

*The Companies Act, 1996 - 22.*

(This Copy Includes Unofficial Consolidations to No. 3 of 2003)

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I assent,

CUTHBERT M. SEBASTIAN  
*Governor-General.*

22nd of January, 1997.

**SAINT CHRISTOPHER AND NEVIS**

**No. 22 of 1996**

**AN ACT** to replace the Companies Act (Cap. 335) and the International Business Companies Act with new provision for the incorporation, regulation and winding up of limited liability companies, and generally to provide for purposes connected therewith and incidental thereto.

**BE IT ENACTED** by the Queen’s Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis and by the authority of the same as follows:-

**PART I**

**Preliminary**

1. (1) This Act may be cited as the Companies Act, 1996.  
(2) This Act shall come into operation on such date as the Minister by notice published in the Gazette appoints.

Short Title and Commencement.

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

Interpretation.

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

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

“annual return” means the return to be made by a company under Section 71;

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

“bearer certificate” means a certificate issued under sub-section (1) of Section 51;

“body corporate” -

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

(b) except in sub-section (6) of Section 3 and paragraph (a) of sub-section (1) of Section 206, does not include an association;.

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

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- “contributory” means a person liable to contribute to the assets of a company pursuant to Section 192;
- “Court” means the Eastern Caribbean Supreme Court or any Court with similar jurisdiction established in succession to that Court;
- “currency” includes foreign currency and any other means of exchange that may be prescribed;
- “director” means a person who occupies the position of a director, by whatever name called;
- “discount”, in relation to shares, means an amount which is less than the stated value of a share;
- “dissolved”, in relation to a company, means dissolved under this Act or any other law of the Federation;
- “distributable profits” means profits out of which the company may make a distribution under Section 114;
- “document” includes summons, notice, statement, return, account, order, and other legal process, and registers;
- “equity share capital”, in relation to a company, means its issued share capital excluding any part of that capital which, neither as respects dividends, nor as respects capital, carries a right to participate beyond a specified amount in a distribution;
- “exempt company” means a company which is exempt from taxes under sub-section (1) of Section 206;
- “existing company” means a company registered under the Companies Act (Cap. 335) or the International Business Companies Act, 1992, repealed by Section 220;
- “external company” means a body corporate which is incorporated outside the Federation and which carries on business in the Federation or which has an address in the Federation which is used regularly for the purposes of its business;
- “the Federation” means the Federation of Saint Christopher and Nevis.
- “financial period” means a period for which a profit and loss account of a company is made up in accordance with this Act;
- “guarantee”, in relation to a company limited by guarantee, means the amount of money that each member of such a company undertakes to contribute to the assets of the company, in the event of it being wound up, while he is a member, or within 1 year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves;
- “interdict” means a person in respect of whom a curator has been appointed by any court having jurisdiction (whether in the Federation or elsewhere) in matters concerning mental disorder;
- “lawyer” means a barrister or solicitor of the Court;
- “liabilities” includes any amount reasonably necessary to be retained for the purpose of providing for any liability or loss which is either likely to be incurred or

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certain to be incurred but uncertain as to amount or as to the date on which it will arise;

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

“Minister” means the Minister responsible for finance;

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

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

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

“Order” means an Order made by the Minister;

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

“paid up” includes credited as paid up;

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

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

“prescribed” means prescribed by Order;

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

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

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

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

“records” means documents and other records however stored;

“Registrar” means the Registrar of companies appointed pursuant to Section 196 and “his seal”, in relation to the Registrar, means a seal prepared under Section 197;

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

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

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

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

“year” means a calendar year.

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

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

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sub-section or paragraph or sub-paragraph of that number or letter contained in the Section or other division of this Act in which that reference occurs.

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

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

3. (1) For the purposes of this Act, a company is, subject to sub-section (4), deemed to be a subsidiary of another if, but only if -

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

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

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

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

(4) In determining whether one company is a subsidiary of another -

- (a) any shares held or power exercisable by the other in a fiduciary capacity are to be treated as not held or exercisable by it;
- (b) subject to paragraph (c), any shares held or power exercisable -
  - (i) by any person as nominee for the other (except where the other is concerned only in a fiduciary capacity); or
  - (ii) by, or by a nominee for, a subsidiary of the other (not being a subsidiary which is concerned only in a fiduciary capacity),are to be treated as held or exercisable by the other;
- (c) any shares held or power exercisable by, or by a nominee for, the other or its subsidiary are to be treated as not held or exercisable by the other if the shares are held or the power is exercisable as above mentioned by way of security only.

(5) For the purposes of this Act -

- (a) a company is deemed to be another's holding company if, but only if, the other is its subsidiary; and

Meaning of "holding company", "subsidiary" and "wholly-owned subsidiary".

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(b) a body corporate is deemed to be the wholly owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

(6) In this Section “company” includes any body corporate.

(7) The Minister may by Order modify the provisions of this Section and, without prejudice to the generality of the foregoing, any such Order may amend the meaning of “holding company”, “subsidiary” or “wholly-owned subsidiary” for the purposes of all or any of the provisions of this Act.

**PART II**

**Formation of Companies and Registration**

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

Method of formation.

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

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

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

Memorandum of association.

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

- (a) the name of the company;
- (b) whether the liability of the members of the company is to be limited by shares or by guarantee or by both; *(as amended by No. 3 of 2003)*
- (c) in the case of a company limited by shares the maximum number of shares that the company is authorised to issue and the amount of their stated value, which may be expressed in any currency or currencies;
- (d) in the case of a company limited by guarantee, the number of members with which the company proposes to be registered and the amount of the guarantee, which may be expressed in any currency or currencies;
- (e) the period (if any) fixed for the intended duration of the company;
- (f) where the company is a public company, that it is such a company;
- (g) the full names and addresses of the subscribers who are individuals and the corporate names and the addresses of the registered or principal offices of the subscribers which are bodies corporate.

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

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(4) A company limited by guarantee may also have a share capital. *(as added by No. 3 of 2003)*

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

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

Articles of association.

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

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

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

Standard Tables.

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

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

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

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

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

Documents to be delivered to the Registrar.

- (a) the company's name and the address of its registered office;
- (b) whether the company is a public or a private company;
- (c) whether the company is an ordinary or an exempt company;
- (d) the nature of the business to be carried out by the company;
- (e) whether the whole or any part of the relevant Table prescribed under Section 7 is to be adopted by the company;
- (f) in the case of a public company and in the case of a private company which is an ordinary company, the particulars with respect to the persons who are to be directors of the company which are required by Section 84 to be contained in the register kept under Section 83;
- (g) the particulars with respect to any person who is to be the secretary of the company which is required by Section 85 to be contained in the register kept under Section 83; *(as added by No. 14 of 2001)*

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- (h) in the case of an exempt company, an undertaking that the directors of the company will forthwith notify the Minister by notice in writing if the company should no longer qualify as an exempt company; and
- (i) any other prescribed particulars.

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

(3) A person who signs or delivers to the Registrar or concur in delivering to the Registrar a statement which contains information that he knows is false, misleading or deceptive commits an offence and is liable, upon conviction, to a fine not exceeding 5,400 dollars and, in the case of an individual, to imprisonment for a term not exceeding 2 years, or both. *(as added by No. 13 of 1998)*

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

Registration.

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

- (a) allocate a registration number to the company in accordance with Section 198; and
- (b) give a certificate of incorporation in respect of the company stating -
  - (i) the name of the company;
  - (ii) its registration number;
  - (iii) the date of its incorporation; and
  - (iv) that it is a public company, if its memorandum so states.

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

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

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

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

Effect of memorandum and articles.

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

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

Alteration of memorandum and articles.

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

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

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

- (a) requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made; or
- (b) in any way increases his liability as at that date to contribute to the company's share capital or otherwise to pay money to the company, unless he agrees in writing, either before or after the alteration is made, to be bound by it.

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

- (a) shorten the period of the company's existence; or
- (b) alter rights attached to a class of shares which cannot be altered under the Acts repealed by Section 220, unless the alteration is agreed to by all the members or approved by the Court.

12. (1) A company shall, on being so required by a member, send to him a copy of the memorandum and of the articles subject to payment of such sum (if any), not exceeding 50 dollars, as the company may require.

Copies of memorandum and articles for members.

(2) If a company fails to comply with this Section, it is guilty of an offence and liable to a fine not exceeding 1,000 dollars.

**PART III**

**Names**

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

Requirements as to names.

(2) An existing company the name of which contravenes sub-section (1) shall within 3 months from the date on which this Section comes into force either change its name or establish that it has obtained from the Minister an exemption from the requirements of that sub-section.

(3) The Registrar may refuse to register -

- (a) the memorandum; or
- (b) a special resolution changing the name of a company,

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

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

Change of name.

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

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



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

Power to require change of name.

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

(3) The company may within 21 days from the date of the direction apply to the Court to set it aside; and the Court may set the direction aside or confirm it.

(4) If the Court confirms the direction, it shall specify a period not being less than 28 days within which it shall be complied with and may order the Registrar to pay the company such sum (if any) as it thinks fit in respect of the expense to be incurred by the company in complying with the direction.

(5) A company which fails to comply with a direction under this Section is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

**PART IV**

**Types of Companies**

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

Public companies and private companies.

(2) The memorandum of a company which, when Section 17 comes into force, has more than 50 members shall be deemed to state that it is a public company.

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

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

(5) A public company which has fewer than 51 members may become a private company by altering its memorandum.

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

(a) no account shall be taken of directors or persons who are in the employment of the company and persons who, having been formerly directors or in the employment of the company, were while directors or in that employment, and have continued after the determination of that office or employment to be, members of the company;

(b) where a company has issued bearer certificates, each such certificate shall be deemed to have been issued to a different person and each such person shall be accounted for as one member; and

(c) where two or more persons hold one or more shares in a company jointly, they shall be accounted for as one member.

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

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

17. (1) A private company shall not -

Consequences of certain actions of private company.

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- (a) enter the name of any person in its register of members or issue bearer certificates so as to increase the number of its members (excluding the persons referred to in paragraph (a) of sub-section (6) of Section 16) beyond 50; or
- (b) circulate a prospectus,

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

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

(3) If on the application of a private company or a public company that is about to become a private company the Minister is satisfied that by reason of the nature of the company's activities its affairs may properly be regarded as the domestic concern of its members, the Minister may, in his discretion, by written notice to the company direct that sub-section (1) shall apply to the company with such modifications as are specified in the direction and the Minister may at any time withdraw or amend the terms of any such direction.

(4) The company shall within 14 days after the making of an order under sub-section (2) or the receipt of a direction under sub-section (3) deliver the relevant act of the Court or a copy of the direction, as the case may be, to the Registrar, and if there is failure to comply with this sub-section the company is guilty of an offence and liable to a fine not exceeding 1,000 dollars and in the case of a continuing offence to a further fine not exceeding 100 dollars for each day on which the offence so continues.

(5) Where there is a contravention of paragraph (b) of sub-section (1) then, without derogation from the consequences under that sub-section, the company and every officer of it who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

**PART V**

**Corporate Capacity and Transactions**

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

Capacity of company.

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

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

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

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

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

No implied notice of public records.

20. A person acting under the express or implied authority of a company may make, vary or discharge a contract or sign an instrument on behalf of the company in the same manner as if the contract were made, varied or discharged or the instrument signed by an individual.

Form of contracts.

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

Transactions entered into prior to corporate existence.

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

22. (1) Every company shall have a common seal upon which its name is engraved in legible characters; and if a company fails to comply with this sub-section it is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

Common seal.

(2) If an officer of a company or a person on its behalf uses or authorizes the use of any seal purporting to be a seal of the company on which its name is not engraved as required by sub-section (1), he is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

23. (1) A company shall maintain its common seal at such a place as the company may, from time to time, determine. *(as added by No. 3 of 2003)*

Official seal for use abroad.

(2) Where a company fails to determine a place in accordance with subsection (1), then it shall maintain its common seal at its registered office. *(as added by No. 3 of 2003)*

(3) A company may, if authorised by its articles of association, maintain a duplicate seal or seals, each of which shall be a facsimile of its common seal at such place or places in or outside the Federation, as it may authorise. *(as added by No. 3 of 2003)*

(4) A company which engages in business outside the Federation may, if authorized by its articles, have for use in any country, territory or place outside the Federation an official seal, which shall be a facsimile of the company's common seal of the company with the addition on its face either of the words "Branch Seal" or the name of the country, territory or place where it is to be used. *(as renumbered by No. 3 of 2003)*

(5) A document to which the official seal is duly affixed binds the company as if it had been sealed with the company's common seal. *(as renumbered by No. 3 of 2003)*

(6) A company may, in writing under its common seal, authorize an agent appointed for the purpose to affix the official seal to a document to which the company is party. *(as renumbered by No. 3 of 2003)*

(7) As between the company and the person dealing with the agent, the agent's authority continues until that person has actual notice of the termination of the authority. *(as renumbered by No. 3 of 2003)*

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

Official seal for share certificates , etc.

**PART VI**

**Membership**

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

Definition of "member".

(2) Every other person -

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

is a member of the company.

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

Membership of holding company.

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

- (a) has no right to vote at meetings of the holding company or a class of its members;
- (b) shall not acquire further shares in the holding company except on a capitalisation issue; and
- (c) shall within 12 months, or such longer period as the Court may allow, dispose of all of its shares therein.

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

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

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

Company without members.

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

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

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

Prohibition of minors and interdicts.

**PART VII**

**Prospectuses**

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

Prospectuses.

- (a) the circulation of a prospectus in the Federation;
  - (b) the circulation of a prospectus, in the Federation or elsewhere, by a company.
- (2) Such Order may provide -
- (a) for prospectuses -
    - (i) to be filed with, or filed and approved by, the Minister,

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

(3) Any person who fails to comply with any provision of any such Order and, where the offence is committed by a body corporate, every officer of the body corporate which is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

(4) In this Section and in Sections 17, 30, 31 and 33 -

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

(5) For the purposes of this Section -

- (a) an invitation is made to the public where it is not addressed exclusively to a restricted circle of persons; and
- (b) an invitation shall not be considered to be addressed to a restricted circle of persons unless -
  - (i) the invitation is addressed to an identifiable category of persons to whom it is directly communicated by the inviter or his agent; and
  - (ii) the members of that category are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the invitation; and
  - (iii) the number of persons in the Federation or elsewhere to whom the invitation is so communicated does not exceed 50.

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

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

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

Compensation for misleading statements in prospectus.

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(d) from each person who has authorized the contents of, or any part of, the prospectus.

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

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

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

31. A person shall not be liable under Section 30 if he satisfies the Court -

Exemption from liability to pay compensation.

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

(b) that, having made such enquiries (if any) as were reasonable, from the circulation of the prospectus until the securities were acquired, he reasonably believed that the statement was true and not misleading or that the matter omitted was properly omitted; or

(c) that, after the circulation of the prospectus and before the securities were acquired he, on becoming aware of the untrue or misleading statement or of the omission of the statement of a material fact, took reasonable steps to secure that a correction was brought to the notice of persons likely to acquire the securities; or

(d) in the case of a loss caused by a statement purporting to be made by a person whose qualifications give authority to a statement made by him which was included in the prospectus with his consent, that when the prospectus was circulated he reasonably believed that the person purporting to make the statement was competent to do so and had consented to its inclusion in the prospectus; or

(e) that the person suffering the loss acquired or agreed to acquire the securities knowing that the statement was untrue or misleading or that the matter in question was omitted.

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

Recovery of compensation.

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

33. If a prospectus is circulated with a material statement in it which is untrue or misleading or with the omission from it of the statement of a material fact, any person who authorized the circulation of the prospectus is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both unless he satisfies the Court that he reasonably believed, when the prospectus was circulated, that the statement was true and not misleading or that the matter omitted was properly omitted.

