person is in the opinion of the Minister suitably qualified for such an appointment by reason of his knowledge and experience.

**Powers and  
duties of  
auditors.**

134. (1) Every auditor of a company has a right of access at all times to the books and accounts and vouchers of the company and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(2) The auditors are required to make a report to the members on the accounts examined by them and on every balance sheet laid before the company in general meeting during their tenure of office and to state whether, in their opinion, the balance sheet is drawn up in accordance with the national accounting standards approved by a recognised professional body of chartered accountants in The Bahamas so as to give a fair representation of the company's affairs.

**Removal of  
auditor.**

135. The directors of a company may remove the auditors other than an auditor appointed by the court under section 130(3).

**Filling  
auditor's  
vacancy.**

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

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

(3) An auditor appointed to fill a vacancy shall hold office for the unexpired term of his predecessor.

**Occurrence of  
vacancy.**

137. A vacancy in the office of auditor shall occur when an auditor -

- (a) dies or resigns; or
- (b) is removed in accordance with section 135.

**Auditor's right  
to notice.**

138. An auditor of a company shall be entitled to receive notice of every meeting of the company and, at the expense of the company, to attend and be heard at the meeting on matters relating to his duties as an auditor.

**Auditor's  
compulsory  
attendance at  
meeting.**

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

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

(3) Subsection (1) shall apply, mutatis mutandis to any former auditor of the company.

**Statement by  
auditor.**

140. (1) An auditor who -

- (a) resigns;
- (b) receives notice or otherwise learns of a meeting of directors called for the purpose of removing him from office;
- (c) receives a notice or otherwise learns of a meeting of directors or members at which another person is to be appointed to fill the office of auditor, whether because of the resignation or removal of the incumbent auditor or because his term has expired or is about to expire; or
- (d) receives a notice or otherwise learns of a meeting of the company at which a resolution referred to in section 131 is to be proposed,

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

(2) When it receives a statement referred to in subsection (1), the company shall immediately send a copy of the statement to every member entitled to receive notice of any meeting referred to in section 138 and to the Registrar.

(3) No individual may accept appointment, consent to be appointed or be appointed auditor of a company if he is replacing an auditor who has resigned, been removed or whose term on office has expired or is about to expire, until the individual has requested and received from the former auditor within a period of sixty days a written statement of the circumstances and the reasons why, in that auditor's opinion, he is to be replaced.

(4) Notwithstanding subsection (3), an individual otherwise qualified may accept appointment or consent to be appointed as auditor of a company if, within fifteen days after making the request referred to in that subsection, he does not receive an interim reply to it.

**Notification of  
error to  
auditor.**

141. (1) A director or officer of a company shall immediately notify the company's auditor of any error or mis-statement of which the director or officer becomes aware in a financial statement that the auditor or former auditor of the company has reported

upon.

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

(3) Where under subsection (2) the auditor or a former auditor of a company informs the directors of an error or mis-statement in a financial statement of the company, the directors shall -

- (a) prepare and issue revised financial statements; or
- (b) otherwise inform the members of the error or mis-statement, and, if the company is a public company, inform the Registrar of the error or mis-statement in the same manner as the directors inform the members of the error or mis-statement.

**Non-liability for defamation.**

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

**Provision as to liability of officers and auditors.**

143. (1) Subject to this section, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any officer of the company or any person, whether an officer of the company or not, employed by the company as auditor from or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void.

(2) Nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.

(3) Notwithstanding anything contained in this section, a company may, in pursuance of any such provision referred to in subsection (1), indemnify and such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal in which judgement is given in his favour or in which he is acquitted.

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(4) This section shall not apply to private companies.

**Receivers**

**Appointment and registration of receiver.**

144. (1) Where any person -

- (a) obtains an order for the appointment of a receiver of any of the property of a company;
- (b) who as a debenture holder becomes entitled to realise his security interest and appoints a receiver of any assets of a



company pursuant to the instrument creating the debenture; or

- (c) appoints a receiver, pursuant to any Act, instrument or rule of law, of any of the property of a company or enters possession of any property of a company under the powers contained in any charge,

he shall give, within ten days from the date of the order, appointment or entry into possession, notice thereof to the Registrar, who shall cause the same to be filed in the company's file at the Registry.

(2) When -

- (a) a person who has been appointed a receiver of property of a company ceases to act as receiver; or
- (b) a person who has entered into possession of any property of a company goes out of possession of that property,

he shall, within ten days of his having done so, give notice of his doing so in the approved form to the Registrar, who shall enter the notice in the company's file at the Registry.

**Notice of receivership.**

145. Where a receiver or a receiver-manager of any assets of a company has been appointed for the benefit of debenture holders, every invoice, order of goods or business letter issued by or on behalf of the company or the receiver, being a document on or in which the name of the company appears, shall contain a notice that a receiver or a receiver-manager has been appointed.

**Disqualified receivers.**

146. (1) A person may not be appointed a receiver or receiver-manager of any assets of a company, and may not act as such a receiver or receiver-manager, if the person -

- (a) is a body corporate;
- (b) is an undischarged bankrupt; or
- (c) is disqualified from being a trustee under a trust deed executed by the company or would be so disqualified if a trust deed had been executed by the company.

(2) If a person who was appointed to be a receiver or receiver-manager becomes disqualified under subsection (1) or under any provision contained in a debenture or trust deed, another person may be appointed in his place by the persons who are entitled to make the appointment or by the court; but a receivership is not terminated or interrupted by the occurrence of the disqualification.

(3) This section applies to a person appointed a receiver or receiver manager whether so appointed before or after the commencement of this Act.

**Functions of receiver.**

147. A receiver of any property of a company may, subject to the rights of secured creditors, receive the income from the property, pay the liabilities connected with the property, and realise the security interest of those on behalf of whom he is appointed; but except to the extent permitted by the court, he may not carry on the business of the company.

- Functions of receiver-manager.** 148. A receiver of a company may, if he is also appointed manager of the company, carry on any business of the company to protect the security interest of those on behalf of whom he is appointed.
- Court appointed receiver.** 149. A receiver of receiver-manager of a company appointed by the court shall act in accordance with the directions of the court.
- Receiver under instrument.** 150. A receiver or receiver-manager of a company appointed under an instrument shall act in accordance with that instrument and any directions of the court given under section 153.
- Duty of care.** 151. (1) A receiver of receiver-manager of a company appointed under an instrument shall -
- (a) act honestly and in good faith; and
  - (b) deal with any property of the company in his possession or control in a commercially feasible manner.
- (2) The burden of proving that a receiver or receiver-manager of the company did not act in accordance with any provision of this section shall lie on the person making the allegation.
- Duties of receiver.** 152. A receiver or receiver-manger of a company shall -
- (a) immediately give notice of his appointment to the Registrar and of his discharge;
  - (b) take into his custody and control the property in accordance with the court order or instrument under which he is appointed;
  - (c) open and maintain a bank account in his name as receiver or receiver-manager of the company for the moneys of the company coming under his control;
  - (d) keep detailed accounts of all transactions carried out by him as receiver or receiver-manager;
  - (e) keep accounts of his administration, which shall be available during usual business hours for inspection by the directors of the company;
  - (f) prepare financial statements of his administration at such intervals as the court may direct or as his instrument of appointment may require;
  - (g) upon completion of his duties, render a final account of his administration, in the form approved for the purposes of paragraph (f); and
  - (h) file with the Registrar a copy of any financial statement mentioned in paragraph (f) and any final account mentioned in paragraph (g) within fifteen days of the preparation of the

financial statement or rendering of the final account, as the circumstances require.

**Directions by court.**

153. Upon an application by a receiver or receiver-manager of a company, whether appointed by the court or under an instrument, or upon an application by an interested person, the court may make any order it thinks fit, including -

- (a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;
- (b) an order determining the notice to be given to any person, or dispensing with notice to any person;
- (c) an order declaring the rights of persons before the court or otherwise, or directing any person to do or abstain from doing anything;
- (d) an order fixing the remuneration of a receiver or receiver-manager;
- (e) an order requiring the receiver or receiver-manager or a person by or on behalf of whom he is appointed -
  - (i) to make good any default in connection with the receiver or receiver-manager's custody or management of the property and business of the company,
  - (ii) to relieve any such person from any default on such terms as the court thinks fit, and
  - (iii) to confirm any act of the receiver or receiver-manager; and
- (f) an order giving direction on any matter relating to the duties of the receiver or receiver-manager.

**Liability of receivers etc.**

154. (1) A receiver of assets of a company appointed under section 144 -
- (a) shall be personally liable on any contract entered into by him in the performance of his functions, except to the extent that the contract otherwise provides; and
  - (b) shall be entitled in respect of that liability to an indemnity out of the assets of which he was appointed to be receiver,

but nothing in this section shall limit any right to an indemnity that he would have, apart from this section, or shall limit his liability on a contract entered into without authority, or shall confer any right to indemnity in respect of that liability.

(2) Where the purported appointment of a receiver out of court is invalid because the charge under which the appointment purported to be made is invalid or because, in the circumstances of the case, the power of appointment under the charge was not exercisable or not wholly exercisable, the court may on application made to it -

- (a) wholly or to such extent as it thinks fit, exempt the receiver from personal liability in respect of anything done or omitted to be done by him, that, if the appointment had been valid, would have been properly done or omitted to be done;
- (b) order that the person by whom the purported appointment was made, be personally liable to the extent to which that relief has been granted.

(3) Subsection (1) shall apply to a receiver appointed before or after the commencement of this Act.

**Preparation of  
statement for  
receiver.**

155. (1) Where a receiver of the whole or substantially the whole, of the assets of a company is appointed under section 144 -

- (a) the receiver shall immediately send notice to the company of his appointment;
- (b) within fourteen days after the receipt of the notice by the company or such longer period as may be allowed by the receiver, there shall be prepared by the company and submitted to the receiver a statement in accordance with section 156 as to the affairs of the company; and
- (c) the receiver shall, within two months after the statement, send

-

- (i) to the Registrar and, if the receiver was appointed by the court, to the court, a copy of the statement and of any comments he sees fit to make thereon, and, in the case of the Registrar, also a summary of the statement and of his comments, if any, thereon,
- (ii) to the company, a copy of those comments, or, if the receiver does not see fit to make any comments, a notice to that effect,
- (iii) to the trustee of the trust deed, a copy of the statement and those comments, if any, and
- (iv) to the holders of all debentures belonging to the same class as the debentures in respect of which he was appointed, a copy of that summary.

(2) The receiver shall -

- (a) within two months or such longer period as the court may allow, after the expiration of the period of twelve months from the date of his appointment and after every subsequent period of twelve months; and
- (b) within two months, or such longer period as the court may

allow, after he ceases to act as receiver of the assets of the company,

send to the Registrar, and to the holders of debentures belonging to the same class as the debentures in respect of which the receiver was appointed, an abstract in a form approved by the Registrar.

(3) The abstract shall show -

- (a) the receiver's receipts and payments during the period of twelve months or, if the receiver ceases to act, during the period to which the last preceding abstract related up to the date of his ceasing to act; and
- (b) the aggregate amounts of his receipts and his payments during all preceding periods since his appointment.

(4) Subsection (1) shall not apply in relation to the appointment of a receiver to act with an existing receiver, or in place of a receiver who dies or ceases to act, except that, where that subsection applies to a receiver who dies or ceases to act before the subsection has been fully complied with, the references in paragraphs (b) and (c) of that subsection to the receivers include references to his successor and to any continuing receiver.

(5) If the company is being liquidated, this section and section 156 shall apply notwithstanding that the receiver and the liquidator are the same person, but with the necessary modifications.

(6) Nothing in subsection (2) affects the duty of a receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times that, he is required to do so apart from that subsection.

**Content of statement.**

156. (1) The statement as to the affairs of a company required by section 155 to be submitted to the receiver or successor shall show, as at the date of the receiver's appointment -

- (a) the particulars of the company's assets, debts and liabilities;
- (b) the names, addresses and occupations of the company's creditors;
- (c) the security interests held by the company's creditors respectively;
- (d) the dates when the security interests were respectively created; and
- (e) such further information as may be required by the receiver.