Criminal liability in relation to prospectuses.

**PART VIII**

**Share Capital**

34. (1) The shares of any member of a company -
- (a) are personal estate; and
  - (b) shall, subject to Section 42, be transferable in the manner provided by the company's articles.
- (2) Each share in a company shall, subject to sub-section (3), be distinguished by its identification number.
- (3) If and so long as all the issued shares in a company or all the issued shares in it of a particular class -
- (a) are fully paid up and carry the same rights in all respect; or
  - (b) are evidenced by certificates issued in accordance with Section 50 or 51,
- none of those shares need have an identification number.
- (4) The requirements imposed by sub-paragraph (i) of paragraph (b) of sub-section (1) of Section 41, that the identification number of any share in a company shall be inscribed in the register of members, shall not apply in relation to a share which is not for the time being required to have an identification number by virtue of sub-section (3).
35. (1) Except as permitted by Section 36, no company shall issue shares at a discount or apply its shares or capital money either directly or indirectly in payment of a commission, discount or allowance to a person in return for his subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.
- (2) Sub-section (1) applies whether the shares or money be so applied by being added to the purchase money of property acquired by the company or to the contract price of work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.
- (3) Nothing in this Section or Section 36 shall make unlawful a payment made or remuneration given by a company to a broker making his usual charges for services rendered to the company.
- (4) A vendor to, or promoter of, or other person who receives payment in money or shares from, a company has, and is deemed always to have had, power to apply any part of the money or shares so received in payment of a commission, the payment of which, if made directly by the company, would have been lawful under this Section and Section 36.
36. (1) A company may pay a commission to a person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company, if the following conditions are satisfied -
- (a) the payment of the commission is authorized by the company's articles;
  - (b) the commission does not exceed 10 per cent of the price at which the shares are allotted or the amount or rate authorized by the articles, whichever is less; and
  - (c) in the case of a public company, the amount or rate per cent of commission, and the number of shares which persons have agreed for a commission to subscribe absolutely are disclosed -

Nature, transfer and numbering of shares.

Commissions and discounts barred.

Commissions.

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- (i) where the shares are offered for subscription by a prospectus, in that prospectus; or
- (ii) where the shares are not offered for subscription by a prospectus, in a statement signed by every director of the company or by his agent authorized in writing and delivered (before payment of the commission) to the Registrar.

(2) If default is made in complying with paragraph (c) of sub-section (1) as regards delivery to the Registrar of the statement, the company and every officer of it who is in default is guilty of an offence and liable to a fine not exceeding 1,000 dollars and in the case of a continuing offence to a further fine not exceeding 100 dollars for each day on which the offence so continues.

37. A company, if so authorized by its articles, may -

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

Provision for different amounts to be paid on shares.

38. (1) A company may, by altering its memorandum -

- (a) increase its share capital by creating new shares of such amount and in such currency or currencies as it thinks expedient;
- (b) consolidate and divide all or any of its shares (whether issued or not) into shares of larger amount than its existing shares;
- (c) convert all or any of its fully paid shares into stock, and re-convert that stock into fully paid shares of any denomination;
- (d) subject to sub-section (2), sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum;
- (e) subject to sub-section (3), convert any of its fully paid shares the stated amount of which is expressed in one currency into fully paid shares of a stated amount of another currency; and
- (f) cancel shares which, at the date of the passing of the resolution to cancel them, have not been taken or agreed to be taken by any person, and diminish the amount of the company's share capital by the amount of the shares so cancelled.

Alteration of share capital.

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

(3) A conversion under paragraph (e) of sub-section (1) shall be effected at the rate of exchange current at a time specified in the resolution being within 30 days before the conversion takes effect.

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

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



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

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

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

or in providing for any premium payable on the redemption or purchase of shares in accordance with Section 55 or 57.

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

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

40. (1) Notwithstanding paragraph (c) of sub-section (2) of Section 5, a company, if authorized by its articles, may issue a fraction of a share, but - Power to issue fractions of shares.

- (a) no fraction of a share shall be issued otherwise than as fully paid;
- (b) no fraction of a share shall be issued if, as a result, the total amount of the issued shares of any class would not be a whole number of shares; and
- (c) if the holder of a fraction of a share acquires a further fraction of a share of the same class, the fractions shall be treated as consolidated.

(2) The rights of a member in respect of the holding of a fraction of a share shall be as provided in the articles.

(3) Subject to this Section, and save as otherwise provided in the articles of the company, this Act applies to fractions of shares as it applies to whole shares.

**PART IX**

**Register of Members and Certificates**

41. (1) Every company shall keep a register of members containing in respect of each class of its members - Register of members.

- (a) a list showing in alphabetical order the full name and address of each member who is an individual, or in the case of a body corporate its full name, the place where it is incorporated and the address of its registered or principal office;
- (b) in the case of a company limited by shares, with the names and addresses of each member of that class, a statement, in respect of each one of them, of -
  - (i) subject to sub-section (4) of Section 34, the identification number of each share held by the member or, where shares are evidenced by share certificates, the identification number of each share certificate issued in the name of the member,
  - (ii) the total number of shares held by the member or, where shares are evidenced by share certificates, the number of shares contained in each share certificate issued in the name of the member,
  - (iii) the total amount paid up on the shares of the member,

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- (c) in the case of a company limited by guarantee, with the names and addresses of each member of that class, a statement, in respect of each one of them, of the amount of the guarantee agreed to be paid by the member;
- (d) the date on which each person became a member; and
- (e) the date on which each person ceased to be a member.

(2) The address of a member entered in the register of members shall be deemed to be his actual address and whenever a member changes his address he shall give written notice of the new address to the company at its registered office; upon receipt of such a notice the directors or the secretary shall enter the change of address in the register of members.

(3) An entry relating to a former member of the company may be removed from the register after 10 years from the date on which he ceased to be a member.

(4) Without prejudice to any lesser period of limitation or prescription, liability incurred by a company from the making or deletion of an entry in its register of members, or from failure to make or delete any such entry, is not enforceable more than 10 years after the date on which the entry was made or deleted or the failure first occurred.

(5) If a company fails to comply with this Section, the company and every officer of it who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

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

Transfer of shares  
and registration.

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

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

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

(5) If a company refuses to register a transfer of shares the company shall, within 2 months after the date on which the transfer was lodged with it, give to the transferor and transferee notice of the refusal.

(6) The Minister may by Order provide for -

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

43. (1) For the purpose of this Section -

Certification of  
transfers.

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- (a) an instrument of transfer shall be deemed to be certificated if it bears the words "certificate lodged" or words to the like effect;
- (b) the certification shall be deemed to be made by a company if -
  - (i) the person issuing the instrument is a person authorized to issue certificated instruments of transfer on the company's behalf; and
  - (ii) the certification is signed by a person authorized to certificate transfers on behalf of the company or by an officer or servant of the company or of a body corporate so authorized;
- (c) a certification is deemed to be signed by a person if -
  - (i) it purports to be authenticated by his signature or initials (whether handwritten or not), and
  - (ii) it is not shown that the signature or initials was not or were not placed there by him or by any other person authorized to use the signature or initials for the purpose of certificating instruments of transfer on behalf of the company.

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

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

(4) Where a certification is expressed to be limited to 42 days or any longer period from the date of certification, the company is not, in the absence of fraud, liable in respect of the registration of any transfer of shares or debentures comprised in the certification after the expiration of the period so limited if the instrument of transfer has not, within that period, been lodged with the company for registration.

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

Location of register.

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

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

(4) If a company fails for 14 days to comply with sub-section (2), the company is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

45. (1) The rights conferred by this Section on a person who is not a member or officer of the company or the Registrar to inspect and obtain a copy of the company's register of members shall not apply in respect of a private company which is an exempt company. *(as amendment by S.R.O. No. 14 of 2001)*

Inspection of register.

(2) The register of members shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, but so that not less than two hours in each business day be allowed for inspection) be open to the inspection of a

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member or officer of the company or the Registrar without charge and of any other person on payment of such sum (if any), not exceeding 50 dollars, as the company may require. *(as amendment by S.R.O. No. 14 of 2001)*

(3) A person may -

- (a) on submission to the company of a declaration under Section 46; and
- (b) on payment of such sum (if any), not exceeding 100 dollars, as the company may require,

require a copy of the register and the company shall, within 10 days after the receipt of the declaration and payment, cause the copy so required to be available at the place where the register is kept for collection by that person during business hours.

(4) If inspection under sub-section (2) is refused, or if a copy required under sub-section (3) is not made available within the proper period, the company is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

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

46. (1) The declaration required under sub-section (3) of Section 45 or sub-section (4) of Section 71 shall be made in writing under oath and shall state the name and address of the applicant and contain an undertaking by him that no information contained in the copy of the register made available to him will be used by him, or by any person who acquires any such information on behalf of the applicant, or directly or indirectly from the applicant or any such person, save for the following purposes -

Declaration.

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

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

(3) If any such information is used in a manner inconsistent with the terms of a declaration under sub-section (1) the person who made the declaration is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

47. (1) If -

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

Rectification of register.

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

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

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

(4) Where an order is made under this Section, the company in relation to which the order is made shall cause the relevant act of the Court to be delivered to the Registrar for registration within 14 days after the making of the order; and in the event of failure to comply with this sub-section the company is guilty of an offence and liable to a fine not exceeding 1,000 dollars and in the case of a continuing offence to a further fine not exceeding 100 dollars for each day on which the offence so continues.

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

Trusts not to be entered on register.

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

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

Branch registers.

50. (1) Subject to this Section, every company limited by shares shall in respect of each class of shares in it -

Share certificates.

- (a) within 2 months after the allotment of any of the shares in that class; and
- (b) within 2 months after the date on which a transfer of any of the shares of that class is lodged with the company,

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

(2) Sub-section (1) does not apply -

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

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

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

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

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

(6) In the event of failure to comply with sub-section (1), the company and every officer of it who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

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(7) If a company to which a notice has been given by a person entitled to have share certificates delivered to him requiring it to make good a failure to comply with sub-section (1) fails to make good the failure within 10 days after the service of the notice, the Court may, on the application of that person, make an order directing the company and any officer of it to make good the failure within a time specified in the order; and the order may provide that all costs of and incidental to the application shall be borne by the company or by an officer of it responsible for the failure.

(8) The Minister may by Order -

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

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

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

Certificates issued to bearer.

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

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

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

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

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

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

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

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

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- (a) reduce the number of shares held by the member then entered therein as holding the share or shares by the number of shares contained in the bearer certificate;
- (b) strike out of that section of its register the name of that member if, but only if, after having made such reduction, he no longer holds any share of that class; and
- (c) enter in the section of its register of members which includes the particulars of the bearer certificates issued in respect of shares of that class, the following particulars -
  - (i) the identification number of the bearer certificate,
  - (ii) the number of shares contained in it,
  - (iii) the date of the issue of the bearer certificate,
  - (iv) the date of the surrender of the bearer certificate.

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

(10) After the issue by the company of a bearer certificate, the annual return required by Section 71 shall, in respect of each class of shares in the company, specify the total number of issued shares of that class which are represented by bearer certificates issued in accordance with this Section together with the information required to be kept under Section 51(8)(c). *(as amended by SRO No. 14 of 2001)*

(11) Any person who forges, or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any bearer certificate or coupon, or any documents purporting to be a bearer certificate or coupon, issued in pursuance of this Act, or demands or endeavours to obtain or receive any share or interest of or in any company under this Act, or to receive any dividend or money payable in respect thereof, by virtue of any such forged or altered bearer certificate, coupon, or document, purporting as aforesaid, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.

(12) Any person who falsely and deceitfully personates any owner of any share or interest of or in any company, or of any bearer certificate or coupon issued in pursuance of this Act, and thereby obtains or endeavours to receive any such share or interest, or bearer certificate or coupon, or receives or endeavours to receive any money due to any such owner, as if he were the true and lawful owner, is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.

(13) Any person who without lawful authority or excuse, the proof whereof shall be on the party accused, engraves or makes upon any plate, wood, stone or other material any bearer certificate or coupon, purporting to be a bearer certificate or coupon issued or made by any particular company under and in pursuance of this Act, or to be a blank bearer certificate, or coupon issued or made as aforesaid, or to be a part of such a bearer certificate or coupon, or uses any such plate, wood, stone, or other material, for the making or printing any such bearer certificate or coupon, or any such blank bearer certificate or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.

(14) The Minister may by Order -

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- (a) modify the provisions of this Section; or
- (b) prohibit the issue of bearer certificates; or
- (c) upon written application, allow any company which, prior to the coming into force of this Act, had issued bearer shares to retain those shares in the form in which they were originally issued, *(as added by No. 16 of 1999)*

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

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

Deposit of bearer certificate.

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

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

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

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

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

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

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

*(Section 51A as added by No. 14 of 2001)*

**PART X**

51A.

**Class Rights**

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

Variation of class rights.

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



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- (3) If provision is not so made the rights may be varied if, but only if -
  - (a) the holders of two-thirds in stated value of the shares of the class consent in writing to the variation; or
  - (b) a special resolution passed at a separate meeting of the holders of that class sanctions the variation.

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

(5) In this Section, in Section 53 and (except where the context otherwise requires) in any provision for the variation of the rights attached to a class of shares contained in the memorandum or articles, or in the terms of issue of the shares, references to the variation of those rights are to be read as including references to their abrogation.

53. (1) If the rights attached to any class of shares are varied in a manner referred to in Section 52, the holders of not less in the aggregate than one-tenth in stated value of shares of the class (being persons who did not consent to, or vote in favour of a resolution for, the variation) may apply to the Court to have the variation cancelled and, if such an application is made, the variation has no effect unless and until it is confirmed by the Court.

Shareholders' right to object to variation.

(2) The application to the Court must be made within 28 days after the date on which the consent was given or the resolution was passed and may be made on behalf of the shareholders entitled to make it by one or more of them as they may appoint in writing.

(3) Notice signed by or on behalf of the applicants that an application to the Court has been made under this Section shall be given by or on behalf of the applicants to the Registrar within 7 days after it is made.

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

(5) The company shall, within 14 days after the making of an order by the Court under this Section deliver the relevant act of the Court to the Registrar; and if default is made in complying with this provision, the company is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

54. (1) The provisions of this Section apply to public companies.

(2) If a company -

(a) allots shares; or

(b) in the case of a company limited by guarantee, creates a class of members,

with rights which are not stated in its memorandum or articles, or in a resolution or agreement to which Section 100 applies, the company shall deliver to the Registrar within 1 month from allotting the shares or, as the case may be, from the date on which the new class of members is created, a statement containing the particulars of those rights.

Registration of particulars of special rights.

(3) Sub-section (2) does not apply to a company limited by shares if the shares are in all respects uniform with shares previously allotted; and shares are not for this purpose to be treated as different from shares previously allotted by reason only that the former do not carry the same rights to dividends as the latter during the 12 months immediately following the former's allotment.

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(4) Where a company, otherwise than by an amendment of its memorandum or articles or by a resolution or agreement subject to Section 100, -

- (a) varies the rights attached to a class of its shares or, in the case of a company limited by guarantee, varies the rights of any class of its members; or
- (b) assigns a name or other designation, or a new name or other designation, to a class of its shares or, in the case of a company limited by guarantee, to a class of its members,

it shall within 1 month from doing so deliver to the Registrar a statement containing particulars of the variation or, as the case may be, the new name or designation so assigned.

(5) If a company fails to comply with this Section, the company and every officer of it who is in default is guilty of an offence and liable to a fine not exceeding 1,000 dollars.

**PART XI**

**Redemption and Purchase of Shares**

55. (1) Subject to the provisions of this Section, and Sections 56 to 58, a company may, if authorized to do so by its articles -

Power to issue redeemable shares.

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

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

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

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

- (a) in the case of the stated value of the shares -
  - (i) from profits out of which a company may make a distribution under paragraph (a) of sub-section (2) of Section 114, or
  - (ii) from profits out of which a company may make a distribution under paragraph (b) of sub-section (2) of Section 114, but subject to the proviso to that paragraph, or
  - (iii) from the proceeds of a fresh issue of shares made for the purposes of the redemption,or from a combination of any of the foregoing;
- (b) in the case of any premium paid on redemption -
  - (i) from a share premium account, or
  - (ii) from the sources mentioned in paragraph (a), or
  - (iii) with the sanction of a special resolution, and subject to the proviso to sub-section (3) of Section 114, from the sources mentioned in that sub-section,or from a combination of any of the foregoing.

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(4) A special resolution passed for the purposes of sub-paragraph (iii) of paragraph (b) of sub-section (3) may have effect in relation to a particular redemption of shares or generally but shall not be capable of sanctioning any redemption effected more than 18 months after the resolution is passed.

(5) If shares are redeemed wholly out of a company's profits there shall be transferred out of profits out of which the company may make a distribution under Section 114 to a reserve to be called the capital redemption reserve a sum equal to the stated value of the shares redeemed.

(6) If shares are redeemed wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate stated value of the shares redeemed, the amount of the difference shall be transferred out of profits out of which the company may make a distribution under Section 114 to the capital redemption reserve.

(7) The provisions of Section 61 shall, except as provided by this Section, apply as if the capital redemption reserve were paid up share capital of the company except that the reserve may be applied in paying up unissued shares to be allotted as fully paid bonus shares.

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

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

(10) Any shares issued by a company before Section 220 comes into force and which could have been redeemed under the Acts repealed by that Section shall be subject to redemption either in accordance with the Act under which such company was originally incorporated or in accordance with the provisions of this Act.

(11) Any fund established before Section 220 comes into force and which could have been used for the redemption of shares under the Acts repealed by that Section shall be known as the company's capital redemption reserve and shall be treated as if it had been established for the purposes of this Section, and any reference in any existing enactment or in the articles of any company or in any other instrument to any fund established for the redemption of shares shall be construed as a reference to the company's capital redemption reserve.

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

Financial requirements on redemption.

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

57. (1) A company may purchase its own shares (including any redeemable shares).

Power of company to purchase own shares.

(2) A purchase under this Section shall, unless the company is a wholly-owned subsidiary, be sanctioned by a special resolution.

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

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

- (a) the maximum number of shares to be purchased;
- (b) the maximum and minimum prices which may be paid; and
- (c) a date, not being later than 18 months after the passing of the resolution, on which the authority to purchase is to expire.

(5) Sections 55 and 56 apply to the purchase by a company under this Section of its own shares as they apply to the redemption of redeemable shares.

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

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

Financial assistance by company for purchase of own shares.

(2) This Section does not prohibit -

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

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

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

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

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

(5) If a company gives financial assistance in contravention of this Section the company is guilty of an offence and liable to a fine not exceeding 2,500 dollars and any officer of it who is in default is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.

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

Power of the Minister to extend or modify Sections 55 to 58.

(2) The Minister may by Order extend or modify the provisions of Sections 55 to 58 with respect to any of the following matters -

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

**PART XII**

**Reduction of Capital**

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

Forfeiture of shares.

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

Special resolution for reduction of share capital.

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

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

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

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

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

Application to the Court for order of confirmation.

(2) If the proposed reduction of share capital involves either -

- (a) a diminution of liability in respect of unpaid share capital; or
- (b) the payment to a shareholder of any paid up share capital,

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and in any other case if the Court so directs, the next three sub-sections have effect, but subject throughout to sub-section (6).

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

(4) The court shall settle a list of creditors entitled to object, and for that purpose -

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

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

- (a) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
- (b) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after an enquiry and adjudication.

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

63. (1) The Court, if satisfied with respect to every creditor of the company who under Section 62 is entitled to object to the reduction of capital that either -

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

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

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

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

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

shall register the act and minute.

Court order confirming reduction.

Registration of act and minute of reduction.

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

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

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

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

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

Liability of members on reduced shares.

(2) Sub-sections (3) and (4) apply if -

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

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

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

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

66. If an officer of the company -

- (a) wilfully conceals the name of a creditor entitled to object to the reduction of capital; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of a creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation,

Penalty for concealing name of creditor, etc.

he is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

**PART XIII**

**Administration**

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

Registered office.

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

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

(4) The change shall take effect upon the notice being registered by the Registrar, but until the end of the period of 14 days beginning with the date on which it is registered a person may validly serve any document on the company at its previous registered office.

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

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

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

a company which has given notice to the Registrar of a change in the situation of its registered office may act on the change as from such date, not more than 14 days after the notice is given, as it may determine.

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

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

(b) gives notice accordingly to the Registrar of a change in the situation of its registered office within 14 days of doing so,

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

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

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

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

(2) If the name of a company is not displayed as required in sub-section (1), the company is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

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

Company's name to appear in its correspondence.

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

(b) notices and other official publications; and

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

(2) If a company fails to comply with sub-section (1) it is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

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

Particulars in correspondence.

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

(3) If a company fails to comply with sub-section (1) or (2) it is guilty of an offence and liable to a fine not exceeding 2,500 dollars.



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71. (1) Every company shall, in every year before the end of the month next following the month in which the anniversary date of its incorporation or registration under this Act falls – *(as amended by No. 14 of 2001)* Annual return.

- (a) complete an annual return containing such information current as may be prescribed as at the anniversary date of its incorporation or registration in that year; *(as amended by No. 14 of 2001)* [or registration under this Act]
- (b) deliver a copy of the return to the Registrar together with the prescribed filing fee; *(as amended by No. 14 of 2001)*
- (c) file the original return in a register kept by it for the purpose; and *(as added by No. 14 of 2001)*
- (d) the annual return shall be signed by a Director or the Secretary of [to] the company. *(as added by No. 14 of 2001)*

(2) Every company shall state in its annual return -

- (a) the company's name and the address of its registered office;
- (b) whether the company is a public or a private company;
- (c) whether the company is an ordinary or an exempt company;
- (d) the nature of the businesses carried out by the company;
- (e) in the case of a public company and in the case of a private company which is an ordinary company -
  - (i) the particulars with respect to the persons who are directors of the company which are required by Section 84 to be contained in the register kept under Section 83,
  - (ii) in respect of each class of members of the company, a list showing in alphabetical order the full name and address of each member of that class who is an individual, or in the case of a body corporate its full name, the place of its incorporation and the address of its registered or principal office,
- (f) in respect of each class of members of the company, the total number of persons who are members of that class;
- (g) in the case of a company limited by shares, a statement, in respect of each class of shares in the company, of -
  - (i) the total number of issued shares of that class which are not evidenced by any certificate issued under Section 50 or 51 together with the aggregate amount paid up on such shares,
  - (ii) the total number of issued shares of that class evidenced by share certificates issued under Section 50 and the aggregate amount paid up on the shares comprised in such certificates,
  - (iii) the total number of issued shares of that class evidenced by bearer certificates issued under Section 51,
- (h) in the case of a company limited by guarantee, a statement, in respect of each class of members of the company, of the aggregate amount of the guarantees for that class;

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- (i) in the case of an exempt company, an undertaking that the directors of the company will forthwith notify the Minister by notice in writing if the company should no longer qualify as an exempt company;
  - (j) that the information contained in the return is current as at the anniversary date of its incorporation in the year in which it is required to be delivered; *(as amended by No. 14 of 2001)*
  - (k) the name of the secretary of the company; *(as added by No. 14 of 2001)*
  - (l) the name of the Custodian of any bearer certificates. *(as added by No. 14 of 2001)*
- (3) The Minister may,
- (a) by written notice, direct any company to submit together with its annual return such information, declaration and verification as are specified in the direction, and he may at any time withdraw or amend the terms of the direction;
  - (b) upon written application, permit any company not to comply with any provision of this Section or to disclose information in such other manner as the Minister may direct.

*(Section 71(3) as amended by No. 16 of 1999)*

(4) The Registrar shall not provide to any person a copy of a return made under this Section unless that person has delivered to the Registrar a declaration under Section 46 in respect of it.

(5) A company which fails to comply with any provision of sub-section (1) or (2) which applies to it -

- (a) is guilty of an offence;
- (b) is liable to be struck off the register of companies in accordance with Section 205, the provisions of which shall apply accordingly; and
- (c) in the case of an offence under paragraph (b) of sub-section (1), is liable to a fine not exceeding one half of the prescribed filing fee for each day the offence is permitted to continue.

72. (1) A document may be served on a company -

- (a) by leaving it at, or sending it by post to, the registered office of the company; or
- (b) in accordance with sub-section (4) of Section 67; or
- (c) if an existing company has no registered office, by sending it by post -
  - (i) in the case of a company which is in compliance with the requirements of Section 83 to any person who is shown on the register kept in accordance with that Section as a director or secretary of the company at the address entered in that register;
  - (ii) in any other case to any person shown as a member of the company in the register of members or in the latest annual return delivered to the Registrar under Section 71 at his address entered in that register or, as the case may be, in that return; and
  - (iii) in default thereof, to any person whose name appears as a subscriber in the company's memorandum at his address shown in the memorandum.

Service of documents.

(2) Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery, within the period, if any, laid down for

the service thereof; and, in providing service of such document, it shall be sufficient to prove that such document was properly addressed and that it was put as a prepaid letter into the post office.

**PART XIV**

**Directors and Secretary**

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

Directors.

(2) No person shall be a director who -

- (a) is a minor; or
- (b) is an interdict; or
- (c) is disqualified for being a director under this or any other enactment; or
- (d) is a body corporate with corporate directors. *(as amended by No. 3 of 2003)*

(3) Paragraph (d) of sub-section (2) shall not apply to an existing company until the expiration of 6 months from the date on which this Section comes into force.

(4) In this Section, "related company", in relation to a company, means any body corporate which is that company's subsidiary or holding company, or a subsidiary of that company's holding company.

74. (1) A director, in exercising his powers and discharging his duties, shall -

Duties of directors.

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

(2) Without prejudice to the operation of any rule of law empowering the members, or any of them, to authorize or ratify a breach of this Section, no act or omission of a director shall be treated as a breach of sub-section (1) if -

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

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

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

Duty of directors to disclose interests.

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

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

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

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76. (1) Subject to sub-sections (2) and (3), where a director fails to disclose an interest of his under Section 75 the company or a member of the company may apply to the Court for an order setting aside the transaction concerned and directing that the director account to the company for any profit or gain realised, and the Court may so order or make such other order as it thinks fit.

Consequences of failure to comply with Section 75.

(2) A transaction is not voidable, and a director is not accountable, under sub-section (1) where, notwithstanding a failure to comply with Section 75 -

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

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

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

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

Indemnity of officers and secretary

(2) Sub-section (1) does not apply to a provision for exempting a person from or indemnifying him against -

- (a) any liabilities incurred in defending any proceedings (whether civil or criminal) -
  - (i) in which judgment is given in his favour or he is acquitted, or
  - (ii) which are discontinued otherwise than for some benefit conferred by him or on his behalf or some detriment suffered by him, or
  - (iii) which are settled on terms which include such benefit or detriment and, in the opinion of a majority of the directors of the company (excluding any director who conferred such benefit or on whose behalf such benefit was conferred or who suffered such detriment), he was substantially successful on the merits in his resistance to the proceedings; or
- (b) any liability incurred otherwise than to the company if he acted in good faith with a view to the best interests of the company; or
- (c) any liability incurred in connexion with an application made under Section 214 in which relief is granted to him by the Court; or
- (d) any liability against which the company normally maintains insurance for persons other than directors.

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

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

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

Disqualification orders.

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

(3) An order under sub-section (2) shall be for such period not exceeding 5 years as the Court thinks fit.

(4) A person who acts in contravention of an order made under this Section is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.

79. (1) A person who acts in contravention of an order made under Section 78 is personally responsible for such liabilities of the company as are incurred at a time when that person was, in contravention of the order, involved in the management of the company.

Personal responsibility for liabilities where person acts while disqualified.

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

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

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

Validity of acts of director.

81. (1) Every company shall have a secretary who is resident in the Federation and may have one or more assistant secretaries who, or each of whom, may be an individual or a body corporate. *(as amended by No. 14 of 2001)*

Secretary.

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

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

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

82. (1) It shall be the duty of the directors of a public company to take all reasonable steps to secure that the secretary and each assistant secretary of the company is a person who appears to the directors to have the requisite knowledge and experience to discharge the functions of a secretary of a public company.

Qualifications of secretary.

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

- (a) on the coming into force of this Section was the secretary or assistant or deputy secretary of a public company;
- (b) is a lawyer;
- (c) is an accountant;
- (d) is a member in good standing of such other professional bodies as the Minister may by Order designate; or

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- (e) is a person who, by virtue of his holding or having held any other position or being a member of any other body, appears to be capable of discharging the functions of a secretary of a public company,

may be assumed by a director of a public company to have the requisite knowledge and experience to discharge the functions of a secretary or assistant secretary of a public company, if the director does not know otherwise.

- (3) A private exempt company must have as its secretary a person authorised to carry on either trust or corporate business. *(as added by No. 14 of 2001)*

83. (1) Every company shall keep at its registered office a register of its directors and secretary; and the register shall with respect to the particulars to be contained in it comply with Sections 84 and 85.

Register of directors and secretaries.

(2) The register shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, but so that not less than two hours in each business day be allowed for inspection) be open to the inspection of the Registrar and of a member or officer of the company without charge and, in the case of a public company, of any other person on payment of such sum (if any), not exceeding 25 dollars, as the company may require.

(3) The Registrar shall not disclose or make use of any information obtained by him as a result of the exercise of the right conferred upon him by sub-section (2) except for the purpose of enabling any provision of this Act or any obligation owed to the company by an officer or secretary of the company to be enforced.

(4) If an inspection required under this Section is refused, or if there is a failure to comply with sub-section (1), the company and every officer of it who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

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

84. (1) Subject to the provisions of this Section, the register kept by a company under Section 83 shall contain the following particulars with respect to each director -

Particulars of directors.

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

(2) In sub-section (1) and in Section 85 -

- (a) "surname", in the case of a peer or a person usually known by a title different from his surname, means that title; and
- (b) the reference to a former forename or surname does not include -
  - (i) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title, or

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- (ii) in the case of any person, a former forename or surname where that name or surname was changed or disused before the person bearing the name attained the age of 20, or has been changed or disused for a period of not less than 20 years.

85. The register to be kept by a company under Section 83 shall contain the following particulars with regard to the secretary, or, where there are assistant secretaries, with respect to each of them -

Particulars of secretaries.

- (a) in the case of an individual, his present forenames and surname, any former forenames or surname and his usual residential address;
- (b) in the case of a body corporate, its full name, the place where it is incorporated and the address of its registered or principal office; and
- (c) in either case, the date on which he or it became the secretary or assistant secretary and, where appropriate, the date on which he or it ceased to be the secretary or assistant secretary.

**PART XV**

**Meetings**

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

Participation in meetings.

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

87. (1) Sub-sections (2) and (3) shall have effect subject to sub-sections (4) to (7).

Annual general meeting.

(2) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notice calling it; but so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(3) In the case of a public company, not more than 18 months, and in the case of a private company, not more than 22 months shall elapse between the date of one annual general meeting and the date of the next.

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

(5) In any year in which an annual general meeting would be required to be held but for such an agreement and in which no such meeting has been held, any member of the company may by written notice to the company given not later than 3 months before the end of the year require the holding of an annual general meeting in that year.

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

- (a) if any person who becomes a member of the company while the agreement is in force does not within 2 months of becoming a member accede to the agreement; or
- (b) if any member of the company gives written notice to the company determining the agreement; or

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

(7) If such an agreement ceases to have effect, whether pursuant to sub-section (6) or otherwise, and an annual general meeting has not previously been held in the year in which the cessation takes place, the directors shall forthwith call an annual general meeting to be held within 3 months after the agreement ceases to have effect.