(2) The statement of the affairs of the company shall be submitted by, and be verified by, the signed declaration of at least one person who is, at the date of the receiver's appointment, a director, and by the secretary of the company at that date, or by such of the persons, hereafter in this subsection mentioned, as the receiver or his successor, subject to the directions of the Registrar, may require to submit and verify the statement

namely, persons who -

- (a) are or have officers of the company;
- (b) have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;
- (c) are in the employment of the company, or have been in the employment of the company within that year and, in the opinion of the receiver, are capable of giving the information required; or
- (d) are or have been within that year officers of or in the employment of an affiliated company.

(3) Any person making or verifying the statement of affairs of a company or any part of it shall be allowed and paid by the receiver or his successor out of the receiver's receipts, such costs and expenses incurred in and about the making or verifying of the statement as the receiver or his successor considers reasonable, subject to an appeal to the court.

#### **Public Companies - Insider Trading**

##### **Definitions.**

157. (1) For the purposes of sections 158 and 159 "insider" means in respect of a company -

- (a) a director or officer of the company and a person connected with a director or an officer;
- (b) an associated company or enterprise of the company;
- (c) an affiliated company or enterprise of the company;
- (d) a person who beneficially owns more than ten per cent of the shares of the company or who exercises control or direction over more than ten per cent of the votes attached to the shares of the company whether such control or direction is exercised by virtue of direct or indirect ownership or by virtue of statute or agreement and a person connected with such a person;
- (e) a person, whether or not he is employed by the company, who
  - 
  - (i) receives specific confidential information from a person described in this section including a person described in this paragraph, and
  - (ii) who has knowledge that the person giving the information is a person described in this section, including a person described in this paragraph; or
- (f) any agent, auditor, contractor or consultant to the company who receives or comes into confidential information.

(2) In this section -

(i) "associated company" includes a company (not being a subsidiary of the investing group or company) in which either

-

(a) the investing group or company's interest is effectively that of a partner in a joint venture or consortium and the investing group or company is in a position to exercise significant influence over the investee company; or

(b) the investing group or company's interest is for the long term and substantial and, having regard to the disposition of the other share-holdings of the investing group or company, is in a position to participate in the investee company's operating and financial policies (including dividend policy), but not necessarily exercise control over these policies. Where the investing group or company's interest amounts to twenty per cent or more of the equity voting rights of a company, it shall be presumed, subject to clear rebuttal otherwise, that the investing group or company has the ability to exercise significant influence over that company (through the participation in the operating and financial policy decisions of that company);

(ii) "connected person" includes, in relation to a director or officer unless that person is also a director or an officer of the same company -

(a) the spouse of the director or officer and any child or step-child over eighteen;

(b) a body corporate in which the director or the officer or those natural persons connected with the director or the officer have direct or indirect interests in twenty per cent or more of the equity share capital of that body corporate or are able to control twenty per cent or more of the voting power at any of its general meetings;

(c) a trustee or trust, the beneficiaries of which include the director or the officer himself or a person connected with the director or the officer;

(d) a partner of either the director or officer or a connected person;

(iii) "enterprise" includes an unincorporated association.

**Presumed insider.**

158. (1) For the purposes of this section and sections 159 and 160 -

(a) a director or officer of a body corporate that is a parent company is an insider of its subsidiary company;

(b) a director or officer of a body corporate that is a subsidiary is an insider of its parent company;

(c) a director or officer of a body corporate that is an affiliated company is an insider of its affiliates.

(2) For the purposes of this section and sections 159 and 160 -

(a) if a body corporate becomes an insider of a company or enters into a business combination with a company, a director or officer of the body corporate shall be presumed to have been an insider of the company for the previous six months or for such shorter period as he was a director or an officer of the body corporate; and

(b) if a company becomes an insider of a body corporate, or enters into a business combination with a body corporate, a director or officer of the body corporate shall be presumed to have been an insider of the company for the previous six months or for such shorter period as he was a director or officer of the body corporate.

(3) In subsection (2), business combination means an acquisition of all or substantially all the property of one body corporate by another or a merger of two or more bodies corporate.

**Liability of insider.**

159. An insider who, in connection with a transaction in a share of the company or any of its affiliates, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the share -

(a) shall be liable to compensate any person for any direct loss incurred by that person as a result of the transaction, unless the information was known or in the exercise of reasonable diligence should have been known to that person at the time of the transaction; and

(b) shall be accountable to the company for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

**Limitation and**

160. (1) An action to enforce a right created by section 159 may not be



**application.** commenced except within two years after the discovery of the facts that gave rise to the cause of action.

(2) Sections 157 to 159 inclusive are applicable to public companies only.

**PART V**  
**MERGER, CONSOLIDATION AND**  
**CONSEQUENTIAL MATTERS**

**Definitions for purposes of Part V.**

161. In this Part -  
"consolidated company" means the new company that results from the consolidation of two or more constituent companies;  
"consolidation" means the uniting of two or more constituent companies into a new company;  
"constituent company" means an existing company that is participating in a merger or consolidation with one or more existing companies;  
"merger" means the merging of two or more constituent companies into one of the constituent companies;  
"surviving company" means the constituent company into which one or more other constituent companies are merged.

**Merger and consolidation.**

162. (1) Two or more solvent companies may merge or consolidate in accordance with subsections (3) to (5).  
(2) One or more companies may merge or consolidate with one or more companies incorporated under this Act in accordance with subsections (3) to (5) if the surviving company or the consolidated company shall satisfy the requirements of this Act.  
(3) The directors of each constituent company that proposes to participate in a merger or consolidation shall approve a written plan of merger or consolidation containing, as the case requires -  
(a) the name of each constituent company and the name of the surviving company or the consolidated company;  
(b) in respect of each constituent company -  
(i) the designation and number of outstanding shares of each class or series of shares specifying each such class or series entitled to vote on the merger or consolidation, and  
(ii) a specification of each such class or 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 memorandum or articles 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 memorandum and articles for a company except statements as to facts not available at the time the plan of consolidation is approved by the directors.

(4) Some or all of the 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 the 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 shall be authorized by a resolution of members and the outstanding shares of a class or series of shares shall be entitled to vote on the merger or consolidation as a class or series if the memorandum or articles so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the memorandum or articles, would entitle the class or series to vote on the proposed amendment as a class or series;
- (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each member, whether or not entitled to vote on the merger or consolidation;
- (c) if it is proposed to obtain the written consent of members, a copy of the plan of merger or consolidation shall be given to each member, whether or not entitled to consent to the plan of merger or consolidation;
- (d) after approval of the plan of merger or consolidation by the directors and members of each constituent company, articles of merger or consolidation shall be executed by each company and shall contain -
  - (i) the plan of merger or consolidation and, in the case of consolidation, any statement required to be included

in the memorandum and articles of a company incorporated under this Act,

- (ii) the date on which the memorandum and articles of each constituent company were registered by the Registrar,
- (iii) the manner in which the merger or consolidation was authorized with respect to each constituent company;
- (e) the articles of merger or consolidation shall be submitted to the Registrar who shall retain and register them in the register of companies;
- (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.

(6) A certificate of merger or consolidation issued by the Registrar shall be prima facie evidence of compliance with all requirements of this Act in respect of the merger or consolidation.

**Merger with subsidiary.**

163. (1) A parent company may merge with one or more subsidiary companies without the authorization of the members of any company, in accordance with subsections (2) to (6), if the surviving company is a company incorporated under and shall satisfy the requirements of this Act.

(2) The parent company shall approve a written plan of merger containing -

- (a) the name of each constituent company and the name of the surviving company;
- (b) 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 of the 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 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 shall be given to every member of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that member.

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

- (a) the plan of merger;
- (b) the date on which the memorandum and articles of each constituent company were registered by the Registrar; and
- (c) if the parent company does not own all the 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 members of each subsidiary company.

(6) The articles of merger shall be submitted to the Registrar who shall retain and register them in the register of companies.

(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 shall be prima facie evidence of compliance with all the requirements of this Act in respect of the merger.

**Effect of  
merger or  
consolidation.**

164. (1) A merger or consolidation shall be effective on the date the articles of merger or consolidation are registered by the Registrar or such date subsequent thereto, not exceeding thirty days, as is stated in the articles of merger or consolidation.

(2) As soon as a merger or consolidation becomes effective -

- (a) the surviving company or the consolidation company insofar as is consistent with its memorandum and articles, 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 memorandum and articles of the surviving company are automatically amended to the extent, if any, that changes in its memorandum and articles are contained in the articles of merger;
- (c) in the case of a consolidation, the statements contained in the articles of consolidation that are required or authorized to be contained in the memorandum and articles of a company incorporated under this Act, are the memorandum and articles

of the consolidated company;

- (d) property of every description, including choses in action and the business of each of the constituent companies, shall immediately vest in the surviving company or the consolidation company; and
- (e) the surviving company or the consolidated company shall be liable for all claims, debts, liabilities and obligations of each of the constituent companies.

(3) Where a merger or consolidation occurs -

- (a) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any member, director, officer or agent thereof, shall be 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, as the case may be, or
  - (ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.

(4) The Registrar shall strike off the register of companies -

- (a) a constituent company that is not the surviving company in a merger; and
- (b) a constituent company that participates in a consolidation.

**Disposition of**

**assets.**

**28 of 1994.**

165. Any sale, transfer, lease, exchange or other disposition of more

than fifty per cent in value of the assets of a company, if not made in the usual manner

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 shall be approved by the directors;
- (b) upon approval of the proposed sale, transfer, lease, exchange or other disposition, the directors shall submit the proposal to the members for it to be authorized 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, shall be given to each member, whether or not he is entitled to vote on the sale, transfer, lease, exchange or other disposition; and
- (d) if it is proposed to obtain the written consent of members, an outline of the proposal shall be given to each member, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.

**Redemption of minority shares.**

166. (1) Subject to any limitations in the memorandum or articles -
- (a) shareholders holding ninety per cent of the votes of the outstanding shares entitled to vote; and
  - (b) shareholders holding ninety per cent of the votes of the outstanding shares of each class and series of shares entitled to vote as a class or series,

on merger or consolidation under section 162 may give a written instruction to the 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 irrespective of whether or not the shares are by their terms redeemable.

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

**Arrangements. 28 of 1994.**

167. (1) In this section "arrangement" means -
- (a) a reorganization or reconstruction of a company;
  - (b) a separation of two or more businesses carried on by a company;
  - (c) any combination of any of the circumstances specified in paragraphs (a) and (b).

**28 of 1994.**

(2) If the directions of a company determine that it is in the best interests of the company or the creditors or members thereof, the directors of the company may by a resolution of directors, approve a plan of arrangement that contains the details of the proposed arrangement.

(3) Upon approval of the plan of arrangement by the members, the company shall make application to the court for approval of the proposed arrangement.

(4) The court may, upon an application made to it under subsection (3), make an interim or final order that is not subject to an appeal unless a question of law is involved, in which case notice of appeal shall be given within twenty days immediately following the date of the order and in making the order the court may -

- (a) determine what notice, if any, of the proposed arrangement is to be given to any person;
- (b) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;
- (c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under section 168;
- (d) conduct a hearing and permit any interested persons to appear; and
- (e) approve or reject the plan of arrangement as proposed or with such amendments as it may direct.

(5) Where the court makes an order approving a plan of arrangement, the directors of the company, if they are still desirous of executing the plan, shall confirm the plan of arrangement as approved by the court whether or not the court has directed any amendments to be made thereto.

(6) The directors of the company, upon confirming the plan of arrangement, shall -

- (a) give notice to the persons to whom the order of the court requires notice to be given; and
- (b) submit the plan of arrangement to those persons for such approval, if any, as the order of the court requires.