(8) If a public company fails to comply with sub-section (2) or (3), it and every director of it who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

88. (1) If default is made in holding a meeting in accordance with Section 87, the Minister may, on the application of any officer, secretary or member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Minister thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conduct of the meeting, the operation of the company's articles.

Minister's power to call meeting in default.

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

(3) If default is made in complying with directions given under sub-section (1), the company and any officer or secretary of it who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

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

(5) Where a company so resolves, a copy of the resolution shall, within 21 days after it is passed, be forwarded to the Registrar and recorded by him; and if default is made in complying with this sub-section, the company is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

89. (1) The directors of a company shall, notwithstanding anything in the company's articles, on a members' requisition forthwith proceed to call a general meeting or, as the case may be, a meeting of the holders of a class of shares to be held as soon as practicable but in any case not later than 2 months after the date of the deposit of the requisition.

Requisition of meetings.

(2) A members' requisition is a requisition of -

(a) members of the company holding at the date of the deposit of the requisition not less than one-tenth in the stated value of the shares which at that date carry the right of voting at the meeting requisitioned; or

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

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

(4) If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to call a meeting to be held within 2 months of that date, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves call a meeting, but a meeting so called shall not be held after 3 months from that date.

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



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

(7) In the case of a meeting at which a resolution is to be proposed as a special resolution the directors are deemed not to have duly called the meeting if they do not give the notice required for special resolutions by Section 90.

90. (1) A resolution is a special resolution when it has been passed by a majority of not less than two-thirds of such members as (being entitled to do so) vote in person, or by proxy, at a general meeting of the company or at a separate meeting of any class of members of the company of which in either case not less than 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given.

Definition of special resolution.

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

- (a) together holding not less than 95 per cent in stated value of the shares giving that right; or
- (b) in the case of a company limited by guarantee, together representing not less than 95 per cent of the total voting rights at that meeting of all the members,

a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

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

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

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

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

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

Notice of meetings.

- (a) in the case of the annual general meeting, 21 days' notice in writing; and
- (b) in the case of a meeting, other than an annual general meeting or a meeting for the passing of a special resolution, 14 days' notice in writing.

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

- (a) in the case of the annual general meeting, by 21 days' notice in writing; and
- (b) in the case of a meeting, other than an annual general meeting or a meeting for the passing of a special resolution, by 14 days' notice in writing.

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

- (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and
- (b) otherwise, by a majority in number of the members having the right to attend and vote at the meeting, being a majority -
  - (i) together holding no less than 95 per cent in stated value of the shares giving a right to attend and vote at the meeting; or
  - (ii) in the case of a company limited by guarantee, together representing not less than 95 per cent of the total voting rights at that meeting of all the members.

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

General provisions  
as to meetings and  
votes.

- (a) notice of a meeting shall be given to every member entitled to receive it by delivering or posting it to his registered address;
- (b) where a company has issued any bearer certificate, the notice referred to in paragraph (a) shall be published in one or more newspapers circulated in the Federation; but the directors may also publish such notice in one or more newspapers circulated elsewhere than in the Federation;
- (c) members holding not less than one-tenth in stated value of the issued shares carrying a right to vote thereat or, in the case of a company limited by guarantee, not less than 5 per cent in number of the members of the company may call a meeting;
- (d) subject to paragraphs (e) and (h), no business shall be transacted at any meeting unless a quorum is present and two members present in person or by proxy -
  - (i) together holding not less than one-third in stated value of the issued shares carrying a right to vote at the meeting; or
  - (ii) in the case of a company limited by guarantee, together representing not less than one-third of the total voting rights at that meeting of all the members,shall be a quorum;
- (e) if a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place; and, if at such adjourned meeting, a quorum is not present within half an hour from the time appointed for the meeting, or if during such adjourned meeting a quorum ceases to be present, then any member present in person or by proxy shall be a quorum;
- (f) any member elected by the members present at a meeting may be chairman of it and in the case of an equality of votes the chairman of the meeting shall be entitled to a casting vote in addition to any vote he may have;
- (g) on a show of hand every member has one vote and on a poll every member has -

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

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

Representation of body corporate at meetings.

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

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

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

Power of court to order meetings.

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

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

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

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

95. (1) Anything that may be done by a resolution (including a special resolution but excluding a resolution removing an auditor) passed at a meeting of a company or at a meeting of any class of members of the company may, subject to the company's articles, be done by a resolution in writing signed by or on behalf of each member who, at the date when the resolution is deemed to be passed, would be entitled to vote on the resolution if it were proposed at a meeting.

Resolutions in writing.

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

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

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

(5) Sections 98 and 100 apply to a resolution in writing under this Section as if it had been passed at a meeting.

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

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

Proxies.

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

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

(3) In the event of failure to comply with sub-section (2) as respects any meeting, every officer of the company who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

(4) A provision contained in a company's articles is void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective.

(5) If for the purpose of a meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be given notice of the meeting and to vote at it by proxy, then every officer of the company who knowingly and wilfully authorizes or permits their issue in that manner is guilty of an offence and liable to a fine not exceeding 2,500 dollars; but an officer is not so liable by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxy, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

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

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

Demand for poll.

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

(2) The instrument appointing a proxy to vote at such a meeting is deemed also to confer authority to demand or join in demanding a poll; and for the purposes of sub-section (1) a

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demand by a person as proxy or alternate proxy for a member is the same as a demand by the member.

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

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

Minutes.

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

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

(4) If a company fails to comply with sub-section (1), the company and every officer of it who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

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

Inspection of minute books.

(2) A member may require, on submission to the company of a written request and on payment of such sum (if any), not exceeding 50 dollars, as the company may require, a copy of any such minutes and the company shall, within 7 days after the receipt of the request and the payment, cause the copy so required to be made available at the registered office of the company for collection during business hours.

(3) If an inspection required under this Section is refused or if a copy required under this Section is not sent within the proper time, the company is guilty of an offence and liable to a fine not exceeding 1,000 dollars.

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

100. (1) A printed copy of every resolution or agreement to which this Section applies shall, within 21 days after it is passed or made, be forwarded to the Registrar and recorded by him.

Filing of resolutions.

(2) A printed copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the memorandum or articles issued after the passing of the resolution or the making of the agreement; and a printed copy of every such resolution or agreement shall be forwarded to a member at his request on payment of such sum (if any), not exceeding 50 dollars, as the company may require.

(3) This Section applies to -

(a) special resolutions;

(b) resolutions or agreements which have been agreed to by all the members of a company but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;

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

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

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

(5) If a company fails to comply with sub-section (2), it is guilty of an offence and liable to a fine not exceeding 1,000 dollars.

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

101. Where a resolution is passed at an adjourned meeting of -

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

Resolution passed at adjourned meeting.

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

**PART XVI**

**Accounts and Audits**

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

Accounting records.

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

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

(3) If accounting records of a public company are kept at a place outside the Federation, returns with respect to the business dealt with in the accounting records so kept shall be sent to, and kept in, the Federation, shall at all times be open to such inspection, and shall be such as to -

- (a) disclose with reasonable accuracy the financial position of the business in question at intervals of not more than 6 months; and
- (b) enable the directors to ensure that any accounts prepared by the company under this Part comply with the requirements of this Act.

(4) Subject to Section 194, accounting records which a company is required by this Section to keep shall be preserved by it for 12 years from the date on which they are made.

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

Register of mortgages and charges.

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

(2) If a company fails to comply with sub-section (1), the company and every officer of it who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

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

104. (1) The directors of every company shall prepare accounts for a period of not more than 18 months beginning on the date the company was incorporated or, if the company has previously prepared a profit and loss account, beginning at the end of the period covered by the most recent account:

Accounts.

Provided that an existing company which has not prepared a profit and loss account for a period ending within 12 months before the date on which this Section comes into force shall not be required to prepare accounts for a period beginning earlier than that date.

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

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

(4) Within 7 months after the end of the financial period, the accounts for that period shall be -

- (a) prepared, and where it is required under this Act, examined and reported upon by auditors; and
- (b) subject in the case of a private company to sub-section (5), laid before a general meeting together with a copy of the auditors' report (if any).

(5) If at the end of any financial period of a company, an agreement under sub-section (4) of Section 87 dispensing with the holding of an annual general meeting has effect -

- (a) the company shall not be obliged to lay the accounts for that period or a copy of any auditors' report before a general meeting; but
- (b) if any member of the company, not later than 8 months after the end of that period, by written notice given to the company so requires, those accounts and a copy of any auditors' report thereon shall be laid before a general meeting which shall be held within 28 days after the receipt of the notice by the company, or after approval of the accounts by the directors, whichever shall last occur.

(6) In this Part, references to "accounts" are to those prepared in accordance with this Section.

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

Copies of accounts.

(2) If default is made in complying with such a request within 7 days after its making, the company and every officer of it who is in default is guilty of an offence and liable to a fine not

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exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

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

Delivery of accounts to the Registrar.

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

- (a) a copy of the accounts for the period signed on behalf of the directors by one of them together with a copy of the report thereon by its auditors (if any); or
- (b) a certificate of solvency for the period signed on behalf of the directors by at least one of them and by the auditors (if any).

(3) Every certificate of solvency delivered to the Registrar pursuant to paragraph (b) of sub-section (2) shall state -

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

(4) The documents referred to in sub-sections (1) and (2) shall be delivered to the Registrar within 10 months after the end of the financial period to which they relate and if any document so delivered is in a language other than English, the directors shall annex to the copy of that document a translation of it into English, certified to be a correct translation.

(5) Where for special reasons the Minister sees fit, he may by notice in writing extend a period mentioned in sub-section (1), (4) or (5) of Section 104 or in sub-section (4) of this Section by such period as is specified in the notice.

107. (1) If a company fails to comply with the provisions of Section 102, 104 or 106 -

- (a) the company is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence under Section 106 to a further fine not exceeding 250 dollars for each day on which the offence so continues; and
- (b) in the case of a public company, every officer of it who is in default is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.

Failure to comply with Section 102, 104 or 106.



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(2) A director or auditor of a company who signs or delivers to the Registrar or concurs in delivering to the Registrar of a certificate required by paragraph (b) of sub-section (2) of Section 106 which contains a statement that is false, misleading or deceptive or an opinion that he has no reasonable ground to believe to be accurate is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.

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

Power to make Order as to accounts.

(2) Without prejudice to the generality of the foregoing, such Order may provide for -

- (a) the inclusion in accounts of group accounts dealing with the affairs of a company and its subsidiaries;
- (b) the inclusion in accounts of a report by the directors dealing with such matters as may be specified;
- (c) the accounting principles to be applied in the preparation of accounts;
- (d) the appointment, remuneration, removal, resignation, rights and duties of auditors,

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

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

109. (1) Where -

Appointment and removal of auditors.

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

the company shall appoint auditors who shall examine and report in accordance with this Act upon the accounts prepared pursuant to Section 104.

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

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

(4) If a private company required by this Section to appoint auditors dispenses with the holding of an annual general meeting pursuant to subsection (4) of Section 87 any auditors then in office shall continue to act and be deemed to be re-appointed for each succeeding financial period until the conclusion of the next annual general meeting or until the company in general meeting resolves that the appointment of the auditors be brought to an end.

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

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

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

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

(9) If a company fails to comply with sub-section (1), the company and every officer of it who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

110. (1) This Section, and Sections 111 and 113, apply only to a company which is required to appoint auditors pursuant to Section 109.

Auditors' report.

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

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

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

Auditors' duties and powers.

(a) whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them;

(b) whether the company's accounts are in agreement with the accounting records and returns.

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

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

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

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

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

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

(a) a statement to the effect that there are no circumstances connected with his ceasing to hold office which he considers should be brought to the notice of the members or creditors of the company; or

(b) a statement of any circumstances as are mentioned above.

(8) Where a statement under sub-section (7) falls within paragraph (b) of that section, the company shall within 14 days send a copy of the statement to every member of the company and to every person entitled to receive notice of general meetings.

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(9) If a person ceasing to hold office as auditor fails to comply with sub-section (7) he is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

(10) If a company fails to comply with sub-section (8) the company and every officer of it who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

112. Where Section 109 requires a company to appoint auditors, an officer and the secretary of a company is guilty of an offence and liable to imprisonment for a term of 2 years or a fine or both if he knowingly or recklessly makes to the company's auditors a statement (whether written or oral) which -

False statements to auditors.

(a) conveys or purports to convey any information or explanation which the auditors require, or are entitled to require, as auditors of the company; and

(b) is misleading, false or deceptive in a material particular.

113. (1) No person shall be qualified for appointment as auditor of a company under Section 109 unless he is an accountant.

Qualification for appointment as auditor.

(2) Notwithstanding sub-section (1) -

(a) a body corporate; or

(b) a partnership;

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

(3) No auditor is so qualified if he is a person who is -

(a) an officer or secretary or servant of the company or a partner or employee of such a person; or

(b) a person against whom an order under Section 78 is in force.

(4) An auditor is also not so qualified if he is, under sub-section (2), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(5) No person appointed under Section 109 shall act as auditor of a company at a time when he knows that he is disqualified for appointment to that office; and if an auditor of a company to his knowledge becomes so disqualified during his term of office he shall thereupon vacate his office and give notice in writing to the company that he has vacated it by reason of that disqualification.

(6) A person who acts as auditor in contravention of sub-section (4), or fails without reasonable excuse to give notice of vacating his office as required by that sub-section, is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

(7) The Minister may by Order -

(a) amend the definition of "accountant"; or

(b) amend any provision of this Section;

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

(8) Sub-sections (5) and (6) shall not apply to an existing company until the expiration of 6 months from the date on which this Section comes into force.

**PART XVII**

**Distributions**

114. (1) A company shall not make a distribution except in accordance with this Section. Restrictions on distributions.
- (2) A company may make a distribution at any time -
- (a) out of its realised profits less its realised losses;
  - (b) out of its realised revenue profits less its revenue losses, whether realised or unrealised, provided the directors reasonably believe that, immediately after the distribution has been made -
    - (i) the company will be able to discharge its liabilities as they fall due, and
    - (ii) the value of the company's assets will not be less than the amount of its liabilities.
- (3) A company may, with the sanction of a special resolution, make a distribution out of its unrealised profits less its losses, whether realised or unrealised, provided the directors reasonably believe that immediately after the distribution has been made -
- (a) the company will be able to discharge its liabilities as they fall due; and
  - (b) the value of the company's assets will not be less than the aggregate of -
    - (i) its liabilities,
    - (ii) the stated amount of its issued shares,
    - (iii) any amount standing to the credit of its share premium account, and
    - (iv) any amount standing to the credit of its capital redemption reserve.
- (4) In this Part -
- (a) "distribution" means every description of distribution of a company's assets to its members in their characters of members, whether in cash or otherwise, except distribution by way of -
    - (i) an issue of shares as fully or partly paid bonus shares,
    - (ii) the redemption or purchase of any of the company's shares out of the proceeds of a fresh issue of shares or share premium account,
    - (iii) the reduction of share capital by extinguishing or reducing the liability of any of the members on any of the company's shares in respect of share capital not paid up, or by paying off paid up share capital, and
    - (iv) a distribution of assets to members of the company on its winding up.
  - (b) references to profits of any description are to accumulated profits of that description made at any time so far as not previously utilised by distribution or capitalization;
  - (c) references to losses of any description are to accumulated losses of that description made at any time so far as not previously written off in a reduction or reorganisation of capital duly made;
  - (d) references to profits and losses of any description are to profits and losses of that description ascertained in accordance with generally accepted accounting principles;
  - (e) "capitalization" means -

- (i) applying profits in wholly or partly paying up unissued shares in the company to be allotted to members as fully or partly paid bonus shares, or
- (ii) transferring the profits to capital redemption reserve.

(5) A company shall not apply an unrealised profit in paying up debentures.

(6) Where the directors of a company are, after making all reasonable enquiries, unable to determine whether a particular profit made before the provisions of this Section came into force is realised or unrealised, they may treat it as realised; and where, after making such enquiries, they are unable to determine whether a particular loss so made is realised or unrealised, they may treat the loss as unrealised.

115. Where a distribution, or part of a distribution, made by a company to one of its members is made in contravention of Section 114 and, at the time of the distribution, he knows or has reasonable grounds for believing that it is so made, he is liable to repay it, or that part of it, to the company or, in the case of a distribution made otherwise than in cash, to pay the company a sum equal to the value of the distribution, or that part, at that time.

Consequences of unlawful distribution.

## **PART XVIII**

### **Amalgamation and Arrangements**

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

Takeover offers.

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

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

(4) A variation is permitted by this sub-section where -

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

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

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

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the date of the offer shall accordingly be construed as references to the date of which the original offer was made.

(7) In this Part “the offeror” means, subject to Section 122, the person making a takeover offer and “the company” means the company whose shares are the subject of the offer.

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

Right of offeror to buy out minority shareholders.

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

(3) No notice shall be given under sub-section (1) or (2) unless the offeror has acquired or contracted to acquire the shares necessary to satisfy the minimum specified in that sub-section before the end of the period of 4 months beginning with the date of the offer; and no such notice shall be given after the end of the period of 2 months beginning with the date on which he has acquired or contracted to acquire shares which satisfy that minimum.

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

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

(6) Any person who fails to send a copy of a notice or a declaration as required by sub-section (4) or makes such a declaration for the purposes of that sub-section knowing it to be false or without having reasonable grounds for believing it to be true is guilty of an offence and liable to imprisonment for a period not exceeding 2 years or a fine or both.

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

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

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

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

118. (1) The following provisions shall, subject to Section 121, have effect where a notice is given in respect of any shares under Section 117.

Effect of notice under Section 117.

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

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

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

and the terms of the offer mentioned in sub-section (2) shall be determined accordingly.

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

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

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

- (5) At the end of six weeks from the date of the notice the offeror shall forthwith -
- (a) send a copy of the notice to the company; and
  - (b) make payment to the company for the shares to which the notice relates.

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

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

(8) Any sum received by a company under paragraph (b) of sub-section (5) and any other payment received under that sub-section shall be held by the company on trust for the person entitled to the shares in respect of which the sum or other payment was received.

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

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

(11) The expenses of any such enquiry as is mentioned in sub-section (10) may be defrayed out of the money or other property held on trust for the person or persons to whom the enquiry relates.

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

Right of minority shareholder to be bought out by offeror.

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

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

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

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

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

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

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

(5) Sub-section (3) does not apply if the offeror has given the shareholder a notice in respect of the shares in question under Section 117.

(6) If the offeror fails to comply with sub-section (3) he and, if the offeror is a company, every officer of the company who is in default or to whose neglect the failure is attributable, is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

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

120. (1) The following provisions shall, subject to Section 121, have effect where a shareholder exercises his rights in respect of any shares under Section 119.

Effect of requirement under Section 119.

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

(3) Where the terms of an offer are such as to give the holder of shares a choice of payment for his shares the holder of the shares may indicate his choice when requiring the offeror to acquire them and the notice given to the holder under sub-section (3) of Section 119 -

- (a) shall give particulars of the choice and of the rights conferred by this sub-section; and



- (b) may state which payment specified in the offer is to be taken as applying in default of his indicating a choice,

and the terms of the offer mentioned in sub-section (2) shall be determined accordingly.

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

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

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

121. (1) Where a notice is given under Section 117 to the holder of any shares the Court may, on an application made by him within six weeks from the date on which the notice was given -

Applications to the Court.

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

(2) If an application to the Court under sub-section (1) is pending at the end of the period mentioned in sub-section (5) of Section 118 that sub-section shall not have effect until the application has been disposed of.

(3) Where the holder of any shares exercises his rights under Section 119 the Court may, on an application made by him or the offeror, order that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the Court thinks fit.

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

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

(5) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under sub-section (1) or (2) of Section 117 the Court may, on the application of the offeror, make an order authorizing him to give notices under that Section if satisfied -

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

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

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

(2) The conditions for the exercise of the rights conferred by Sections 117 and 119 shall be satisfied by the joint offerors acquiring or contracting to acquire the necessary shares jointly (as respects acquisitions by virtue of acceptances of the offer) and either jointly or separately (in other cases); and, subject to the following provisions, the rights and obligations of the offeror under those Sections and Sections 118 and 120 shall be respectively joint rights and joint and several obligations of the joint offerors.

(3) It shall be a sufficient compliance with any provision of those Sections requiring or authorizing a notice or other document to be given or sent by or to the joint offerors that it is given or sent by or to any of them; but the declaration required by sub-section (4) of Section 117 shall be made by all of them and, in the case of a joint offeror being a company, signed by a director of that company.

(4) In Section 116, sub-section (7) of Section 118 and Section 123 references to the offeror shall be construed as references to the joint offerors or any of them.

(5) In sub-section (6) of Section 118 references to the offeror shall be construed as references to the joint offerors or such of them as they may determine.

(6) In paragraph (a) of sub-section (4) of Section 118 and paragraph (a) of sub-section (4) of Section 120 references to the offeror being no longer able to make the relevant payment shall be construed as references to none of the joint offerors being able to do so.

(7) In Section 121 references to the offeror shall be construed as references to the joint offerors except that any application under sub-section (3) or (5) may be made by any of them and the reference in paragraph (a) of sub-section (5) to the offeror having been unable to trace one or more of the persons holding shares shall be construed as a reference to none of the offerors having been able to do so.

123. (1) The requirement in sub-section (1) of Section 116 that a takeover offer must extend to all the shares, or all the shares of any class or classes, in a company shall be regarded as satisfied notwithstanding that the offer does not extend to shares which associates of the offeror hold or have contracted to acquire; but, subject to sub-section (2), shares which any such associate holds or has contracted to acquire, whether at the time when the offer is made or subsequently, shall be disregarded for the purposes of any reference in this Part to the shares to which a takeover offer relates. Associates.

(2) Where during the period within which a takeover offer can be accepted any associate of the offeror acquires or contracts to acquire any of the shares to which the offer relates, then, if the condition specified in paragraph (a) or (b) of sub-section (8) of Section 117 is satisfied as respects those shares they shall be treated for the purpose of that Section as shares to which the offer relates.

(3) In paragraph (b) of sub-section (1) and paragraph (b) of sub-section (2) of Section 119 the reference to shares which the offeror has acquired or contracted to acquire shall include a reference to shares which any associate of his has acquired or contracted to acquire.

(4) In this Section, "associate", in relation to an offeror, means -

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

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

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

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

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

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

Convertible securities.

(2) Sub-section (1) shall not be construed as requiring any securities to be treated -

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

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

Power of company to compromise with creditors and members.

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

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

(4) If a company fails to comply with sub-section (3), it is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

(5) In this Section and Section 126, "arrangement" includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

126. (1) This Section applies where a meeting of creditors or a class of creditors, or of members or a class of members, is called under Section 125.

Information as to compromise to be circulated.

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

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compromise or arrangement, in so far as it is different from the effect on the same interests of other persons.

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

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

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

(6) If a company fails to comply with a requirement of this Section the company and every officer of it who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars; and for this purpose a trustee of a deed for securing the issue of debentures of the company is deemed an officer of it; but a person is not liable under this sub-section if he shows that the default was due to the refusal of another person, being a director or trustee for debenture holders, to supply the necessary particulars of his interests.

(7) A director of the company, and a trustee for its debenture holders, shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this Section; and a person who defaults in complying with this sub-section is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

127. (1) This Section applies where application is made to the Court under Section 125 for the sanctioning of a compromise or arrangement proposed between a company and any persons mentioned in that Section.

Provisions for facilitating company reconstruction or amalgamation.

(2) If it is shown -

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

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

- (i) the transfer to the transferee company of the whole or part of the undertaking and of the property or liabilities of a transferor company,
- (ii) the allotting or appropriation by the transferee company of shares, debentures, policies or other similar interests in that company which under the compromise or arrangement are to be allotted or appropriated by the company to or for any person,
- (iii) the continuation by or against the transferee company of legal proceedings pending by or against a transferor company,
- (iv) the dissolution, without winding up, of a transferor company,

- (v) the provision to be made for persons who, within a time and in a manner which the Court directs, dissent from the compromise or arrangement,
- (vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

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

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

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

(4) Where an order is made under this Section, every company in relation to which the order is made shall cause the relevant act of the Court to be delivered to the Registrar for registration within 14 days after the making of the order; and in the event of failure to comply with this sub-section, the company is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

(5) In this Section, "property" includes property, rights and powers of every description and "liabilities" includes duties.

## **PART XIX**

### **Investigations**

128. (1) If the Minister has *prima facie* evidence that -

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

Appointment of inspectors by Minister.

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

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

(3) The Minister may, before appointing inspectors, require the applicant, other than the Registrar, to give security, to an amount not exceeding 25,000 dollars or such other sum as may be prescribed for payment of the costs of the investigation.

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

129. (1) If inspectors appointed under Section 128 to investigate the affairs of a company think it necessary for the purposes of their investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding

Powers of inspectors.

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company, or a subsidiary of its holding company or a holding company of its subsidiary, they shall have power to do so; and they shall report on the affairs of the other body corporate so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the first mentioned company.

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

130. (1) If inspectors appointed under Section 128 consider that any person is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him -

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

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

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

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

131. If inspectors appointed under Section 128 have reasonable grounds for believing that a director, or past director, of the company or other body corporate whose affairs they are investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in the Federation or elsewhere, into or out of which there has been paid money which has been in any way connected with an act or omission, or series of acts or omissions, which constitutes misconduct (whether fraudulent or not) on the part of that director towards the company or other body corporate or its members, the inspectors may require the director to produce and make available to them all records in the director's possession or under his control relating to that bank account.

132. (1) Inspectors appointed under Section 128 may for the purpose of an investigation under that Section apply to the Court for a warrant under this Section in relation to specified premises.

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

(3) The conditions referred to in sub-section (2) are -

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

(4) Where a person has entered premises in the execution of a warrant issued under this Section, he may seize and retain any material, other than items subject to legal professional

Production of records and evidence to inspectors.

Power of inspectors to call for directors' bank accounts.

Authority for search.

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privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

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

133. Any person who wilfully obstructs any person acting in the execution of a warrant issued under Section 132 is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.

Obstruction.

134. (1) If any person -

- (a) fails to comply with a requirement under Section 130 or 131; or
- (b) refuses to answer any question put to him by the inspectors for the purpose of the investigation,

Failure to co-operate with inspectors.

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

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

(3) Notwithstanding the generality of the foregoing, no proceedings for an offence or for the recovery of any penalty shall be instituted under this Section against any person who refuses to answer any question if such refusal is made pursuant to Section 212.

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

Inspectors' reports.

(2) The Minister may -

- (a) forward a copy of any report made by the inspectors to the company's registered office;
- (b) furnish a copy on request and on payment of the prescribed fee to -
  - (i) any member of the company or other body corporate which is the subject of the report,
  - (ii) any person whose conduct is referred to in the report,
  - (iii) the auditors of the company or that body corporate,
  - (iv) the applicants for the investigation,
  - (v) any other person whose financial interests appear to the Minister to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or otherwise; and
- (c) cause the report to be printed and published.

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

Power to bring civil proceedings on behalf of body corporate.

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

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

Expenses of investigating a company's affairs.

- (a) a person who -
  - (i) is convicted in proceedings on a prosecution instituted as a result of the investigation, or
  - (ii) is ordered to pay the costs of the whole or any part of the proceedings brought under Section 136,may in the same proceedings be ordered to pay those expenses to the extent specified in the order;
- (b) a body corporate in whose name proceedings are brought under that Section is liable to the amount or value of any sums or property recovered by it as a result of those proceedings;
- (c) a body corporate which has been the subject of the investigation is liable except so far as the Minister otherwise directs; and
- (d) the applicant or applicants for the investigation (other than the Registrar), is or are liable to the extent (if any) which the Minister may direct.

(2) For the purposes of this Section, costs or expenses incurred by the Minister in or in connexion with proceedings brought under Section 136 (including expenses incurred under sub-section (2) of it) are to be treated as expenses of the investigation giving rise to the proceedings.

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

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

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

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

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

Inspectors' report to be evidence.

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

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

Privileged information.

- (a) by a person of information or records which he would in an action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the Court except, if he is a lawyer, the name and address of his client;



- (b) by a company's bankers (as such) of information or records relating to the affairs of any of their customers other than the company or other body corporate under investigation.

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

Investigation of external companies.

## **PART XX**

### **Unfair Prejudice**

141. (1) A member of a company may apply to the Court for an order under Section 143 on the ground that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members (including at least himself) or that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

Power for member to apply to Court.

(2) The provisions of this Section and Sections 142 and 143 apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law, as those provisions apply to a member of the company; and references to a member or members are to be construed accordingly.

142. If in the case of a company -

Power for Minister to apply to Court.

- (a) the Minister has received a report under Section 135; and
- (b) it appears to the Minister that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members, or that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial,

the Minister may apply to the Court for an order under Section 143.

143. (1) If the Court is satisfied that an application under Section 141 or 142 is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

Powers of Court.

(2) Without prejudice to the generality of sub-section (1), the Court's order may -

- (a) regulate the conduct of the company's affairs in the future;
- (b) require the company to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained it has omitted to do;
- (c) authorize civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the Court may direct;
- (d) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly;
- (e) suspend the exercise of the powers of the directors;
- (f) appoint an interim receiver of the company;
- (g) order the directors to meet and to consider any matter and to give all necessary directions and orders in relation thereto.

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

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

(5) The Act of the Court recording the making of an order under this Section altering, or giving leave to alter, a company's memorandum or articles shall, within 14 days from the making of the order or such longer period as the Court may allow, be delivered by the company to the Registrar for registration, and if a company fails to comply with this sub-section, the company is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

**PART XXI**

**Summary Winding Up**

144. This Part applies to the winding up of a company which has no liabilities or which is able to discharge its liabilities in full within 12 months after the commencement of the winding up and such winding up is a summary winding up.

Application of this Part.

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

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

(2) Within 21 days after that date a notice of the resolution so deemed to be passed shall be delivered to the Registrar.

(3) If a statement of solvency has been made in accordance with sub-section (2) of Section 146 within 28 days before the date referred to in sub-section (1) and is delivered to the Registrar with the notice referred to in sub-section (2), the company shall be wound up summarily in accordance with this Part.

146. (1) A company may be wound under this Part -

Procedure for any other summary winding up.

- (a) by passing a special resolution that it be wound up summarily; and
- (b) by delivering to the Registrar a statement of solvency in accordance with sub-section (2).

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

- (a) that the company has no assets and no liabilities; or
- (b) that the company has assets and no liabilities; or
- (c) that the company will be able to discharge its liabilities in full within 6 months after the commencement of the winding up,

as the case may be.

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

- (a) the resolution is passed within 28 days after the statement of solvency has been signed by each of the directors; and
- (b) the statement is delivered to the Registrar with the copy of the resolution delivered in accordance with Section 100.

147. A summary winding up under which assets of the company are to be distributed commences when the copy of the resolution for winding up or (as the case may be) the notice

Commencement of winding up.

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referred to in sub-section (2) of Section 144 and the statement under Section 146 are registered by the Registrar.

148. After the commencement of a summary winding up of a company which has assets the corporate state and capacity of the company continue until the company is dissolved but, from the commencement of the winding up, its powers shall be exercised only so far as may be required for the realization of the assets of the company, the discharge of any liabilities of the company and the distribution of its assets in accordance with Section 150.