(7) After the plan of arrangement has been approved by those persons by whom the order of the court may require approval, articles of arrangement shall be executed by the company and shall contain -

- (a) the plan of arrangement;
- (b) the order of the court approving the plan of arrangement; and
- (c) the manner in which the plan of arrangement was approved, if approval was required by the order of the court.

(8) The articles of arrangement shall be submitted to the Registrar who shall retain and register them in the register of companies.

(9) Upon registration of the articles of arrangement, the Registrar shall issue a certificate under his hand and seal certifying that the articles of arrangement have been registered.

(10) A certificate of arrangement issued by the Registrar shall be prima facie evidence of compliance with all requirements of this Act in respect of the arrangement.

(11) An arrangement shall be effective on the date the articles of

arrangement are registered by the Registrar or on such date subsequent thereto not exceeding thirty days, as is stated in the articles of arrangement.

**Rights of dissenters.**

168. (1) A member of a company shall be entitled to payment of the fair value of his shares upon dissenting from -

- (a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;
- (b) a consolidation if the company is a constituent company;
- (c) any sale, transfer, lease, exchange or other disposition of more than fifty per cent of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including -
  - (i) a disposition pursuant to an order of the court having jurisdiction in the matter,
  - (ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition, or
  - (iii) a transfer pursuant to the power described in section 36;
- (d) a redemption of his shares by the company pursuant to section 166; and
- (e) an arrangement, if permitted by the court.

(2) A member who desires to exercise his entitlement under subsection (1) shall give to the company, before the meeting of members at which the action is submitted to a vote, or at the meeting before the vote, written objection to the action; but an objection shall not be required from a member to whom the company did not give notice of the meeting in accordance with this Act or where the proposed action is authorized by written consent of members without a meeting.

(3) An objection under subsection (2) shall include a statement that the member proposes to demand payment for his shares if the action is taken.

(4) Within twenty days immediately following the date on which the vote of members authorizing the action is taken, or the date on which written consent of members without a meeting is obtained, the company shall give written notice of the authorization or consent to each member who gave written objection or from whom written objection was not required, except those members who voted for, or consented to in writing, the proposed action.

(5) A member to whom the company was required to give notice and who elects to dissent shall, within twenty 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 member who elects to dissent from a merger under section 163 shall give to the company a written notice of his decision to elect to dissent within twenty 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 162.

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

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

(8) Within seven days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within seven days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company, shall make a written offer to each dissenting member to purchase his shares at a specified price that the company determines to be their fair value; and if, within thirty days immediately following the date on which the offer is made, the company making the offer and the dissenting member agree upon the price to be paid for his shares, the company shall pay to the member the amount in money upon the surrender of the certificates representing his shares.

(9) If the company and a dissenting member fail, within the period of thirty days referred to in subsection (8), to agree on the price to be paid for the shares owned by the member, within twenty days immediately following the date on which the period of thirty days expire, the following shall apply -

- (a) the company and the dissenting member shall each designate an appraiser;
- (b) the two designated appraiser together shall designate a third appraiser;
- (c) the three appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorizing the action was taken or the date on which written consent of members without a meeting was obtained, excluding any appreciation or depreciation directly or

indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and

- (d) the company shall pay to the member the amount in money upon the surrender by him of the certificates representing his shares.

(10) Shares acquired by the company pursuant to subsection (8) or (9) shall be cancelled, but if the shares are shares of a surviving company, they shall be available for reissue.

(11) The enforcement by a member of his entitlement under this section shall exclude the enforcement by the member of a right to which he might otherwise be entitled by virtue of his holding shares, except that this section shall not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.

## PART VI

### INCORPORATION AND REGISTRATION OF OTHER COMPANIES

#### Incorporation of Companies without Share Capital

**Application of sections 170 to 178.**  
**28 of 1994.**

169. Sections 170 to 178 shall apply to non-profit companies only.

**Form of memorandum.**

170. The memorandum of a non-profit company shall state -

- (a) the restrictions on the undertaking that the company is to carry on;
- (b) that the company has no authorized share capital and is to be carried on without pecuniary gain to its members and that any profits or other accretions to the company are to be used in furthering its undertaking;
- (c) if the undertaking of the company is of a social nature, the address in full of the club house or similar building maintained by the company; and
- (d) that each first director becomes a member of the company upon its incorporation.

**By-laws.**  
**Second Schedule.**  
**Directors.**

171. The directors of a non-profit company may make by-laws to provide for the matters specified in the Second Schedule.

172. A non-profit company shall have no fewer than three directors and its articles may provide for individuals becoming directors by virtue of their holding some office outside the company.

**Unlimited**

173. Unless the articles otherwise provide, there shall be no limit to the

- membership.** membership of a non-profit company.
- Classes of membership.** 174. The articles of a non-profit company may provide for more than one class of membership; in which case, the designation of and the terms and conditions attaching to each class of shares shall be specified.
- Admission to membership.** 175. Subject to the articles of a non-profit company persons may be admitted to membership in the company by a resolution of directors; but the articles may provide -
- (a) that the resolution shall be ineffective until confirmed by the members in general meeting; and
  - (b) that members can be admitted by virtue of holding some office outside the company.
- Voting.** 176. (1) Subject to subsection (2), each member of each class of members of a non-profit company shall have one vote.
- (2) The articles of a non-profit company may provide that each member of a specified class shall have more than one vote or shall have no vote.
- Transfer of members' interests.** 177. (1) Unless the articles of a non-profit company otherwise provide, the interest of a member in such a company shall not be transferable, and shall lapse and cease to exist upon his death or when he shall cease to be a member by resignation or otherwise in accordance with the articles of the company.
- (2) Where the articles of a non-profit company provide that the interest of a member shall be transferable, any restriction on such interest shall be void.
- Dissolution and distribution.** 178. (1) The articles of a non-profit company may provide that, upon dissolution, the remaining property of the company shall be distributed among the members or among the members of a class or classes of members or to one designated organisation or more, or to any combination thereof.
- (2) Where the articles of a non-profit company do not provide for a distribution of its remaining property in accordance with subsection (1), the company shall, by a resolution of directors, after payment of all debts and liabilities, distribute or dispose of the remaining property to any organization in The Bahamas the undertaking of which is charitable or beneficial to the community at large.
- (3) Where the articles do not contain a provision for the distribution of remaining property to the members, the articles may not be amended so to provide.

#### **Registration of Foreign Companies**

- Interpretation.** 179. In this Part -
- "foreign company" means any incorporated or unincorporated body formed under the laws of a country other than The Bahamas;
- "undertaking" means, in relation to a foreign company, any business or undertaking carried on by a foreign company.

**Carrying on  
business in The  
Bahamas.**

180. (1) A foreign company carries on an undertaking in The Bahamas if -
- (a) it maintains a warehouse or place of business in The Bahamas;
  - (b) it is licensed or registered or required to be licensed or registered under the laws of The Bahamas whereby it is entitled to do business or to sell shares or debentures of its own issue; or
  - (c) in any other manner, it carries on any undertaking in The Bahamas.

(2) For the purposes of subsection (1), where a foreign company is listed with a telephone number in The Bahamas under the name of the foreign company in a telephone directory published for use in The Bahamas, the foreign company is presumed, in the absence of evidence to the contrary, to be carrying on an undertaking in The Bahamas.

**Registration of  
foreign  
companies.**

181. (1) Subject to subsection (2), no foreign company may begin to carry on any undertaking in The Bahamas until it is registered under this Act.
- (2) Subject to section 182, a foreign company, upon payment of the prescribed fee, shall be entitled to be registered under this Act for any lawful undertaking.
- (3) This section shall not apply to a foreign company that carried on an undertaking in The Bahamas prior to the commencement of this Act.

**Requirements  
for registration  
of foreign  
company.**

182. (1) In order to register under this Act, a foreign company shall file with the Registrar a statement in the approved form setting out -
- (a) the name of the company;
  - (b) the jurisdiction in which the company was incorporated;
  - (c) the date of its incorporation;
  - (d) the manner in which it was incorporated;
  - (e) the particulars of its corporate instruments;
  - (f) the period, if any, fixed by its corporate instruments for the duration of the company;
  - (g) the extent, if any, to which the liability of the shareholders or members of the company is limited;
  - (h) the undertaking that the company will carry on in The Bahamas;
  - (i) the date on which the company intends to commence any of its undertakings in The Bahamas;
  - (j) the authorized, subscribed and paid up or stated capital of the company and the shares that the company is authorized to issue and their nominal or par value, if any;
  - (k) the full address of the principal office of the company outside

The Bahamas;

- (l) the full address of the principal office of the company in The Bahamas; and
- (m) the full names, addresses and occupations of the directors of the company.

(2) The statement for the purposes of subsection (1) shall be accompanied by -

- (a) a statutory declaration by at least one director of the company that verifies on behalf of the company the particulars set out in the statement;
- (b) a certified copy of the corporate instruments of the company;
- (c) a statutory declaration by a counsel and attorney that this section has been complied with;
- (d) the prescribed fees.

**28 of 1994.**

(3) Where the statement required by this section is not in the English language, a notarially certified translation of that document shall be provided unless the Registrar otherwise directs.

**Certificate of registration.**

183. (1) When the Registrar has, in respect of a foreign company, received all the required documents and the prescribed fees, the Registrar shall -

- (a) issue a certificate showing that the company has been registered as a foreign company under this Act; and
- (b) publish in the Gazette a notice of the registration of the company as a foreign company.

(2) A certificate of registration issued under this Act to a foreign company shall be conclusive proof of the registration of the company on the date shown on the certificate and any other facts that the certificate purports to certify.

**Effect of registration.**

184. Subject to this Part and any other law of The Bahamas, a foreign company that is registered under this Act may carry on its undertaking in The Bahamas in accordance with its certificate of registration and may exercise its corporate powers within The Bahamas.

**Capacity of foreign company.**  
**28 of 1994.**

185. A foreign company that is registered under this Act has the same capacity as a company incorporated under this Act and the provisions of this Act, except those relating to incorporation, shall apply, mutatis mutandis, to foreign companies.

**Suspension of registration.**

186. (1) Subject to any regulations made by the Minister respecting foreign companies, the Minister may suspend or revoke the registration of a foreign company for failure to comply with any requirements of this Part or for any other prescribed cause; and the Minister may subject to those regulations, remove a suspension or cancel a revocation.

(2) The rights of the creditors of a foreign company shall not be affected by the suspension or revocation of its registration under this Act.

(3) The Registrar shall immediately publish in the Gazette a notice of any suspension or revocation of a foreign company under this Act.

**Cancellation of registration.**

187. (1) When a foreign company ceases to carry on its undertaking in The Bahamas, the company shall file a notice to that effect with the Registrar, who shall thereupon cancel the registration of the company under this Act.

(2) If a foreign company ceases to exist and the Registrar is made aware of that circumstance by evidence satisfactory to him, the Registrar may cancel the Registration of the company under this Act.

**Revival of registration.**

188. (1) Subject to subsection (3), where the registration of a foreign company has been cancelled under section 187, the Registrar may revive the registration of a foreign company under this Act if the company files with him such documents as he may require and pays the prescribed fee.

(2) The registration of a foreign company is revived when the Registrar issues a new certificate of registration to the company.

**28 of 1994.**

(3) The Registrar may not revive the registration of a foreign company the registration of which was suspended or revoked by the Minister under section 186.

**Name display.**

189. (1) A foreign company registered under this Act and carrying on an undertaking in The Bahamas shall paint or affix its name and place of business, in a conspicuous place in easily legible letters, and keep that information so painted and affixed, on the outside of its registered office in The Bahamas and every office or place in The Bahamas in which it carries on its undertaking.

(2) A foreign company carrying on any undertaking in The Bahamas, in the transaction of its undertaking in The Bahamas, shall have its name mentioned in legible characters in -

- (a) all notices, advertisements and other official publications;
- (b) all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company; and
- (c) all bills of parcels, invoices, receipts and letters of credit of the company.

**Registered office.**

190. A foreign company that is registered under this Act shall maintain a registered office in The Bahamas and the address of that office shall be notified to the Registrar.