Effect on status of company.

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

Appointment of liquidator.

(2) On the appointment of a liquidator all the powers of the directors cease except so far as the resolution appointing the liquidator or any subsequent special resolution otherwise provides and, subject to any such resolution and to Section 150, all those powers shall thereafter be exercisable by the liquidator.

(3) Section 83 applies to a liquidator appointed under this Section as it applies to a director.

150. (1) On the registration by the Registrar of a statement delivered under Section 146 that the company has no assets and no liabilities the company is dissolved.

Application of assets and dissolution.

(2) On the registration by the Registrar of a statement so delivered that the company has assets and no liabilities the company shall forthwith proceed to distribute its assets among its members according to their rights or otherwise as provided by the memorandum or articles.

(3) On the registration by the Registrar of a statement so delivered that the company will be able to discharge its liabilities in full within 6 months after the commencement of the winding up the assets of the company shall be applied in satisfaction of the company's liabilities and, subject to that application, shall be distributed as aforesaid.

(4) As soon as the company has completed the distribution of its assets in accordance with sub-section (2) or (3), it shall deliver to the Registrar a statement signed by each of the directors or, if the distribution has been completed by a liquidator appointed under Section 149, by the liquidator, that each director or (as the case may be) the liquidator, having made full inquiry into the company's affairs, is satisfied that the company has no assets and no liabilities and, upon the registration of the statement, the company is dissolved.

151. (1) This Section applies where after the commencement of a summary winding up the directors (or, if there is a liquidator, the liquidator) form the opinion that the company has liabilities which it will be unable to discharge in full within 6 months after the commencement of the winding up.

Effect of insolvency.

(2) When that opinion is formed it shall be recorded in the minutes of a meeting of the directors or, as the case may be, by the liquidator.

(3) The directors (or, if there is a liquidator, the liquidator) shall -

- (a) by not less than 14 days' notice given by post, call a meeting of the creditors of the company to be held in the Federation within 28 days after that opinion was recorded and the company shall in the notice nominate a person to be liquidator for the purpose of a creditors' winding up;
- (b) when that notice is given to the creditors, deliver a copy of it to the Registrar;
- (c) not less than 10 days before the day for which the meeting is called, give notice of the meeting by advertisement in *the Gazette* and in one of the newspapers published in the Federation;

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- (d) during the period before the creditors' meeting is held, furnish any creditor free of charge with such information concerning the affairs of the company as he may reasonably request; and
- (e) make out a statement as to the affairs of the company and lay that statement before the creditors' meeting.

(4) The statement as to the affairs of the company shall be verified by affidavit by some or all of the directors or (if there is a liquidator) by the liquidator.

(5) If there is a liquidator, he shall preside at the creditors' meeting and, if there is no liquidator, a director nominated by the directors shall preside.

(6) As from the day on which the creditors' meeting under this Section is held the winding up becomes a creditors' winding up and this Act has effect as if that meeting was the meeting of creditors mentioned in Section 160.

(7) If the directors or, as the case may be, the liquidator without reasonable excuse fail to comply with their obligations under this Section or if a director or, as the case may be, the liquidator fails to comply with sub-section (5) so far as requiring him to preside at the creditors' meeting, the directors or the director or the liquidator (as the case may be), is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

(8) A director or liquidator who signs a statement delivered to the Registrar under Section 146 or 150 without having reasonable grounds for stating that the company has no liabilities or that it will be able to discharge its liabilities in full within 6 months after the commencement of the winding up is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.

152. (1) This Section applies where -

- (a) a company is dissolved under Section 150;
- (b) an order is made under Section 213 declaring the dissolution void;
- (c) when that order is made the company's assets (if any) are not sufficient for the discharge of all the liabilities admissible to proof against the company in a creditors' winding up; and
- (d) the company's assets (if any) at the time of its dissolution were not sufficient for the discharge of all such liabilities at that time.

(2) Any person to whom any assets were distributed under Section 150 and any director or liquidator who signed a statement delivered to the Registrar under Section 146 or 150 that the company had no liabilities (except a person who shows that he had reasonable grounds for being satisfied when he signed the statement that the company had no liabilities) are, so as to enable the insufficiency referred to in paragraph (d) of sub-section (1) to be met, liable to contribute to the following extent to the company's assets.

(3) A person to whom any such distribution was made is liable to contribute an amount not exceeding the amount or value of the assets which were distributed to him and the directors and any such liquidator are jointly and severally liable with that person to contribute that amount.

(4) A person who is liable to contribute, or who has contributed, any amount to the assets under this Section may apply to the Court for an order directing any person jointly and severally liable with him in respect of that amount to pay him such amount as the Court thinks fair and reasonable.

153. A liquidator appointed under Section 149 shall be entitled to receive from the company such remuneration as is agreed between him and the company before his appointment or

Liability of past directors and others.

Remuneration of liquidator.

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as is at the time of his appointment subsequently approved by the company in general meeting or by the Court.

154. A liquidator appointed under Section 149 may be removed from office by a special resolution of the company and shall vacate office if he ceases to be qualified to hold that office.

Cesser of office by liquidator.

**PART XXII**

**Winding Up by the Court**

155. (1) A company may be wound up by the Court if the Court is of the opinion that it is just and equitable that the company should be wound up.

Power for Court to wind up.

(2) An application to the Court under this Section may be made by the company or creditor of the company, or by a director or any member of the company. *(as amended by No. 14 of 2001)*

(3) If the Court orders a company to be wound up under this Section, it may appoint a liquidator and may from time to time direct the manner in which the winding-up is to be conducted.

(4) The act of the Court ordering the winding up of a company shall, within 14 days after the making of the order, be delivered by the company to the Registrar and recorded by him,

(5) An order for winding up shall operate in favour of all the creditors and of the contributories of the company as if made on the joint petition of a creditor and a contributory. *(as added by No. 14 of 2001)*

(6) If the company fails to comply with sub-section (4) it and every officer of it in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

**PART XXIII**

**Creditors' Winding Up**

156. This Part applies to the winding up of a company otherwise than under Part XXI or Part XXII and such winding up is a creditors' winding up.

Application of this Part.

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

Procedure for creditors' winding up at end of period of existence.

(2) Within 21 days after that date a notice of the resolution so deemed to be passed shall be delivered to the Registrar.

(3) If a statement of solvency is not delivered to the Registrar in accordance with sub-section (3) of Section 145, the company shall be wound up in a creditors' winding up in accordance with this Part and for that purpose Section 151 shall apply as though the opinion referred to in that Section has been recorded on the date referred to in sub-section (1) of this Section.

158. (1) A company may be wound up under this Part if the company so resolves by special resolution.

Procedure for any other creditors' winding up.

(2) When a company has passed a resolution for a creditors' winding up, it shall, within 14 days of the passing of the resolution, give notice of the resolution by advertisement in *the Gazette*.

(3) In the event of failure to comply with this sub-section (2), the company and every officer of it who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars

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and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

159. (1) A creditors' winding up is deemed to commence when the resolution for winding up is passed or, where Section 151 applies, when the winding up becomes a creditors' winding up; and the company shall from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.

Commencement and effects of creditors' winding up.

(2) The corporate state and capacity of the company continue until the company is dissolved.

(3) A transfer of shares, not being a transfer made to or with the sanction of the liquidator, and an alteration in the status of the company's members made after the commencement of the winding up is void.

(4) After the commencement of the winding up no action shall be taken or proceeded with against the company except by leave of the Court and subject to such terms as the Court may impose.

160. (1) The company shall -

- (a) not less than 14 days before the day on which there is to be held the company meeting at which the resolution for a creditors' winding up is to be proposed give by post to its creditors notice calling a meeting of creditors to be held in the Federation on the same day as, and immediately following the conclusion of, the company meeting and nominating a person to be liquidator for the purposes of a creditors' winding up;
- (b) give notice of the creditors' meeting by advertisement in *the Gazette* not less than 10 days before the day for which that meeting has been called;
- (c) during the period before the creditors' meeting furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require.

Meeting of creditors in creditors' winding up.

(2) The directors shall -

- (a) make out a statement as to the affairs of the company, verified by affidavit by some or all of the directors;
- (b) lay that statement before the creditors' meeting; and
- (c) appoint a director to preside at that meeting,

and the director so appointed shall attend the meeting and preside over it.

(3) If -

- (a) the company without reasonable excuse fails to comply with sub-section (1);
- (b) the directors without reasonable excuse fail to comply with sub-section (2); or
- (c) a director without reasonable excuse fails to comply with sub-section (2), so far as requiring him to attend and preside at the creditors' meeting,

the company, the directors or the director (as the case may be) is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

161. (1) The creditors and the company at their respective meetings mentioned in Section 160 may nominate a person to be liquidator for the purpose of the winding up.

Appointment of liquidator.

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(2) Where a creditors' meeting is called in accordance with Section 151, the person nominated to be liquidator in the notice calling the meeting shall be deemed, for the purposes of this Section, to have been nominated as aforesaid by the company.

(3) The person nominated by the creditors, or if no person is nominated by the creditors, the person nominated, or deemed to have been nominated, by the company is appointed liquidator with effect from the conclusion of the creditors' meeting.

(4) In the case of different persons being nominated, a director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order either -

- (a) directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors; or
- (b) appointing some other person to be liquidator instead of the person nominated by the creditors.

(5) A liquidator appointed under this Section shall within 14 days after his appointment give notice thereof signed by him to the Registrar and to the creditors.

(6) A liquidator who fails to comply with sub-section (5) is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

(7) Section 83 applies to a liquidator appointed under this Section as it applies to a director.

162. (1) A creditors' meeting may appoint a liquidation committee consisting of not more than five persons to exercise the functions conferred on it by or under this Act.

Appointment of liquidation committee.

(2) If a committee is appointed, the company may, in general meeting, appoint such number of persons not exceeding five as they think fit to act as members of the committee.

(3) The creditors may resolve that all or any of the persons so appointed by the company ought not to be members of the committee; and if the creditors so resolve -

- (a) the persons mentioned in the resolution are not then, unless the Court otherwise directs, qualified to act as members of the committee; and
- (b) on an application to the Court under this provision the Court may appoint other persons to act as such members in place of the persons mentioned in the resolution.

163. (1) A liquidator in a creditors' winding up is entitled to receive such remuneration as is agreed between him and the liquidation committee or, if there is no committee, between him and the creditors or, failing any such agreement, as is fixed by the Court.

Remuneration of liquidator, cesser of directors' powers, and vacancy in office of liquidator.

(2) On the appointment of a liquidator in a creditors' winding up, all the powers of the directors cease, except so far as the liquidation committee (or, if there is no committee, the creditors) sanction their continuance.

(3) The creditors may at any time remove a liquidator.

(4) If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by the Court) the creditors may fill the vacancy.

164. (1) This Section applies where a creditors' winding up has commenced but no liquidator has been appointed.

No liquidator appointed.

(2) During the period before the appointment of a liquidator, the powers of the directors shall not be exercised except -

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- (a) with the sanction of the Court;
- (b) to secure compliance with Section 160; or
- (c) to protect the company's assets.

(3) If the directors, without reasonable excuse, fail to comply with this Section, they are guilty of an offence and liable to a fine not exceeding 2,500 dollars.

165. All costs, charges and expenses properly incurred in a creditors' winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

Costs of creditors' winding up.

166. Any surplus remaining after payment of the debts proved in the winding up, before being applied for any other purpose, shall be applied in paying interest on those debts which bore interest prior to the commencement of the winding up in respect of the period during which they have been outstanding since the commencement of the winding up and at the rate of interest applicable apart from the winding up.

Payment of interest on debts.

167. (1) An arrangement entered into between a company immediately preceding the commencement of, or in the course of, a creditors' winding up and its creditors is (subject to the right of appeal under this Section) binding -

Arrangement when binding on creditors.

- (a) on the company, if sanctioned by a special resolution; and
- (b) on the creditors, if acceded to by three-quarters in number and value of them.

(2) A creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it; and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

168. (1) If a creditors' winding up continues for more than 12 months, the liquidator shall call a general meeting of the company and a meeting of the creditors to be held at the first convenient date within 3 months after the end of the first 12 months from the commencement of the winding up, and of each succeeding 12 months, or such longer period as the Minister may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding 12 months.

Meetings of company and creditors.

(2) If the liquidator fails to comply with this Section, he is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

169. (1) As soon as the affairs of a company in a creditors' winding up are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.

Final meeting and dissolution.

(2) Each such meeting shall be called by not less than 21 days' notice sent by post, accompanied by a copy of the liquidator's account.

(3) Within 7 days after the date of the meetings (or, if they are not held on the same date, after the date of the later one) the liquidator shall make a return to the Registrar of the holding of the meetings and of their dates and in the case of a public company a copy of the account.

(4) If the copy is not delivered or the return is not made in accordance with sub-section (3), the liquidator is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.



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(5) If a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by sub-section (3), deliver a return that the meeting was duly called and that no quorum was present; and when that return is made the provisions of that sub-section as to the making of the return are, in respect of that meeting, deemed complied with.

(6) The Registrar on receiving the account and, in respect of each such meeting, either of the returns mentioned above, shall forthwith register them, and at the end of 3 months from the registration of the return the company is deemed to be dissolved; but the Court may, on the application of the liquidator or of another person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(7) The person on whose application an order of the Court under this Section is made shall, within 14 days after the making of the order, deliver to the Registrar the relevant Act of the Court for registration; and if that person fails to do so he is guilty of an offence and liable to a fine not exceeding 1,000 dollars and in the case of a continuing offence to a further fine not exceeding 100 dollars for each day on which the offence so continues.

(8) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this Section he is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

170. (1) The liquidator in a creditors' winding up may, with the sanction of the Court or the liquidation committee (or, if there is no such committee, a meeting of the creditors) -

Powers and duties of liquidator.

- (a) pay a class of creditors in full;
- (b) compromise any claim by or against the company.

(2) The liquidator may, without sanction, exercise any other power of the company as may be required for its beneficial winding up.

(3) The liquidator may -

- (a) settle a list of contributories (and the list of contributories is prima facie evidence of the persons named in it to be contributories);
- (b) make calls;
- (c) summon general meetings of the company for the purpose of obtaining its sanction by special resolution or for any other purpose he may think fit.

(4) The liquidator shall pay the company's debts and adjust the rights of the contributories among themselves.

(5) The appointment or nomination of more than one person as liquidator shall declare whether any act to be done is to be done by all or any one or more of them, and in default, any such act may be done by two or more of them.

171. (1) Subject to this Section, the liquidator in a creditors' winding up may, within 6 months after the commencement of the winding up, by the giving of notice, signed by him and referring to this Section and Section 172, to each person who is interested in or under any liability in respect of the property disclaimed, disclaim any onerous movable property, or any onerous immovable property situated outside the Federation, and may do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.

Power to disclaim onerous property.

(2) For the purposes of this Section -

- (a) onerous movable property is any -
  - (i) unprofitable contract, and

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(ii) other movable property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act;

(b) onerous immovable property is any immovable property of the company situated outside the Federation and having the characteristics mentioned in subparagraph (ii) of paragraph (a).

(3) A disclaimer under this Section -

(a) shall operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but

(b) shall not, except so far as is necessary for the purpose of releasing the company from liability, affect the rights or liabilities of any other person.

(4) A person sustaining loss or damage in consequence of the operation of a disclaimer under this Section shall be deemed to be a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

172. (1) This Section applies where the liquidator of a company has disclaimed property under Section 171.

Powers of Court in respect of disclaimed property.

(2) An application may be made to the Court under this Section by -

(a) a person who claims an interest in the disclaimed property; or

(b) a person who is under a liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.