**Returns.**

191. (1) The Registrar may, at any time, make a written demand for information concerning a foreign company and such information shall be furnished within twenty-one days of the demand signed by at least one director of the company.

(2) The Registrar may cancel the registration of a foreign company for failure to comply with a demand under subsection (1) where he is satisfied that his demand has been received and there has been wilful default in complying therewith.

**PART VII**  
**WINDING UP OF COMPANIES**

**Preliminary**

**Definition of "Contributory".** 192. For the purposes of this Part "contributory" means every person liable to contribute to the assets of a company under this Act in the event of that company being wound up and includes any person alleged to be a contributor in proceedings for determining the persons who are to be deemed contributories and in all proceedings prior to the final determination of such persons.

**Nature of liability of contributory.** 193. (1) The liability of any person to contribute to the assets of a company under this Act, in the event of such company being wound up, shall be deemed to create a debt of the nature of a specialty accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made for enforcing such liability.

(2) Without affecting subsection (1), where a contributory is bankrupt, the estimated value of his liability to future calls, as well as calls already made, may be proved against his estate.

**Contributories in case of death.** 194. Where any contributory dies either before or after he has been placed on the list of contributories, his personal representatives, heirs, and devisees shall be liable in the due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly.

**Contributories in case of bankruptcy.** 195. Where any contributory becomes bankrupt, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such bankrupt for all the purposes of the winding up, and shall be deemed to be contributories, accordingly, and may be called upon to admit to proof against the estate of such bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any monies due from such bankrupt in respect of his liability to contribute to the assets of the company being wound up.

**28 of 1994.** 196. REPEALED.

**Winding up by court**

**Circumstances giving rise to winding up by court.** 197. A company under this Act may be wound up by the court in the following circumstances -

- (a) when the company has passed a resolution requiring the company to be wound up by the court;
- (b) when the company does not commence its business within a year from its incorporation, or suspends its business for a period of one year;
- (c) when the members are reduced in number to less than two;

- (d) when the company is unable to pay its debts;
- (e) if the court is of the opinion that it is just and equitable that the company should be wound up; or
- (f) if the Central Bank petitions for the winding up of a bank whose licence has been suspended.

**Company when deemed unable to pay its debts.**

198. A company under this Act shall be deemed to be unable to pay its debts where -

- (a) a creditor, by assignment or otherwise, to whom the company is indebted, in a sum exceeding one thousand dollars then due, has served on the company, at its registered office, a demand under his hand requiring the company to pay the sum due, and the company has for three weeks thereafter neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor;
- (b) execution or other process issued on a judgement, decree, or order obtained in any court in favour of any creditor in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part;
- (c) it is proved to the satisfaction of the court that the company is unable to pay its debts; or
- (d) it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, having regard to its contingent and prospective creditors.

**Application for winding up to be made by petition.**

199. Any application to the court for the winding up of a company under this Act shall be by petition; and such petition may be presented by the company, a director, or by any one or more creditors, a contributory of the company, or by all or any of the above parties, together or separately; and every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

**Power of court.**

200. Any judge of the court may do in chambers any act which the court is authorized to do in a winding up by the court.

**Commencement of winding up.**

201. A winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

**Court may grant injunction.**

202. The court may, at any time after the presentation of a petition for winding up a company under this Act, and before making an order for winding up the company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action, suit or proceeding against the company, upon such terms as the court thinks fit; the court may also at any time after the presentation



of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the company.

- Course to be pursued by court.** 203. Upon hearing the petition the court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order, or any other order that it deems just.
- Actions and suits to be stayed.** 204. When an order has been made for winding up a company under this Act, or a provisional liquidator has been appointed, no suit, action, or other proceedings shall be proceeded with or commenced against the company except with the leave of the court, and subject to such terms as the court may impose.
- Copy of order to be forwarded to Registrar.** 205. When an order has been made for winding up a company under this Act, a copy of such order shall be forwarded by the company to the Registrar who shall make a minute thereof in the register of companies.
- Power of court to stay proceedings.** 206. The court may at any time after an order has been made for winding up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the court that all proceedings in relation to such winding up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.
- Effect of order on share capital of company limited by guarantee.** 207. When an order has been made for winding up a company limited by guarantee and having a capital divided into shares, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a debt of the nature of a specialty due to the company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the court.
- Court may have regard to wishes of creditors or contributors.** 208. (1) Subject to subsection (2), the court may, as to all matters relating to the winding up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held, and conducted in such manner as the court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of such meeting, and to report the result of such meeting to the court.
- (2) Without affecting subsection (1), in the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulation of the company.

#### **Official Liquidators**

- Appointment of official liquidator.** 209. (1) For the purpose of conducting the proceedings in winding up a company, and assisting the court therein, there may be appointed a person to be called an official liquidator; and the court having jurisdiction may appoint such person, either provisionally or otherwise, as it thinks fit, to the office of official liquidator; but in either case, if more persons than one are appointed to the office of official liquidator, the court may

declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons, and the court may also determine whether any and what security is to be given by any official liquidator on his appointment.

(2) If no official liquidator is appointed or during any vacancy in such appointment, all the property shall be deemed to be in the custody of the court.

**Registrations, removals etc.** 210. (1) Any official liquidator may resign or be removed by the court on due cause shown; and any vacancy in the office of official liquidator appointed by the court shall be filled by the court.

(2) There shall be paid to the official liquidator such salary or remuneration, by way of percentages or otherwise, as the court may direct; and if more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the court shall direct.

**Style and duties of official liquidator.** 211. The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed, and not by his individual name; and he shall take into his custody, or under his control, all the property, effects, and things in action to which the company is or appears to be entitled, and shall perform such duties in reference to the winding up of the company as may be imposed by the court.

**Powers of official liquidator.** 212. The official liquidator may, with the approval of court, do any or all of the following -

- (a) bring or defend any action, suit, or prosecution, or other legal proceedings, civil or criminal, in the name and on behalf of the company;
- (b) carry on the business of the company, so far as may be necessary for the beneficial winding up of the same;
- (c) sell the real and personal property, effects, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- (d) do all acts and execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose use, when necessary, the company's seal;
- (e) prove, rank, claim, and draw a dividend, in the matter of the bankruptcy or insolvency of any contributory, for any balance against the estate of such contributory, and take and receive dividends in respect of such balance, in the matter of bankruptcy or insolvency as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors;

- (f) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and drawings, accepting, making or endorsing of every such bill of exchange or promissory note on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or endorsed by or on behalf of such company in the course of carrying on the business thereof;
- (g) take out, if necessary, in his official name, letters or administration to any deceased contributory, and do in his official name any other act that may be necessary for obtaining payment of any monies due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any monies due from a contributory, such monies shall for the purposes of enabling him to take out such letters or recover such monies, be deemed to be due to the official liquidator himself; and
- (h) do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

**Discretion of official liquidator.**

213. The court may provide by any order that the official liquidator may exercise any of the above powers without the approval or intervention of the court, and where an official liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

**Vesting of property in liquidator.**

214. (1) Where a company is being wound up by the court the court may on the application of the liquidator, by order, direct that all or any part of the property belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, whereupon the property to which the order relates shall vest accordingly.

(2) The liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

**Assistance for liquidator.**

215. The official liquidator may, with the approval of the court, appoint a counsel and attorney to assist him in the performance of his duties.

### Ordinary Powers of Court

**Collection and application of assets.**

216. As soon as may be after making an order for winding up the company, the court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.

**Provisions as to representative contributories.**

217. In settling the list of contributories the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable for the debts of others; and it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, but such heirs or devisees may be added as and when the court thinks fit.

**Power of court to require delivery of property.**

218. The court may, at any time after making an order for winding up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

**Power of court to order payment of debts by contributory.**

219. (1) Subject to subsections (2) and (3), the court may, at any time after making an order for winding up the company, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in respect of any monies due from him or from the estate of the person whom he represents to the company exclusive of any monies which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the court pursuant to this Part.

(2) The court may, in making such order when the company is not limited, allow to such contributory by way of set-off any monies due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any monies due to him as a member of the company in respect of any dividend or profit.

(3) When all the creditors of any company whether limited or unlimited are paid in full, any monies due on account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call.

**Power of court to make calls.**

220. The court may, at any time after making an order for winding up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the

contributories amongst themselves, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

- Power of court to order payment into bank.** 221. The court may order any contributory, purchaser, or other person from whom money is due to the company to pay the same into a bank to the account of the official liquidator, instead of to the official liquidator and such order may be enforced in the same manner as if it had directed payment to the official liquidator.
- Regulation of account with court.** 222. All monies, bills, notes, and other securities paid and delivered into a bank in the event of a company being wound up by the court shall be subject to such order and regulations for the keeping of the account of such monies and other effects, and for the payment and delivery in, or investment and payment and delivery out of, the same as the court may direct.
- Representative contributory not paying monies ordered.** 223. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the personal and real estates of such deceased contributory, or either of such estates, and of compelling payment of the monies due.
- Order conclusive evidence.** 224. Any order made by the court pursuant to this Act upon any contributory shall, subject to the provisions for appealing against such order, be conclusive evidence that the monies, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be prima facie evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.
- Court may exclude creditors not proving in certain time.** 225. The court may fix a day on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.
- Court to adjust rights of contributories.** 226. The court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.
- Court to order costs.** 227. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges, and expenses incurred in winding up any company in such order of priority as the court thinks just.
- Dissolution of company.** 228. When the affairs of the company have been completely wound up, the court may make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

**Registrar to make minute of dissolution.** 229. Any order so made shall be reported by the official liquidator to the Registrar who shall make a minute in the register of companies of the dissolution of such company.

### **Extraordinary Powers of Court**

**Power of court to summon persons.** 230. The court may, after it has made an order for winding up the company, summon before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company; and the court may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, having no lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause such person to be apprehended, and brought before the court for examination; but, in cases where any person claims any lien on papers, deeds, or writings or documents produced by him, such production shall be without prejudice to such lien, and the court shall have jurisdiction in the winding up to determine all questions relating to such lien.

**Examination of parties by court.** 231. The court may examine upon oath, either orally or upon written interrogatories, any person appearing or brought before it concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

**Power of arrest.** 232. The court may, at any time before or after it has made an order for winding up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to leave The Bahamas or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, monies securities for monies, goods, and chattels to be seized, and him and them to be safely kept until such time as the court may order.

**Powers of court cumulative.** 233. Any powers conferred on the court by this Act shall be deemed to be in addition to and not in restriction of any other powers subsisting of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company for the recovery of any call or other sums due from such contributory, or debtor, or his estate, and such proceedings may be instituted accordingly.

**Power to enforce orders.** 234. All orders made by the court under this Act may be enforced in the same manner in which orders of such court made in any suit pending therein may be enforced.

### Voluntary Winding Up of Company

<b>Circumstances under which company may be wound up voluntarily.</b>	235.	A company incorporated under this Act may be wound up voluntarily where -  (a) the period, if any, fixed for the duration of the company by the articles shall expire, or whenever the event, if any, shall occur, upon the occurrence of which it is provided by the articles that the company is to be dissolved, and the members of the company have passed a resolution requiring the company to be wound up voluntarily;  (b) a resolution requiring the company to be wound up voluntarily has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the articles to vote as may be present in person or by proxy at any general meeting of which notice specifying the intention to propose such resolution had been duly given; or  (c) the members of the company have passed a resolution to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same.
<b>28 of 1994.</b>		
<b>Commencement of voluntary winding up.</b>	236.	A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorizing such winding up.
<b>Effect of voluntary winding up.</b>	237.	Whenever a company is wound up voluntarily the company shall, from the date of the commencement of such winding up, cease to carry on its business, except in so far as may be required for the beneficial winding up thereof, and all transfers of shares except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company taking place, after the commencement of such winding up are void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up.
<b>Notice of resolution to wind up.</b>	238.	Notice of any resolution passed for winding up a company voluntarily shall be published in the Gazette.
<b>Consequences of voluntary winding up.</b>	239.	The following consequences ensue upon the voluntary winding up of a company -  (a) the property of the company shall be applied in satisfaction of its liabilities <i>pari passu</i> and, subject thereto, shall, unless it be otherwise provided by the articles, be distributed amongst the

members according to their rights and interests in the company;

- (b) a liquidator shall be appointed for the purpose of winding up the affairs of the company and distributing the property;
- (c) the company in general meeting shall appoint such person as it thinks fit to be the liquidator, and may fix the remuneration to be paid to them;
- (d) upon the appointment of a liquidator, all the powers of the directors shall cease, except in so far as the company in general meeting may approve the continuance of such powers;
- (e) if several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two;
- (f) a liquidator may, without the approval of the court, exercise all powers by this Act given to the official liquidator;
- (g) a liquidator may exercise the powers given to the court of settling the list of contributories of the company, and any list so settled shall be prima facie evidence of the liability of the persons named therein to be contributories.

**Special powers  
and duties**

240. (1) A liquidator may at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

(2) A liquidator shall pay the debts of the company, and adjust the rights of the contributories amongst themselves.

(3) Until the affairs of the company are completely wound up, a liquidator shall keep both the members of the company and the Registrar informed of the state of affairs of the company by filing with the Registrar periodic statements of receipts and disbursements and such statements shall be made available to the members.

**Effect of  
winding up on  
share capital  
of company  
limited by**

241. Where a company limited by guarantee, and having a capital divided into shares, is being wound up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidator.



**guarantee.**

**Power of company to delegate authority to appoint liquidator.**

242. A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may by resolution, delegate to its creditors, or to any committee of its creditors the power of appointing liquidators, or any of them, and supplying any vacancies in the appointment of liquidators or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised; and any act done by the creditors pursuant to such delegated power, has the same effect as if it had been done by the company.

**Arrangement when binding on creditors.**

243. Any arrangement entered into between a company about to be wound up voluntarily and its creditors is binding on the company if approved by a resolution of its members, and on the creditors if acceded to by three-fourths in number and value of the creditors if acceded to by such right of appeal in accordance with section 244.

**Power of creditor or contributory to appeal.**

244. Any creditor or contributory of a company that has entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the court against such arrangement, and the court may thereupon, as it thinks just, amend, vary, or confirm any such arrangement.

**Power of liquidators or contributories in voluntary winding up to apply to court.**

245. Where a company is being wound up voluntarily the liquidators or any contributory of the company may apply to the court to determine any question arising in the matter of such winding up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court; and the court if satisfied that the determination of such question, or the required exercise of power will be just and beneficial, may accede, wholly, or partially, to such application, on such terms and subject to such conditions as the court thinks fit, or it may make such other order, interlocutor, or decree on such application as the court thinks just.

**Power of liquidator to call general meeting.**

246. Where a company is being wound up voluntarily, the liquidator may from time to time during the continuance of such winding up summon general meetings of the company for the purpose of obtaining the approval of the company by resolution or for any other purposes they think fit; and in the event of the winding up continuing for more than one year the liquidator shall summon a general meeting of the company at the end of the first year of each succeeding year from the commencement of the winding up or as soon thereafter as may be convenient and shall lay before such meeting an account showing their acts and dealings and the manner in which the winding up has been conducted during the preceding year.

**Power to fill vacancy of liquidator.**

247. If any vacancy occurs in the office of liquidator appointed by the company by death, resignation, or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors fill such vacancy, and a general meeting for the purpose of filling such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly

held if held in manner prescribed by the articles of the company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the court.

**Power of court to appoint liquidators.** 248. If there is no liquidator acting in the case of a voluntary winding up, the court may, on the application of a contributory, appoint a liquidator; and the court may, on due cause shown, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding up.

**Liquidators on conclusion of winding up to make up an account.** 249. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account showing the manner in which such winding up has been conducted, and the property of the company disposed of; and they shall call a general meeting of the company for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidator.

(2) The meeting shall be called by advertisement, specifying the time, place and object of such meeting; and such advertisement shall be published one month, at least, prior to the meeting.

**Liquidator to report meeting to Registrar.** 250. (1) The liquidator shall make a return to the Registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved.

(2) Notification of a dissolution shall be notified in the Gazette and in any local newspaper as the Registrar shall determine.

**Costs of voluntary liquidation.** 251. All costs, charges, and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

**Saving of rights of creditors.** 252. The voluntary winding up of a company does not constitute a bar to the right of any creditor or contributory of such company to have the same wound up by the court, if the court is of the opinion that the rights of such creditor or contributory will be prejudiced by a voluntary winding up.

**Power of court to adopt proceedings of voluntary winding up.** 253. Where a company is in the course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the court, the court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the court, provide in such order or in any other order for the adoption of all of any of the proceedings taken in the course of the voluntary winding up.

#### **Winding up subject to the Supervision of the Court**

**Power of court on application to direct** 254. When a resolution has been passed by a company to wind up voluntarily, the court may make an order directing that the voluntary winding up should continue, but subject to such supervision of the court, and with such liberty for creditors,

**winding up  
subject to  
supervision.**

contributories, or others, to apply to the court, and generally upon such terms and subject to such conditions as the court thinks just.

**Petition for  
winding up  
subject to  
supervision.**

255. A petition, praying wholly or in part that a voluntary winding up should continue, but subject to the supervision of the court, and which winding up is hereinafter referred to as a winding up subject to the supervision of the court, shall, for the purpose of giving jurisdiction to the court over suits and actions, be deemed to be a petition for winding up the company by the court.

**Court may  
have regard  
to wishes  
of creditors.**

256. (1) Subject to subsection (2), the court may, in determining whether a company is to be wound up altogether by the court or subject to the supervision of the court, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court.

(2) The court may, in the case of creditors, have regard to the value of the debts due to each creditor and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

**Powers of court  
to appoint  
additional  
liquidators in  
winding up  
subject to  
supervision.**

257. (1) Subject to subsection (2), where any order is made by the court for a winding up subject to the supervision of the court, the court may, in such order or in any subsequent order, appoint any additional liquidators, and any liquidator so appointed by the court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company.

(2) The court may from time to time remove any liquidator so or appointed by the court and fill any vacancy occasioned by such removal or by death or resignation.

**Effect of order  
of court for  
winding up  
subject to  
supervision.**

258. (1) Where an order is made for a winding up subject to the supervision of the court, the liquidators appointed to conduct such winding up may, subject to any restrictions imposed by the court, exercise all their powers, without the approval or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily; but, any order made by the court for a winding-up, subject to the supervision of the court, shall for all purposes, including the staying of actions, suits and other proceedings, be deemed to be an order of the court, for winding up the company by the court, and shall confer full authority on the court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the court.

(2) For the purposes of the construction of the provisions whereby the court is empowered to direct any act or thing to be done to or in favour of the official

liquidators, the expression official liquidators shall be deemed to include the liquidators conducting the winding up, subject to the supervision of the court.

**Appointment of  
voluntary  
liquidators to  
office of  
official  
liquidators.**

259. Where any order has been made for the winding up of a company subject to the supervision of the court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the court may in such order, or in any subsequent order, appoint the voluntary liquidators, either provisionally or permanently, and either with or without the addition of any other persons, to be official liquidators.

**Supplemental Provisions**

**Dispositions  
after the  
commencement  
of winding up  
to be rendered  
void.**

260. Where any company is being wound up by the court or subject to the supervision of the court all dispositions of the property, effects, and things in action of the company and every transfer of shares, or alteration in the status of the members of the company made between the commencement of the winding up and the order for winding up are, unless the court otherwise orders, void.

**Books of the  
company to be  
evidence.**

261. Where any company is being wound up, all books, accounts and documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

**Disposal of  
books, accounts  
and documents  
of the company.**

262. Where any company has been wound up under this Act and is about to be dissolved, the books, accounts and documents of the company and of the liquidators may be disposed of as follows -

- (a) where the company has been wound up by or subject to the supervision of the court, in such way as the court directs; and
- (b) where the company has been wound up voluntarily, in such way as the company by resolution directs; but after the lapse of five years from the date of such dissolution, no responsibility shall rest on the company, or the liquidators, or anyone to whom the custody of such books, accounts and documents have been committed, by reason that the same, or any of them, cannot be made available to any party claiming to be interested therein.

**Inspection  
of books.**

263. Where an order has been made for winding up a company by the court, or subject to the supervision of the court, the court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories, in conformity with the order of the court.

**Power of**

264. Any person to whom anything in action belonging to the company

**assignee to sue.** is assigned, in pursuance of this Act, may bring or defend any action or suit relating to such thing in action in his own name.

**Debts to be proved.** 265. In the event of any company being wound up under this Act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible as proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

**Rules to be observed.** 266. In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being and all persons who in any case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they are entitled to by virtue of this section.

**Preferential payments.** 267. (1) Notwithstanding anything contained in this Act, in a winding up there shall be paid in priority to all other debts -

- (a) all rates, taxes, assessments or impositions imposed or made under the provisions of any Act, and having become due and payable within twelve months next before the relevant date;
- (b) all wages or salary of any clerk or servant in respect of services rendered to the company during four months before the relevant date;
- (c) all wages of any workman or labourer in respect of services rendered to the company during two months before the relevant date;
- (d) unless the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company or unless the company has at the commencement of the winding up under a contract with insurers with rights capable of being transferred to and vested in the workmen, all amounts due in respect of personal injury to workmen accrued before the relevant date.

(2) The debts referred to in subsection (1) -

- (a) rank equally among themselves and shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority

over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts referred to in subsection (1) shall be discharged so far as the assets are sufficient to meet them.

(4) Where any payment on account of wages or salary has been made to any clerk, servant, workman, or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof; but in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(6) In any case in which it appears that there are numerous claims for wages by workmen and others employed by the company, it shall be sufficient if one proof for all such claims is made by some person on behalf of all such creditors; and such proof shall have annexed thereto, as forming part thereof, a schedule specifying the names of the workmen and others, and the amounts severally due to them.

(7) Any proof made in compliance with subsection (6) has the same effect as if separate proofs had been made by each workman and others.

(8) In this section the expression "relevant date" means -

- (a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and
- (b) in any other case, the date of the commencement of the winding up.

**Liquidation  
scheme may  
be approved.**

268. (1) The liquidators may, with the approval of the court, where the company is being wound up by the court or subject to the supervision of the court, and by resolution of the company where the company is being wound up voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable.

(2) Where a company is being wound up in circumstances

contemplated by subsection (1) the liquidators may, with the approval of the court, compromise -

- (a) all calls and liabilities to calls, debts, and liabilities capable of resulting in debts;
- (b) all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company; and
- (c) all questions in any way relating to or affecting the assets of the company or the winding up of the company, upon the receipt of such sums, payable at such times, and upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts or liabilities.

**Acceptance of shares etc. as consideration for sale of property of company.**

269. (1) Subject to subsection (2), where any company is proposed to be or is in the course of being wound up voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first company may, with the approval of a resolution of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement -

- (a) receive in compensation or part compensation for such transfer or sale shares, policies or other like interests in such other company, for the purpose of distribution amongst members of the company being wound up; or
- (b) enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, receive shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company,

and any sale made or arrangement entered into by the liquidators pursuant to this section shall be binding on the members of the company being wound up.

(2) If any member of a company being wound up who has not voted in favour of the resolution passed by the company of which he is a member at the meeting held for passing the resolution expresses his dissent from any such resolution in writing addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such resolution was passed, such dissentient member may require the liquidators to do one of the following -

- (a) abstain from carrying such resolution into effect; or
- (b) purchase the interest held by such dissentient member at a price to be determined.

(3) For the purpose of subsection (2)(b) the purchase money shall be paid before the company is dissolved, and shall be raised by the liquidators in such manner as may be determined by resolution of members.

(4) No resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company, or for appointing liquidators; but if an order be made within a year for winding up the company by or subject to the supervision of the court, such resolution shall not be of any validity unless it is approved by the court.