(3) Subject to sub-section (4), the Court may, on an application under this Section, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to -

(a) a person entitled to it or a trustee for such a person; or

(b) a person subject to a liability mentioned in paragraph (b) of sub-section (2) or a trustee for such a person.

(4) The Court shall not make an order by virtue of paragraph (b) of sub-section (3) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(5) The effect of an order under this Section shall be taken into account in assessing for the purpose of sub-section (4) of Section 171 the extent of loss or damage sustained by a person in consequence of the disclaimer.

173. (1) Subject to sub-section (2), in a creditors' winding up a lien or other right to retain possession of any records of a company shall be unenforceable to the extent that its enforcement would deny possession of those records to the liquidator.

Unenforceability of liens on records.

(2) Sub-section (1) does not apply to a lien on documents which give a title to property and are held as such.

174. (1) The liquidator or a contributory or creditor may apply to the Court to determine a question arising in a creditors' winding up, or to exercise all or any of the powers which the Court might exercise if a declaration had been made in relation to the company under the Insolvency Act.

Reference of questions and powers to the Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such

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terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

(3) An act of the Court recording the making of an order under this Section staying the proceedings in the winding up shall, within 14 days after the making of the order, be delivered by the company, or otherwise as may be ordered by the Court, to the Registrar, who shall enter it in his records relating to the company.

(4) If a company fails to comply with sub-section (3) it is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

175. (1) If for any reason there is, in a creditors' winding up, no liquidator acting, the Court may appoint a liquidator.

Appointment or removal of liquidator by the Court.

(2) The Court may, on reason being given, remove a liquidator in a creditors' winding up and appoint another.

176. (1) Subject to this Section, where a company has at a relevant time -

- (a) entered into a transaction with any person at an undervalue; or
- (b) given a preference to any person,

Transactions at an undervalue and preferences.

the liquidator in a creditors' winding up may apply to the Court for such order as the Court thinks fit for restoring the position to what it would have been if the company had not entered into that transaction or given that preference, as the case may be.

(2) For the purposes of this Section, a company enters into a transaction with a person at an undervalue if the company -

- (a) makes a gift to that person or it otherwise enters into a transaction with that person on terms for which there is no consideration; or
- (b) enters into a transaction with that person for a consideration; the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration; provided by the company.

(3) For the purposes of this Section, a company gives a preference to a person if -

- (a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and
- (b) the company -

- (i) does anything, or
- (ii) suffers anything to be done,

which has the effect of putting that person into a position which in the event of the company going into insolvent liquidation will be better than the position he would have been in if that thing had not been done.

(4) The Court shall not make an order under this Section in respect of a preference given to any person unless the company which gave it was influenced in deciding to give it by a desire to produce in relation to that person the effect referred to in paragraph (b) of sub-section (3).

(5) Subject to sub-section (6), the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given -

- (a) in the case of a transaction at an undervalue, at a time in the period of 5 years ending with the date of commencement of the winding up;

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- (b) in the case of a preference which is not a transaction at an undervalue, at a time in the period of 1 year ending with that date.

(6) Subject to sub-section (7), where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (a) or (b) of sub-section (5), that time is not a relevant time unless the company -

- (a) is at that time unable to pay its debts as they fall due; or
- (b) becomes unable to pay its debts as they fall due in consequence of the transaction or preference.

(7) Sub-section (6) shall not apply to a transaction at an undervalue which takes place less than 2 years before the date of commencement of the winding up.

(8) This Section shall not apply to a transaction entered into or a preference given before the Section comes into force.

177. (1) Subject to sub-section (3), if in the course of a creditors' winding up it appears that sub-section (2) applies in relation to a person who is or has been a director of the company, the Court on the application of the liquidator may, if it thinks it proper to do so, order that that person be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company arising after the time referred to in sub-section (2).

Responsibility of persons for wrongful trading.

(2) This sub-section applies in relation to a person if -

- (a) at some time before the date of commencement of the winding up of the company that person -
  - (i) knew that there was no reasonable prospect that the company would avoid a creditors' winding up, or
  - (ii) on the facts known to him was reckless as to whether the company would avoid such a winding-up; and
- (b) that person was a director of the company at that time.

(3) The Court shall not make an order under sub-section (1) with respect to any person if it is satisfied that after either condition specified in paragraph (a) of sub-section (2) was first satisfied in relation to him that person took reasonable steps with a view to minimising the potential loss to the company's creditors.

(4) On the hearing of an application under this Section, the liquidator may himself give evidence or call witnesses.

178. (1) If, in the course of a creditors' winding up it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of another person, or for a fraudulent purpose, the Court may, on the application of the liquidator, order that persons who were knowingly parties to the carrying on of the business in that manner are to be liable to make such contributions to the company's assets as the Court thinks proper.

Responsibility for fraudulent trading.

(2) On the hearing of the application the liquidator may himself give evidence or call witnesses.

(3) Where the Court makes an order under this Section or Section 177, it may give such further directions as it thinks proper for giving effect to the order.

(4) Where the Court makes an order under this Section or Section 177 in relation to a person who is a creditor of the company, it may direct that the whole or part of a debt owed by the company to that person and any interest thereon shall rank in priority after all other debts owed by the company and after any interest on those debts.

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(5) This Section and Section 177 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the order under sub-section (1) is to be made.

179. (1) This Section applies in a creditors' winding up where the company is, or has been, a party to a transaction for, or involving, the provision of credit to the company.

Extortionate credit transactions.

(2) Subject to sub-section (5), the Court may, on the application of the liquidator, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of 3 years ending with the commencement of the winding up.

(3) For the purposes of this Section, a transaction is extortionate if, having regard to the risk accepted by the person providing the credit -

- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or
- (b) it otherwise grossly contravened ordinary principles of fair dealing.

(4) An order under this Section with respect to a transaction may contain one or more of the following as the Court thinks fit -

- (a) provision setting aside the whole or part of an obligation created by the transaction;
- (b) provision otherwise varying the terms of the transaction or varying the terms on which a security for the purposes of the transaction is held;
- (c) provision requiring a person who is or was a party to the transaction to pay to the liquidator sums paid to that person, by virtue of the transaction, by the company;
- (d) provision requiring a person to surrender to the liquidator property held by him as security for the purposes of the transaction;
- (e) provision directing accounts to be taken between any persons.

(5) This Section shall not apply to a transaction entered into before the Section comes into force.

180. (1) Where a person has in his possession or control property or records to which a company appears in a creditors' winding up to be entitled, the Court may require that person forthwith (or within a period which the Court may direct) to pay, deliver, convey, surrender or transfer the property or records to the liquidator.

Delivery and seizure of property.

(2) Where -

- (a) the liquidator seizes or disposes of property which is not property of the company; and
- (b) at the time of seizure or disposal the liquidator believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property,

the liquidator shall not be liable to any person in respect of loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the liquidator, and shall have a lien on the property, or the proceeds of its sale, for expenses incurred in connexion with the seizure or disposal.

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181. (1) This Section applies when a company is being wound up in a creditors' winding up and -

Liability in respect of purchase or redemption of shares.

- (a) it has under Section 55 or 57 or under an Order made under Section 59 made a payment out of share premium account in respect of the redemption or purchase of any of its own shares (in this Section referred to as "the relevant payment"); and
- (b) the aggregate amount of the company's assets and the amounts paid by way of contribution to its assets (apart from this Section) is not sufficient for payment of its liabilities and the expenses of the winding up.

(2) If the winding up commenced within 1 year of the date on which the relevant payment was made, then -

- (a) the person from whom the shares were redeemed or purchased; and
- (b) the directors at the time the payment was authorized except a director who shows that, on reasonable grounds, he held the belief referred to in Section 56,

are, so as to enable that insufficiency to be met, liable to contribute to the following extent to the company's assets.

(3) A person from whom any of the shares were redeemed or purchased is liable to contribute an amount not exceeding so much of the relevant payment as was made by the company in respect of his shares; and the directors are jointly and severally liable with that person to contribute that amount.

(4) A person who has contributed an amount to the assets in pursuance of this Section may apply to the Court for an order directing any other person jointly and severally liable in respect of that amount to pay him an amount as the Court thinks just and equitable.

(5) Section 192 does not apply in relation to liability accruing by virtue of this Section.

(6) The Minister may by Order make such modifications to this Section as appear to be reasonably necessary in consequence of any Order made under Section 59.

182. Where a resolution is passed at an adjourned meeting of a company's creditors, the resolution is treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

Resolutions passed at adjourned meetings.

183. (1) In a creditors' winding up each of the persons mentioned in sub-section (2) shall -

Duty to co-operate with liquidator.

- (a) give the liquidator information concerning the company and its promotion, formation, business, dealings, affairs or property which the liquidator may at any time after the commencement of the winding up reasonably require; and
- (b) attend on the liquidator at reasonable times and on reasonable notice when requested to do so.

(2) The persons referred to in sub-section (1) are -

- (a) those who are, or have at any time been, officers of the company;
- (b) those who have taken part in the formation of the company at any time within 1 year before the commencement of the winding up;
- (c) those who are in the employment of the company, or have been in its employment within that year, and are in the liquidator's opinion capable of giving information which he requires; and

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- (d) those who are, or have within that year been, officers of, or in the employment of, another company which is, or within that year was, an officer of the company in question.

(3) For the purposes of sub-section (2) “employment” includes employment under a contract for services.

(4) If a person without reasonable excuse fails to comply with an obligation imposed by this Section, he is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.

(5) Paragraph (d) of sub-section (2) shall cease to have effect on the expiration of 18 months from the date on which Section 73 comes into force.

184. (1) If it appears to the liquidator in the course of a creditors' winding up that any person has been guilty of an offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Minister.

Liquidator to report possible criminal offences.

(2) Where a report is made by the liquidator under sub-section (1), the Minister shall thereupon investigate the matter and for the purpose of the investigation may exercise any of the powers which are exercisable by inspectors appointed under Section 128 to investigate a company's affairs.

(3) If, from any information obtained under this Section, it appears to the Minister that a person has been guilty as mentioned in sub-section (1), the Minister shall refer the matter to the Director of Public Prosecutions.

(4) If it appears to the Court in the course of a creditors' winding up that any person has been guilty as mentioned in sub-section (1), and that no report with respect to the matter has been made by the liquidator under that sub-section, the Court may direct the liquidator to make such a report; and on a report being made accordingly this Section shall have effect as though the report had been made in pursuance of sub-section (1).

185. (1) For the purpose of an investigation by the Minister under sub-section (2) of Section 184, an obligation imposed on a person by a provision of this Act to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in that sub-section is to be regarded as an obligation similarly to assist the Minister in his investigation.

Obligations arising under Section 184.

(2) An answer given by a person to a question put to him in exercise of the powers conferred by sub-section (2) of Section 184 may be used in evidence against him.

(3) Where criminal proceedings are instituted by the Director of Public Prosecutions following a report or reference under Section 184, the liquidator and every officer and agent of the company past and present (other than the defendant) shall give the Director of Public Prosecutions any assistance in connexion with the prosecution which he is reasonably able to give; and for this purpose “agent” includes a banker or lawyer of the company and a person employed by the company as auditor, whether or not that person is an officer of the company.

(4) If a person fails or neglects to give assistance as required by sub-section (3), the Court may, on the application of the Director of Public Prosecutions, direct the person to comply with that sub-section; and if the application is made with respect to a liquidator, the Court may (unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so) direct that the costs shall be borne by the liquidator personally.

**PART XXIV**

**General Provisions in Winding up**

<p>186. Subject to the rights of preferred creditors and to the provisions of any enactment as to preferential payments, a company's property shall on winding up be realised and applied in satisfaction of the company's liabilities <i>pari passu</i> and, subject to that application, shall (unless the memorandum or articles otherwise provide) be distributed among the members according to their rights and interests in the company,</p>	<p>Distribution of company's property.</p>
<p>187. (1) If, in a winding up, a director or a liquidator who has defaulted in delivering a document or in giving any notice which he is by law required to deliver or give fails to make good the default within 14 days after the service on him of a notice requiring him to do so the Court has the following powers -</p> <p>(a) on an application made by a creditor or contributory of the company, or by the Registrar, the Court may make an order directing the director or the liquidator to make good the default within the time specified in the order;</p> <p>(b) the Court's order may provide that costs of and incidental to the application shall be borne, in whole or in part, by the director or the liquidator personally.</p> <p>(2) Nothing in sub-section (1) prejudices the operation of any enactment imposing penalties on a director or a liquidator in respect of a default mentioned therein.</p>	<p>Enforcement of liquidator's duty to make returns, etc.</p>
<p>188. (1) A person who is not an individual is not qualified to act as a liquidator.</p> <p>(2) The Minister may prescribe the qualifications required for any person to act as a liquidator.</p> <p>(3) An appointment made in contravention of this Section or any Order made under it is void; a person who acts as liquidator when not qualified to do so is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine or both.</p> <p>(4) A liquidator shall vacate office if he ceases to be a person qualified to act as a liquidator.</p>	<p>Qualifications of liquidator.</p>
<p>189. A person who gives or agrees or offers to give to a member or creditor of a company any valuable benefit with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator, is guilty of an offence and liable to a fine.</p>	<p>Corrupt inducement affecting appointment as liquidator.</p>
<p>190. (1) A liquidator who resigns, is removed or for any other reason vacates office shall within 14 days after the resignation, removal or vacation of office give notice thereof, signed by him, to the Registrar and in the case of a creditors' winding up (except where the removal is pursuant to sub-section (3) of Section 163) to the creditors.</p> <p>(2) If a liquidator fails to comply with sub-section (1) he is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.</p>	<p>Notification by liquidator of resignation, etc.</p>
<p>191. (1) When a company is being wound up, every invoice, order for goods or services or business letter issued by or on behalf of the company, or a liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is in liquidation.</p> <p>(2) In the event of failure to comply with this Section, the company and every officer of it who is in default is guilty of an offence and liable to a fine not exceeding 2,500 dollars.</p>	<p>Notification that company is in liquidation.</p>



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192. (1) When a company is wound up, every present and past member is liable to contribute to its assets to an amount sufficient for payment of its liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves; but, without prejudice to Section 181 -

Liability as contributories of present and past members.

- (a) a member, past or present, is not liable under this sub-section to contribute in respect of any shares allotted before this Section comes into force;
- (b) a past member is not liable to contribute if he has ceased to be a member for 1 year or more before the commencement of the winding up;
- (c) a past member is not liable to contribute in respect of a liability of the company contracted after he ceased to be a member;
- (d) a past member is not liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act or the Acts repealed by Section 220;
- (e) no contribution is required from a past or present member exceeding -
  - (i) in the case of a company limited by shares, the amount (if any) unpaid on the shares in respect of which he is liable; and
  - (ii) in the case of a company limited by guarantee, the amount of the guarantee in respect of which he is liable.
- (f) a sum due to a member of the company (in his character of a member) by way of dividends, profits or otherwise is not deemed to be a liability of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) The liability imposed on contributories by the Acts repealed by Section 220 shall continue to apply in respect of shares allotted before this Section comes into force.

193. The winding up of a company under this Act bars the right to take any other proceedings in bankruptcy.

Bar against other proceedings.

194. (1) When a company has been wound up and is about to be dissolved, its records and those of a liquidator may be disposed of as follows -

Disposal of records.

- (a) in the case of a summary winding up, in the way that the company by special resolution directs; and
- (b) in the case of a creditors' winding up, in the way that the liquidation committee or, if there is no such committee, the company's creditors, may direct.

(2) After 10 years from the company's dissolution no responsibility rests on the company, a liquidator, or a person to whom the custody of the records has been committed, by reason of any record not being forthcoming to a person claiming to be interested in it.

(3) The Minister may direct that for such period as he thinks proper (but not exceeding 10 years from the company's dissolution), the records of a company which has been wound up shall not be destroyed.