**Mode of determining price.**

270. The price to be paid or the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of The Arbitration Act shall be incorporated within this Act.

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**Certain attachments and executions to be void.**

271. Where any company is being wound up by the court or subject to the supervision of the court, any attachment, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up is void.

**Fraudulent preference.**

272. (1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property as would, if made or done by or against any individual trader, be deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference of the creditors of such traders, shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such company, and is invalid accordingly.

(2) For the purposes of this section -

- (a) the presentation of a petition for winding up a company in the case of a company being wound up by the court or subject to the supervision of the court;
- (b) a resolution for winding up the company, in the case of a voluntary winding up,

shall be deemed to correspond with the act of bankruptcy in the case of an individual trader; and any conveyance or assignment made by any company formed under this Act of all or any part of its estate and effects to trustees for the benefit of all or any part of its creditors is void.

**Assessment of damages against delinquent directors and**

273. Where, in the course of the winding up of any company under this Act, it appears that any past or present director, manager, official or other liquidator, or any officer of such company -

- (a) has misapplied or retained in his own hands or become



**officers.**

liable or accountable for any monies of the company; or

- (b) is guilty of any misfeasance or breach of trust in relation to the company,

the court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine the conduct of such director, manager, or other officer and may compel him to repay any monies so misapplied or retained, or for which he has become liable or accountable, together with interest at such rate as the court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the court thinks just.

**Prosecution of delinquent directors in winding up by court.**

274. Where any order is made for winding up a company by the court or subject to the supervision of the court, and it appears in the course of such winding up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may, on the application of any person interested in such winding up, or of its own motion, direct the official liquidators to refer the matter to the Attorney-General who may institute and conduct a prosecution or prosecutions of such offence.

**Prosecution of delinquent directors in voluntary winding up.**

275. Where a company is being wound up voluntarily, and it appears to the liquidators conducting such winding up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidators may, refer the matter to the Attorney-General who may institute and conduct a prosecution or prosecutions of such offence.

## PART VIII

### ADMINISTRATIVE MATTERS

**Responsibility of Registrar.**

276. (1) The Registrar has, subject to the general supervision of the Minister, the responsibility for the administration of this Act.

(2) The responsibility of the Registrar shall include -

- (a) the preparation of the approved forms; and  
(b) the creation and maintenance of the various registers,

that are required for the purposes of this Act.

**Application for directions.**

277. The Registrar may apply to the court for directions in respect of any matter concerning his duties under this Act.

**Registrar's seal.**

278. The Minister may approve a seal for use by the Registrar in the performance of his duties.

**Delegation.**

279. (1) Subject to subsection (2), the Registrar may delegate to any public officer within his Department any of his functions under this Act.

(2) The power to delegate under subsection (1) shall not include the

power of the Registrar to investigate any company incorporated or registered under this Act.

(3) Any delegation by the Registrar under subsection (1) shall not prevent such functions being exercised by the Registrar and the public officer to whom the delegation was made.

**Power to investigate.**

280. (1) If the Registrar has reasonable cause to suspect that the affairs of a company are being conducted in a fraudulent manner he may, after consultation with the Minister, make a preliminary investigation into the company and submit his findings to the court with a view to the company being wound up.

(2) Upon receipt of the Registrar's findings, the court may proceed to deal with the company in accordance with Part VII.

(3) In the exercise of his power under subsection (1), the Registrar may, in writing, request any document from a company under investigation or from an affiliated company, and the company shall give effect to any such request.

**Removal of companies from Register.**

281. (1) The Registrar may remove from the register of companies -

- (a) a company that fails to submit any return, notice, document or prescribed fee to the Registrar as required by this Act;
- (b) a company that is dissolved;
- (c) a company that has amalgamated or merged, with one or more companies;
- (d) a company that refuses to comply with any request or direction given by the Registrar pursuant to this Act;
- (e) a company whose registration is revoked or cancelled in accordance with this Act;
- (f) a company that has ceased to carry on business.

(2) Where the Registrar is of the opinion that a company is in default with respect to any requirement as to a return, notice, document or prescribed fee, he shall send a notice to that company advising it as to the default and stating that, unless the default is remedied within twenty-one days after the receipt of the notice, the company shall be removed from the register of companies.

(3) After the expiration of the time specified in the notice, the Registrar may remove the company from the register and publish a notice of that fact in the Gazette.

(4) Where a company is removed from the register of companies, the Registrar may, upon receipt of an application, before the expiration of twenty years from the publication in the Gazette of the notice aforesaid, in the approved form and upon payment of the prescribed fee, restore the company to the register and issue a certificate in the approved form.

**Continuation of liability.**

282. Where a company is removed from the register of companies pursuant to section 281, the liability of the company and of every director, officer or member

of the company shall continue and may be enforced as if the company had not been removed from the register.

**Property to be vested in Treasurer. 24 of 1993.** 282A. Where a company is removed from the register of companies pursuant to section 281 the company shall thereupon be dissolved and any property vested in or belonging to any such company shall thereupon vest in the Treasurer for the benefit of The Bahamas and shall not be disposed of without the prior approval of both Houses of Parliament signified by resolution thereof.

**Re-vesting of company's property. 30 of 1995.** 282B. Notwithstanding anything to the contrary in section 282A, where a company is restored to the register of companies pursuant to an application made under section 281(4) the Minister of Finance may in his discretion on application made to him by or on behalf of the company direct, subject to such terms and conditions as the Minister of Finance sees fit, that any property of the company that had vested in the Treasurer upon its removal from the Register and which has not been disposed of be re-vested in the company and such restoration and re-vesting of property shall be as if the company was never removed from the register.

**Indemnity.** 283. The Registrar and any public officer authorized by him to perform any function under this Act shall not be liable for any act or omission performed in good faith under this Act.

**Returns to Register.** 284. Any return, notice, list of other document or information that is required by this Act to be submitted or supplied to the Registrar shall be authenticated by the signature of the secretary or manager or one of the directors of the company and shall bear the seal of the company.

**Certificate of good standing. 28 of 1994.** 284A. (1) The Registrar shall, upon request by any person, issue a certificate of good standing under his hand and seal certifying that a company incorporated or registered under this Act is of good standing if the Registrar is satisfied that -

- (a) the name of the company is on the Register;
- (b) the company has paid all fees and penalties due and payable; and
- (c) the company has filed with the Registrar all documents required to be filed under this Act, unless there are good reasons for not doing so.

(2) The certificate of good standing issued under subsection (1) shall contain a statement as to whether -

- (a) the company has submitted to the Registrar articles of merger or consolidation that have not yet become effective;
- (b) the company has submitted to the Registrar articles of any arrangement that have not yet become effective;
- (c) the company is in the process of being wound up; or
- (d) any notice has been served on the company by the Registrar

to remove the company from the register of companies.

## **PART IX**

### **CIVIL REMEDIES, CIVIL PENALTIES AND OFFENCES**

#### **Civil Remedies**

#### **Definitions.**

285. In this Part -

"action" means an action under this Act;

"complainant" means -

- (a) a shareholder or debenture holder or a former holder of a share or debenture of a company;
- (b) a director or an officer or former director or officer of a company or its affiliates;
- (c) any other person, who in the opinion of the court is a proper person to institute an action under this Part.

#### **Derivative action.**

286. (1) Subject to subsection (2), a complainant may for the purpose of prosecuting, defending or discontinuing an action on behalf of a company apply to the court for leave to bring an action in the name and on behalf of the company or any of its subsidiaries or intervene in any action to which any such company or any of its subsidiaries is a party.

(2) No action may be brought, and no intervention in an action may be made, under subsection (1) unless the court is satisfied that -

- (a) the complainant has given reasonable notice to the directors of the company or its subsidiary of his intention to apply to the court under subsection (1) if the directors of the company or its subsidiary do not bring, diligently prosecute or defend, or discontinue, the action;
- (b) the complainant is acting in good faith; and
- (c) it appears to be in the interests of the company or its subsidiary that the action should be brought, prosecuted, defended or discontinued.

(3) In respect of an action under subsection (1), the court may at any time make any order it deems fit having regard to all the circumstances, including -

- (a) an order authorizing the complainant or any other person to control the conduct of the action;
- (b) an order giving directions for the conduct of the action;
- (c) an order directing that any amount adjudged payable by a defendant in the action be paid in whole or in part, directly to former and present shareholders or debenture holders of the company or its subsidiary, instead of to the company or its

subsidiary; or

- (d) an order requiring the company or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

**Restraining  
oppressive  
action.**

287. (1) A complainant may apply to the court for any order against a company or a director or officer of that company to restrain oppressive action.

(2) If, upon an application under subsection (1), the court is satisfied that in respect of a company or any of its affiliates -

- (a) any act or omission of the company or any of its affiliates effects a result;
- (b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner; or
- (c) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly oppressive to, or that unfairly disregards the interest of, any shareholder or debenture holder, creditor, director or officer of the company, the court may make an order to rectify the matter complained of.

(3) In connection with an application under this section, the court may make any interim or final order it thinks fit, including -

- (a) an order restraining the conduct complained of;
- (b) an order appointing a receiver or a receiver-manager;
- (c) an order to regulate a company's affairs amending its articles or creating or amending a unanimous shareholder agreement;
- (d) an order directing an issue or exchange of shares or debentures;
- (e) an order appointing directors in place of, or in addition to, all or any of the directors then in office;
- (f) an order directing a company, subject to subsection (4), or any other person, to purchase shares or debentures of a holder thereof;
- (g) an order directing a company, subject to subsection (4), or any other person, to pay a shareholder or debenture holder any part of the monies paid by him for his shares or debentures;
- (h) an order varying or setting aside a transaction or contract to which a company is a party, and compensating the company or any other party to the transaction or contract;
- (i) an order requiring a company, within the time specified by the court, to produce to the court or an interested person financial statements in the form required by section 123 or in such

other form as the court determines;

- (j) an order compensating an aggrieved person;
- (k) an order directing rectification of the registers or other records of the company;
- (l) an order liquidating and dissolving the company;
- (m) an order directing the Registrar to make a preliminary investigation into a company; or
- (n) an order requiring the trial of any issue.

(4) A company may not make a payment to a shareholder under subsection (3)(f) or (g) if there are reasonable grounds for believing that -

- (a) the company is unable or would be unable to pay its liabilities as they become due; or
- (b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.

(5) Nothing in this section affects an application, by petition, for the winding up of a company under Part VII.

**Limitation of staying of action.**

288. (1) An action brought or intervened in under this Part may not be stayed or dismissed by reason only that it is shown that the alleged breach of duty owed to the company or its subsidiary has been or might be approved by the shareholders of the company or its subsidiary; but evidence of approval by the shareholders may be taken into account by the court in making an order under section 286 or 287.

(2) An action brought or intervened in under this Part may not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit; and if the court determines that the interests of the complainant could be substantially affected by the stay, discontinuance, settlement or dismissal, the court may order any party to the action to give notice to the complainants.

**Interim costs.**

289. In an action brought or intervened in under section 286 or 287 the court may at any time order the company or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements; but the complainant may be held accountable for those interim costs upon the final disposition of the action.

**Restraining order.**

290. If a company or any director, officer, employee, agent, auditor, trustee, receiver, receiver-manager, or liquidator of a company does not comply with this Act, the articles or any unanimous shareholder agreement of the company, a complainant or creditor may, without prejudice to any other remedy under this Act, apply to the court for an order directing any such person to comply with, or restraining any other person from acting in breach of, any provision of this Act, the articles or unanimous shareholder agreement, as the case may be.

**Appeal from Registrar's**

291. (1) A person aggrieved by a decision of the Registrar -  
(a) to refuse to file in the form submitted to him any articles

**decisions.**

or any other document that is required to be filed under this Act;

- (b) to register, change, reserve or revoke a name of a company;
- (c) to grant any exemption that is authorized to grant under this Act; or
- (d) to refuse to do anything that he is required to do in order to give effect to this Act,

may apply to the court for relief, and the court may, subject to subsection (2), grant such relief as it considers appropriate having regard to all the circumstances.

(2) The court may refuse relief under this section if it is of the opinion that the application is frivolous and vexatious.

**Security  
for costs.**

292. Where a limited liability company is plaintiff in any action, suit or other legal proceedings, a judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant is successful in his defence the assets of the company may be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

**Civil Penalties**

**Civil penalties.**

293. (1) A company or an officer thereof that -

- (a) willfully contravenes sections 12, 13, 18, 20, 21, 40(7), 42(1), 44(2), 47(2), 55, 56, 58, 60, 61, 65, 66, 112, 123, 128(2), 140(2), 141(1), 144, 152, 155(1), 155(2), 166(2) or 166(3);
- (b) knowingly refuses or neglects to do anything that is required to be done by a company under this Act; or
- (c) fails to pay any fee that is due and payable under this Act,

shall be liable to a civil penalty of twenty dollars for each day or part thereof during which the contravention, refusal or neglect continues.

(2) A director or officer of a company who knowingly permits the contravention, refusal or neglect shall be liable to a civil penalty of twenty dollars for each day or part thereof during which the contravention, refusal or neglect continues.

**Recovery of  
civil penalties.**

294. All penalties under this Act may be recovered in a court of summary jurisdiction and all such penalties when recovered shall be paid into the Consolidated Fund.

**Offences**

**Criminal  
liability and  
proceedings.**

295. (1) When an offence is committed under this Act by a company, whether it is incorporated or registered under this Act, and a director or officer of the company knowingly authorized, permitted or acquiesced in the commission of the offence,

the director or officer is also guilty of that offence and shall be liable to the same criminal penalty specified for that offence.

(2) Every offence under this Act and every default, refusal or contravention for which a penalty is provided by this Act, being an offence, default, refusal or contravention for which no other mode of proceedings is provided shall be enforced by summary proceedings.

**Name offence.**

296. A person who contravenes any requirement of this Act regarding the name of a company is guilty of an offence and shall be liable on summary conviction to a fine of five hundred dollars.

**Establishing prohibited association.**

297. A person who establishes, carries on or is a member of, an association that is prohibited by this or any other Act is guilty of an offence and shall be liable on summary conviction to a fine of five hundred dollars.

**Offence regarding reduction of capital.**

298. If any officer of a company -

- (a) wilfully conceals the name of any creditor entitled to object to a reduction of capital;
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation,

he is guilty of an offence and shall be liable on conviction on information to fine of fifty thousand dollars or to imprisonment for two years.

**False return regarding beneficial ownership of shares.**

299. A person who knowingly and wilfully makes a return for the purpose of section 59 which is false in any material particular is guilty of an offence and shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years.

**False Reports and False statements.**

300. (1) A person who makes or assists in making a report, return, notice or other document for submission to the Registrar that -

- (a) contains any untrue statement of a material fact; or
- (b) omits to state a material fact required in such report, return, notice or other document,

is guilty of an offence and shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years.

(2) A person is not guilty of 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.

(3) Where a prospectus issued after the commencement of this Act includes any untrue statement, any person who authorized the issue of the prospectus is guilty of an offence and shall be liable on conviction on information to a fine of fifty thousand



dollars or to imprisonment for two years or to both such fine and imprisonment.

(4) It shall be a defence to a charge under this section for the accused person to prove either that the statement was immaterial or that he had reasonable grounds to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(5) A person shall not be deemed for the purposes of this section to have authorized the issue of a prospectus by reason only of his having given his consent to the inclusion therein of a statement purporting to be made by an expert.

**Unsigned  
balance  
sheet.**

301. Where any copy of a balance sheet which has not been signed as required by section 134(2) is issued, circulated or published or any copy of a balance sheet is issued, circulated or published without either having a copy of the auditor's report attached thereto or does not contain a reference to that report as is required by this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default, shall, on summary conviction, be liable to a fine of five hundred dollars.

**Insider trading.**

302. (1) A person, being an insider who, within the meaning of section 157, in connection with any transaction in a share of a company or any of its affiliates, makes use of any material confidential information for his own benefit or advantage is guilty of an offence and shall be liable on conviction on information to a fine of fifty thousand dollars or to imprisonment for two years or to both such fine and imprisonment.

(2) No information may be brought against a person if the transaction took place more than two years after he has ceased to be associated with the company.

**Falsification of  
company books  
etc.**

303. Any director, officer or contributory of a company wound up under this Act who -

(a) destroys, mutilates, alters or falsifies any books, papers, writings or securities; or

(b) makes or is privy to the making of any false or fraudulent entry in any register, book of account or other document belonging to the company,

with intent to defraud or deceive any person is guilty of an offence and shall be liable on conviction on information to imprisonment for two years.

**Offences in the  
course of  
winding up.**

304. (1) In the course of the winding up of a company under this Act any person, being a past or present officer, director, manager, official or other liquidator of such company commits an offence if -

(a) he does not to the best of his knowledge and belief fully and truly discover to the liquidator all the company's property, and how and to whom and for what consideration and when the company disposed of any part of that property, except such part as has been disposed of in the ordinary way of the

company' business;

- (b) he does not deliver up to the liquidator, or as he directs, all such part of the company's property as is in his custody or under his control, and which he is required by law to deliver up;
- (c) he does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;
- (d) he knows or has reason to believe that a false debt has been proved by any person in the winding up, and fails to inform the liquidator within a reasonable time thereafter; or
- (e) after the commencement of the winding up, he prevents the production of any book or paper affecting or relating to the company's property or affairs.

(2) A person, being a past or present officer, director, manager, official or other liquidator of a company commits an offence if -

- (a) in the course of winding up of that company he attempts to account for any part of the company's property by fictitious losses or expenses; and
- (b) is deemed to have committed an offence if within twelve months immediately preceding the commencement of the winding up he attempted to account for any part of the company's property by fictitious losses or expenses.

(3) A person who is guilty of an offence under this section shall be liable on conviction on information to a fine of fifty thousand dollars or to imprisonment for two years or to both such fine and imprisonment.

(4) It shall be a defence -

- (a) for a person charged under paragraph (a), (b) or (c) of subsection (1) to prove that he had no intent to defraud; and
- (b) for a person charged under paragraph (e) of subsection (1) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

**Miscellaneous offences.**

305. A person who without reasonable cause contravenes any section of this Act for which no other penalty is provided is guilty of an offence and shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years.

**Penalty of perjury.**

306. Where a person -

- (a) upon an examination, oath or affirmation authorized under this Act;

- (b) in any affidavit, deposition, or solemn affirmation in or about the winding up of any company under this Act; or
- (c) otherwise in or about any matter arising under this Act,

wilfully and corruptly gives false evidence, he is guilty of an offence and shall be liable on conviction to the penalties for wilful perjury.

## **PART X**

### **MISCELLANEOUS**

**Exemptions.**

307. The Minister may, by order, exempt a non-profit company or a foreign company from any requirement of this Act, if he is satisfied that such exemption would not materially affect the objectives of the Act.

**Fees.**

308. (1) Subject to this section, there shall be paid to the Registrar in respect of the several matters mentioned in the Third Schedule the several fees specified therein.

**Third Schedule.**

(2) All fees paid under this section shall be placed into the Consolidated Fund.

(3) For the purpose of assessing the fees payable under this section by a company, no share shall be deemed to be beneficially owned by a Bahamian if -

- (a) that Bahamian is in any way under an obligation to or otherwise may exercise any right attaching to that share at the instance of, any person who is not a Bahamian; or
- (b) that share is held jointly or severally with any person who is not a Bahamian.

(4) Notwithstanding subsection (3), a share shall be deemed to be beneficially owned by a Bahamian if -

- (a) it is owned by a Bahamian as trustee and every person having a beneficial interest in the trust is a Bahamian;
- (b) it is owned by a Bahamian as nominee for another who is a Bahamian and no one is in any way under any obligation to or otherwise may exercise any right attaching to the share at the instance of, or for the benefit of, any person who is not a Bahamian.

(5) In respect of the payment of fees -

- (a) not more than thirty days' grace, to be calculated from the 1st of January in each year, may be allowed by the Registrar for payment of the fee payable in any year under this Act; and
- (b) no fee is payable in any year -
  - (i) where the memorandum was filed in respect of a company on or after 1st July in the preceding year, or

- (ii) in respect of a non-profit company that is granted a licence by the Minister under section 14 of this Act.

**Amendment of  
Third Schedule.  
Ch.2.**

309. (1) The Minister may, by order, amend the Third Schedule for the purpose of increasing or decreasing the fees specified therein and any such order which increases the fees shall be exempt from the provisions of section 31 of the Interpretation and General Clauses Act but shall be subject to affirmative resolution of the House of Assembly.

(2) In subsection (1) "affirmative resolution of the House of Assembly" in relation to subsidiary legislation, means that such legislation does not come into operation unless and until affirmed by a resolution of that House.

**Rules and  
regulations.**

310. The Minister may make rules and regulations generally in order to give effect to this Act.

**Repeals and  
savings.**

311. (1) The Acts specified in the Fourth Schedule are hereby repealed.

**Fourth Schedule.**

(2) Any subordinate legislation made under any of the Acts specified in the Fourth Schedule shall continue in force, mutatis mutandis, until such time as subordinate legislation for similar purposes is made under this Act.

(3) Nothing in this section shall affect -

(a) the continuation of any civil or criminal proceedings commenced under any of the Acts specified in the Fourth Schedule; and

(b) any liability to pay any fees or penalties under any of the Acts specified in the Fourth Schedule.

**Existing  
companies.**

312. (1) Subject to subsection (2), all companies existing prior to the commencement of this Act shall not be affected by anything contained in section 311, and shall continue to exist as private companies as if incorporated or registered, as the case may be, under this Act but shall be liable to pay the fees specified in the Third Schedule.

(2) Where a company existing prior to the commencement of this Act wishes to continue as a public company, it may do so but shall satisfy the requirements of this Act regarding public companies within such time as the Minister determines.

(3) Where a company is unable to comply with the requirements of this Act within the time determined by this Act, it may apply for an extension to the Minister, who may grant such extension.

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(4) References to "special resolution" in the articles of companies existing prior to the commencement of this Act shall be construed as references to "resolution of members" within the meaning of this Act.

## **A COMPANY LIMITED BY SHARES**

### **PRELIMINARY**

1. For the purposes of these regulations, expressions defined in the Companies Act at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include females, and words importing persons, shall include bodies corporate.

### **BUSINESS**

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 42 of the Companies Act if, and so far as, those restrictions are relevant to the company.

### **SHARES**

3. Subject to the provisions, if any, in that behalf of the memorandum of the company and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of share capital or otherwise as the company may from time to time by resolution determine.

4. Where at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied by a resolution of directors.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent of the nominal amount of the share, and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections 40 and 42 of the Companies Act as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

7. A share certificate defaced, lost or destroyed may be renewed on payment of such fee, if any, as may be prescribed, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. No part of the funds of the company shall be employed in the

purchase of, or in loans upon the security of, the company's shares.

### **LIEN**

9. The company shall have a lien on every share (not being a fully paid-up share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully paid-up shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company, but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share or the person entitled by reason of his death or bankruptcy to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

12. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

13. Where a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the current prime rate of interest from the day appointed for the payment thereof to the time of the actual payment, but the directors may waive payment of that interest wholly or in part.

14. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

15. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

16. The directors may, if they think fit, receive from any member

willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would but for such advance become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent) as may be agreed upon between the member paying the sum in advance and the directors.

### **TRANSFER AND TRANSMISSION OF SHARES**

17. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

18. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve:

I,A.B. of \_\_\_\_\_ in consideration of the sum of \$ paid to me by C.D. of \_\_\_\_\_ (hereinafter called "the said transferee") do hereby transfer to the said transferee, the share (or shares) numbered \_\_\_\_\_ in the undertaking called the \_\_\_\_\_ Company Limited, to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof: and I, the said transferee, do hereby agree to take the said share (or shares) subject to the conditions aforesaid. As witness our hands the \_\_\_\_\_ day of \_\_\_\_\_  
Witness to the signatures of etc.

19. The directors may decline to register any transfer of shares, not being fully paid-up shares, to a person of whom they do not approve and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless -

- (a) any prescribed fee is paid to the company in respect thereof; and
- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

20. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or the

executors or administrators of the deceased survivor shall be the only persons recognised by the company as having any title to the share.

21. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be required by the directors, having the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

22. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

#### **FORFEITURE OF SHARES**

23. Where a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

24. The notice shall name a further day not earlier than the expiration of fourteen days from the date of the notice on or before which the payment required by the notice is to be made and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

25. Where the requirements of any such notice are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

26. A forfeited share may be sold or otherwise disposed of on any such terms and in such manner as the directors thinks fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

27. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receives payment in full of the nominal amount of the shares.

28. A statutory declaration in writing that the declarant is a director of



the company and that a share in the company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of the facts therein stated, as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof, shall constitute a good title to the share and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

29. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a share becomes payable at a fixed time, whether on account of the amount of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

### **CONVERSION OF SHARES INTO STOCK**

30. The directors may, with the approval of the company previously given in general meeting, convert any paid-up shares into stock and may with the like approval re-convert any stock into paid-up shares of any denomination.

31. The holders of stock may transfer the same or any part thereof in the same manner and subject to the same regulations as and subject to which the shares from which the stock arose might previously to conversion have been transferred or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

32. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters, as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not if existing in shares, have conferred that privilege or advantage.

33. Such of the regulations of the company (other than those relating to share warrants) as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein include "stock" and "stockholder".

### **SHARE WARRANTS**

34. The company may issue share warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid-up, on application in writing signed by the person registered as holder of the share and authenticated by such evidence, if any, as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate, if any, of the share and such

fee as the directors may from time to time require, issue under the company's seal a warrant, stating that the bearer of the warrant is entitled to the shares therein specified and may provide by coupons, or otherwise, for the payment of dividends or other moneys on the shares included in the warrant.

35. A share warrant shall entitle the bearer to the shares included in it, and the shares shall be transferred by the delivery of the share warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

36. The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

37. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share warrant. The company shall, on two days' written notice, return the deposited share warrant to the depositor.

38. Subject as herein otherwise expressly provided, no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend or vote or exercise any other privilege of a member at a meeting of the company or be entitled to receive any notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

39. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

#### **ALTERATION OF CAPITAL**

40. The company may, by a resolution of shareholders, increase the share capital by such sum to be divided into shares of such amount as the resolution shall prescribe.

41. (1) All new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled.

(2) The offer shall be made by notice specifying the number of shares offered and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

(3) The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

42. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise, as the shares in the original share capital.

43. The company may, by resolution of directors -

- (a) consolidate and divide its share capital into shares of larger amount than its existing shares;
- (b) subdivide its existing shares, or any of them or divide the whole or any part of its share capital into shares of smaller amount than is fixed by the memorandum;
- (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person;
- (d) reduce its share capital in any manner and with and subject to any incident authorised and consent required by law.

#### **GENERAL MEETINGS**

44. The statutory general meeting of the company shall be held within the period required by section 70 of the Companies Act.

45. (1) A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint.

(2) In default of a general meeting being so held, a general meeting shall be held in the month next following and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

46. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

47. (1) The directors may, whenever they think fit, convene an

extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 71 of the Companies Act.

(2) Where at any time there are not in The Bahamas sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene any extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

### **PROCEEDINGS AT GENERAL MEETINGS**

48. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business, shall be given in the manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are under the regulations of the company entitled to receive such notices from the company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

49. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, election of directors and other officers in the place of those retiring by rotation and the fixing of the remuneration of the auditors.

50. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

51. Where within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, where at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

52. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

53. Where there is no such chairman or at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

54. (1) The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time

to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(2) When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(3) Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

55. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against that resolution.

56. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

57. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

58. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith; a poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

### **VOTES OF MEMBERS**

59. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

60. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

61. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction with respect to persons of unsound mind, may vote, whether on a show of hands or on a poll, by his committee or other person in the nature of a committee appointed by that court, and any such committee or other person may, on a poll, vote by proxy.

62. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have

been paid.

63. On a poll votes may be given either personally or by proxy.

64. (1) The instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney duly authorised in writing or, if the appointer is a corporation, either under the common seal or under the hand of an officer or attorney so authorised.

(2) No person shall act as proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy or he has been appointed to act at the meeting as proxy for a corporation.

65. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the holding of the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

66. An instrument appointing a proxy may be in the following form or in any other form which the directors may approve:

Company Limited.

"I of being a member of the Company Limited, hereby appoint of as my proxy to vote for me and on my behalf at the (ordinary or extraordinary, as the case may be) general meeting of the company to be held on the day of and at any adjournment thereof."

Signed this day of

### **DIRECTORS**

67. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum.

### **POWERS AND DUTIES OF DIRECTORS**

68. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the Companies Act or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the Companies Act and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

69. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration

(whether by way of salary or commission or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation or taken into account in determining the rotation of retirement of directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be director of the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

70. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

71. The directors shall duly comply with the Companies Act and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it and to keeping a register of the directors, and to sending to the Registrar an annual list of members and a summary of particulars relating thereto and notice of any consolidation or increase of share capital or conversion of shares into stock and copies of special resolutions and a copy of the register of directors and notifications of any changes therein.

72. The directors shall cause minutes to be made in books provided for the purpose -

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors; and
- (c) of all resolution and proceedings at all meetings of the company and of the directors and of committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

#### **THE SEAL**

73. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

#### **ROTATION OF DIRECTORS**

74. At the first ordinary meeting of the company all directors shall retire from office, and at the ordinary meeting every subsequent year, one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest to the one-third, shall retire from office.

75. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who become directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

76. A retiring director shall be eligible for re-election.

77. The company at the general meeting at which a director retires in the manner aforesaid may fill the vacated office by electing a person thereto.

78. Where at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled, the meeting shall stand adjourned till the same day in the next week at the same time and place, and if at the adjourned meeting the places of the vacating directors are not filled, the vacating directors, or such of them as have not had their places filled, shall be deemed to have been re-elected at the adjourned meeting.

79. The company may from time to time in general meeting increase or reduce the number of directors and may also determine in what rotation the increased or reduced number is to go out of office.

80. Any casual vacancy occurring in the board of directors may be filled by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

81. The directors shall have power at any time and from time to time to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting but shall be eligible for election by the company at that meeting as an additional director.

82. The company may by resolution -

(a) remove any director before the expiration of his period of office; and

(b) appoint another person in place of the director removed in accordance with paragraph (a),

but the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

### **PROCEEDINGS OF DIRECTORS**

83. (1) The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit.

(2) Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote.

(3) A director may, and the secretary on the requisition of a director



shall, at any time summon a meeting of the directors.

84. The quorum necessary for the transaction of the business of the directors may be fixed by the directors and unless so fixed shall (when the number of directors exceeds three) be three.

85. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company, but for no other purpose.

86. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

87. The directors may delegate any of their powers to committees consisting of such members or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors.

88. A committee may elect a chairman of their meetings; if no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

89. (1) A committee may meet and adjourn as they think proper.

(2) Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

90. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons so acting or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

#### **DIVIDENDS AND RESERVE**

91. Subject to the Companies Act the company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

92. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

93. No dividend shall be paid otherwise than out of profits.

94. Subject to the rights of persons, if any, entitled to shares with

special rights as to dividends, all dividends shall be declared and paid according to the amounts paid-up on the shares, but if and so long as nothing is paid-up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid-up on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid-up on the shares.

95. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies or for equalising dividends or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company), as the directors may from time to time think fit.

96. Where several persons are registered as joint holders of any share any one of them may give effectual receipts for any dividend payable on the share.

97. Notice of any dividend that may have been declared shall be given in the manner hereinafter mentioned to the persons entitled to share therein.

98. No dividend shall bear interest against the company.

#### ACCOUNTS

99. The directors shall cause true accounts to be kept -

- (a) of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place; and
- (b) of the assets and liabilities of the company.

100. The books of account shall be kept at the registered office of the company or at such other place or places as the directors think fit and shall always be open to the inspection of the directors.

101. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

102. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting.

103. (1) A balance-sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such

meeting.

(2) The balance-sheet shall be accompanied by a report of the directors as to the state of the company's affairs and the amount which they recommend to be paid by way of dividend and the amount, if any, which they propose to carry to a reserve fund.

104. A copy of the balance-sheet and report shall, seven days previous to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

### NOTICES

105. (1) A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or if he has no registered address in The Bahamas to the address, if any, within The Bahamas supplied by him to the company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

106. Where a member has no registered address in The Bahamas and has not supplied to the company an address within The Bahamas for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

107. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

108. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a pre-paid letter addressed to them by name or by the title of representatives of the deceased, or trustees of the bankrupt, or by any like description, at the address, if any, in The Bahamas supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

109. Notice of every general meeting shall be given in some manner hereinbefore authorised to every member of the company (including bearers of share warrants), except those members who (having no registered address within The Bahamas) have not supplied to the company an address within The Bahamas for the giving of notices to them, and also to every person entitled to a share in consequence of the death or

bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

**SECOND SCHEDULE**

**(Section 171)**

- (1) By-laws should provide for -
- (a) the admission of persons and unincorporated associations as members and as **ex officio** members, and the qualifications of and the conditions of membership;
  - (b) the fees and dues of members;
  - (c) the issue of membership cards and certificates;
  - (d) the suspension and termination of membership by the company and by a member;
  - (e) where the articles provide that the interest of a member is transferable, the method of transferring membership;
  - (f) the qualifications of, and the remuneration of, the directors and ex officio directors, if any;
  - (g) the time for and manner of electing directors;
  - (h) the appointment, remuneration, functions, duties and removal of agents; officers and employees of the company, and the security, if any, to be given by them to the company;
  - (i) the time and place, and the notice to be given, for the holding of meetings of the members and of the board of directors, the quorum at meetings, the requirement as to proxies, and the procedure in all things at meetings of the board of directors; and
  - (j) the conduct in all other particulars of the affairs of the company.

(2) The directors of a non-profit company may make by-laws respecting -

- (a) the division of its members into groups, either territorially or on the basis of common interest;
- (b) the election of some or all of the directors -
  - (i) by the groups on the basis of the member in each group,
  - (ii) for the groups in a defined geographical area, by the delegates of the groups meeting together, or
  - (iii) by the groups on the basis of common interest;
- (c) the election of delegates and alternate delegates to represent

each group on the basis of the number of members in each group;

- (d) the number and qualification of delegates and the method of their election;
- (e) the holding of meetings of members or delegates;
- (f) the powers and authority of delegates at meetings; and
- (g) the holding of meetings of members or delegates territorially or on the basis of common interest.

(3) A by-law made under subsection (2)(b) may provide that a meeting of delegates for all purposes is a meeting of the members with all powers of such a meeting.

(4) A by-law made under subsection (2) is not effective until it is confirmed by at least two-thirds of the votes cast at a general meeting of the members duly called for that purpose.

(5) A delegate has only one vote and may not vote by proxy.

(6) A by-law made under subsection (2) may not prohibit members from attending meetings of delegates and participating in the discussion at the meetings.

**THIRD SCHEDULE**

**(Section 308(1))**

**Fees to be Paid to the Registrar**

<b>Matter in respect of which fee is payable</b>	<b>Amount of fee</b>
1. Upon filing memorandum	\$ 300.00
2. Upon filing articles	\$ 30.00
3. In respect of a company registered under this Act on 1st January in each year, and being a company in which -	
(a) not less than 60 per cent of its shares are beneficially owned by Bahamians	\$ 350.00
(b) less than 60 per cent of the shares are beneficially owned by Bahamians	\$ 1,000.00

**FOURTH SCHEDULE**

**(Section 311(1))**

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