(4) If a person acts in contravention of a direction made for the purposes of this Section, he is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

**PART XXV**

**External Companies**

195. (1) A body corporate incorporated outside the Federation shall not carry on business in the Federation or have an address in the Federation which it uses regularly for the purpose of its business until the requirements of sub-sections (2), (3) and (4) of this Section have been satisfied and the Registrar has issued a certificate to the body corporate under sub-section (7) of this Section.

Registration of external companies.

(2) A director of a body corporate falling within the provisions of sub-section (1) of this Section or an agent acting on his behalf may, on delivering to the Registrar a statement and on payment of the prescribed registration fee, apply for the body corporate to be registered as an external company under this Act.

(3) A director or agent who delivers a statement to the Registrar under sub-section (2) of this Section shall ensure that the statement is printed in the English Language, and shall state,

- (a) the particulars of the corporate body, that is to say, its name, place and date of incorporation and its registered number (if any) in that place;
- (b) the address of its registered office or principal place of business at its place of incorporation;
- (c) the address of its office for service in the Federation;
- (d) with respect to each of its directors,
  - (i) in the case of an individual, his present forename and surname, any former forenames or surnames, and his usual residential address, and
  - (ii) in the case of a body corporate, its full name, the place where it is incorporated and the address of its registered or principal office,
  - (iii) in either case, the date on which he or it became such a director;
- (e) with respect to its secretary, or where there are assistant secretaries, with respect to each of them,
  - (i) in the case of an individual, his [or her] present forename and surname, any former forenames or surnames, and his usual residential address,
  - (ii) in the case of a body corporate, its full name, the place where it is incorporated and the address of its registered or principal office,
  - (iii) in either case, the date on [of] which he or it became such a secretary;
- (f) with respect to its agent in the Federation, or where there are more than one such agent, with respect to each of them,
  - (i) in the case of an individual, his [or her] present forename and surname, any former forenames or surnames, and his [or her] usual residential address, [and]
  - (ii) in the case of a body corporate, its full name, the place where it is incorporated and the address of its registered or principal office, [and]
  - (iii) in either case, the date on which he or it became such an agent;
- (g) that its directors will forthwith notify the Registrar in writing if any alterations are made in the names or addresses of any person referred to in paragraphs (d), (e) and (f) or in any of the instruments referred to in sub-section (4) [(5)] of this Section;

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- (h) the nature of the business to be carried out by the external company;
- (i) if the statement is delivered by a person as agent for the directors of the external company, the name and address of such person; and
- (j) any other prescribed particulars.

(4) There shall be delivered to the Registrar with the statement referred to in sub-section (3) of this Section a certified copy of the instruments constituting or defining the constitution of the body corporate.

(5) When an instrument or document that is required to be filed with the Registrar under this Section is not in the English Language, a certified translation of that instrument shall be delivered to him.

(6) The Registrar shall register the external company's statement delivered to him under sub-section (3) of this Section if he is satisfied that all requirements of this Section in respect of the registration of the external company have been complied with.

- (7) The Registrar shall, on the registration of an external company's statement,
- (a) Allocate a registration number to the external company in accordance with Section 198 of this Act; and
  - (b) Issue a certificate of registration in respect of the external company stating,
    - (i) the name of the external company,
    - (ii) its registration number, and
    - (iii) the date of its registration.

(8) The Registrar shall sign and seal every certificate of registration issued under this Section with his seal and such a certificate issued under this Section shall be conclusive evidence of the registration of the external company under this Act.

- (9) An external company shall at all times have in the Federation,
- (a) an office for service to which all communication and notices may be addressed; and
  - (b) at least one agent authorised to accept on its behalf service of process and any notice required to be served on it,

and on registration or renewal [revival] of registration under this Act, the address of the external company's office for service and the name and address of each of its agents shall be as specified in the statement referred to in sub-section (3) of this Section.

(10) Subject to such regulations as the Minister may make in that behalf, the Minister may suspend or revoke the registration of any external company for failing to comply with any requirements of this Section, or for any other prescribed cause; and the Minister may, subject to those regulations, remove a suspension or cancel a revocation, except that the rights of the creditors of an external company shall not be affected by the suspension or revocation of its registration under this Act.

(11) When an external company ceases to carry on any business in or from within the Federation, it shall file a notice to that effect with the Registrar who shall thereupon cancel the registration of the external company, except that if an external company ceases to exist and the Registrar is made aware of the circumstance by evidence satisfactory to him, then he shall cancel the registration of the external company.

(12) Where the registration of an external company has been cancelled under sub-section (11) of this Section, the Registrar may revive the registration of the external company under this

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Act by issuing a new certificate of registration if the company files with him a statement under sub-section (3) of this Section and pays the prescribed filing fee.

(13) Registration or revival of registration under this Act of an external company retroactively authorises all previous acts of the company as though the company has been registered at the time of those acts, except for the purpose of a prosecution for any offence under this Section.

(14) The following provisions of the [this] Act shall apply *mutatis mutandis* to external companies,

- (a) sub-section (3) of Section 13;
- (b) sub-sections (2) and (3) of Section 14;
- (c) Section 15;
- (d) sub-sections (3) and (4) of Section 18;
- (e) Sections 19, 20 and 71; and
- (f) Parts VII, XIII and XIX.

(15) A body corporate falling within the provisions of sub-section (1) or (2) of this Section which fails to comply with any provision of this Section which applies to it commits an offence and is liable, upon conviction, to a fine not exceeding 5,400 dollars and in the case of a continuing offence under this Section to a further fine not exceeding 540 dollars for each day on which the offence continues.

(16) A director of a body corporate falling within the provisions of sub-section (1) or (2) of this Section who signs or delivers to the Registrar or concurs in delivering to the Registrar a document required by this Section which contains,

- (a) a statement that he knows is false, misleading or deceptive; or
- (b) an opinion that he has no reasonable ground to believe to be accurate,

Commits an offence and is liable, upon conviction, to a fine not exceeding 5,400 dollars and, if the director is an individual, to imprisonment for a term not exceeding 2 years, or both.

(17) An external company that has been continued from the amalgamation of two or more external companies shall comply with this Section as though it were a new registration of an external company, irrespective of the fact that one or more of the external companies that were continued by the amalgamation had been registered under this Act at the date of the amalgamation or thereafter.

(18) A company falling within the provisions of sub-section (1) or (2) of this Section which is carrying on business in the Federation immediately before the date on which this Section comes into force shall, within a period of three months, from that date comply with all the provisions of this Section which applies to it.

(19) The provisions of section 206 shall not apply to external companies. (*Section 195 as amended by No. 13 of 1998*)

**PART XXVI**

**Registrar**

196. (1) For the purposes of the registration of companies under this Act, there shall be appointed a person known as the Registrar of companies and such other officers as may be necessary to assist the Registrar in the exercise of his functions under this Act.

Registrar and other officers.

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(2) Any functions of the Registrar under this Act may, to the extent authorized by him, be exercised by any of his officers.

(3) In this Section, "officer" means a person on the staff of the Registrar.

197. The Minister may direct a seal or seals to be prepared for the authentication of documents required for or in connexion with the registration of companies.

Registrar's seal.

198. (1) The Registrar shall allocate to every company a number, which shall be known as the company's registration number.

Registration numbers.

(2) Companies' registration numbers shall be in such form, consisting of one or more sequences of figures or letters as the Registrar may from time to time determine.

(3) The Registrar may upon adopting a new form of registration number make such changes of existing registration numbers as appear to him necessary.

199. (1) For the purpose of securing that documents delivered to the Registrar are of standard size, durable and easily legible, the Minister may prescribe requirements (whether as to size, weight, quality or colour of paper, size, type or colouring of lettering, or otherwise) as the Minister may consider appropriate; and different requirements may be prescribed for different documents or classes of documents.

Size, durability, etc. of documents delivered to the Registrar.

(2) If a document is delivered to the Registrar (whether an original document or a copy) which in the Registrar's opinion does not comply with the prescribed requirements applicable to it, the Registrar may serve on a person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice stating his opinion to that effect and indicating the requirements so prescribed with which in his opinion the document does not comply.

(3) Where the Registrar serves a notice under sub-section (2), then for the purposes of any enactment which enables a penalty to be imposed in respect of an omission to deliver to the Registrar a document required to be delivered under that provision (and, in particular, for the purposes of any such enactment whereby such a penalty may be imposed by reference to each day during which the omission continues) -

- (a) a duty imposed by that provision to deliver a document to the Registrar is to be treated as not having been discharged by the delivery of that document; but
- (b) no account is to be taken of days falling within the period beginning with the day on which the document was delivered to the Registrar and ending with the fourteenth day after the date of service of the notice under sub-section (2).

200. (1) Where any Section of this Act requires a document to be delivered to the Registrar, but the form of the document has not been prescribed, it shall be sufficient compliance with that requirement if -

Form of documents to be delivered to the Registrar.

- (a) the document is delivered in a form which is acceptable to the Registrar; or
- (b) the information in question is delivered in material other than a document, being material which is acceptable to the Registrar,

and the document or information, as the case may be, is accompanied by the prescribed fee, if any.

(2) In this Section and Section 201, any reference to delivering a document includes, in the case of a notice, giving it.

201. (1) The Minister may by Order require the payment to the Registrar of such fees as may be prescribed in respect of -

Fees and forms.

- (a) the performance by the Registrar of such functions under this Act as may be specified in the Order, including the receipt by him of any document under this Act which is required to be delivered to him; and

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(b) the inspection of documents or other material held by him under this Act.

(2) Where a fee is provided for or charged under this Section for the performance of an act or duty by the Registrar, no action need be taken by him until the fee is paid, and where the fee is payable on the receipt by him of a document required to be delivered to him he shall be deemed not to have received it until the fee is paid.

(3) The Minister may prescribe forms to be used for any of the purposes of this Act and the manner in which any document to be delivered to the Registrar is to be authenticated.

(4) Unless otherwise provided by or under this Act, any document delivered to the Registrar by a company pursuant to this Act shall be signed by an officer or the secretary of the company.

(5) Fees paid to the Registrar shall form part of the Consolidated Fund except that for a company brought under this Act by virtue of Section 222 (4) hereof in which case the fees payable in relation to such company shall be paid into the Nevis Island Consolidated Fund.

202. (1) Subject to the provisions of this Section, a person may -

(a) inspect a document delivered to the Registrar under this Act or under the Acts repealed by Section 220 and kept by the Registrar or, if the Registrar thinks fit, a copy thereof;

(b) require a certificate of the incorporation of a company, or, subject to sub-section (4) of Section 71, a copy, certified or otherwise, of any other document or part of any other document referred to in paragraph (a),

and a certificate given under paragraph (b) shall be signed by the Registrar and sealed with his seal.

(2) A copy of or extract from a record kept by the Registrar, certified in writing by him (whose official position it is unnecessary to prove) to be an accurate copy of such record delivered to him under this Act, or kept by him under the Acts repealed by Section 220, shall in all legal proceedings be admissible in evidence as of equal validity with the original record and as evidence of any fact stated therein of which direct oral evidence would be admissible.

(3) In relation to documents delivered to the Registrar with a prospectus pursuant to a requirement of an Order made under Section 29, the rights conferred by sub-section (1) shall be exercisable only during the period or with the permission specified in the Order.

203. (1) If a company, having failed to comply with a provision of this Act which requires it to deliver to the Registrar any document, or to give notice to him of any matter, does not make good the failure within 14 days after the service of a notice on the company requiring it to do so, the Court may, on an application made to it by a member or creditor of the company or by the Registrar, make an order directing the company and any officer of it to make good the failure within a time specified in the order.

(2) The Court's order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of it responsible for the failure.

(3) Nothing in this Section prejudices the operation of any Section imposing penalties on a company or its officers in respect of a failure mentioned above.

204. (1) The Registrar may destroy any records delivered under this Act or the Acts repealed by Section 220 which have been kept for over 30 years and which were, or were comprised in or annexed or attached to, the accounts or annual returns of a company.

(2) Where a company has been dissolved, whether under this Act or otherwise, the Registrar may, at any time after 30 years from the date of the dissolution, destroy any records relating to that company in his possession or under his control.

Inspection and production of documents kept by the Registrar.

Enforcement of company's duty to make returns.

Destruction of old records.

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205. (1) If the Registrar has reason to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

Registrar may strike defunct company off register.

(2) If the Registrar receives an answer to the effect that the company is not carrying on business or in operation, or does not within 1 month after sending the letter receive an answer, he may publish in *the Gazette*, and send to the company by post, a notice that at the end of 3 months from the date of that notice the name of the company mentioned in it will, unless reason is shown to the contrary, be struck off the register and the company will be dissolved.

(3) If, where a company is being wound up in a creditors' winding up, the Registrar has reason to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of 6 consecutive months, the Registrar shall publish in *the Gazette* and send to the company or the liquidator (if any) a notice similar to that provided for in sub-section (2).

(4) If the Registrar has reason to believe that a company which is being wound up summarily has, for a period of 6 months failed to comply with sub-section (4) of Section 150, he shall publish in *the Gazette* and send to the company or the liquidator (if any) a notice similar to that provided for in sub-section (2).

(5) At the end of the period mentioned in the notice the Registrar may, unless reason to the contrary is previously shown by the company or a member, creditor or liquidator of it, strike its name off the register, and shall publish notice of this in *the Gazette*; and on the striking off the company is dissolved; but the liability (if any) of every director and member of the company continues and may be enforced as if the company had not been dissolved.

(6) A notice to be sent under this Section to a liquidator may be addressed to him at his last known place of business.

**PART XXVII**

**Taxes and Stamp Duties**

206. (1) Notwithstanding any provision to the contrary in any enactment, a company which carries on business exclusively with persons who are not resident in the Federation is exempt from all income, capital gains and withholding taxes.

Exemption from taxes.

(2) An exempt company shall not lose its exemption under sub-section (1) by reason only that it is -

- (a) carrying on business with, or buying or selling or otherwise dealing in any shares or other securities issued or created by, or acting as manager or agent for, or consultant or adviser to, any person resident in the Federation who is exempt from all income, capital gains and withholding taxes under any law of the Federation;
- (b) effecting or concluding in the Federation contracts or arrangements (including contracts or arrangements with any person resident in the Federation for employment with, or for the supply of goods and services to, the company) and exercising in the Federation all other powers, so far as may be necessary for the purpose of enabling it to carry on its business;
- (c) administering its internal affairs within the Federation and holding meetings of its directors or members in the Federation;
- (d) owning or leasing property in the Federation for the carrying on of its business or as residence for its directors or employees;

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- (e) re-insuring risks undertaken by any person resident in the Federation who is authorised to carry on insurance business under any law of the Federation; or
- (f) transacting banking business with any person resident in the Federation who is authorised to carry on banking business under any law of the Federation.

(3) In addition to any other exemption under the Income Tax Act in respect of dividends, all income from dividends, interest and royalties derived by an ordinary company out of its ownership of a participating interest in any other body corporate shall be excluded from that company's taxable income for the financial period in which such income is received by it if, but only if -

- (a) it owns from the beginning of that financial period at least 5 per cent of the issued share capital of the other body corporate; and
- (b) it -
  - (i) actively takes part in the management of the other body corporate, or
  - (ii) supplies the other body corporate with goods produced or services performed within the Federation, or
  - (iii) engages in any combination of the foregoing,if the other body corporate is incorporated outside the Federation and carries on business from an office or other fixed place located elsewhere than in the Federation; and
- (c) the other body corporate is subject -
  - (i) to income tax in the Federation; or
  - (ii) to a tax on its profits levied by another country if it is incorporated outside the Federation and carries on business from an office or other fixed place located elsewhere than in the Federation.

(4) Notwithstanding any provision to the contrary in any enactment, no estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by any person with regard to any property owned by, or securities issued or created by or in respect of, an exempt company.

(5) In this Section -

- (a) "person" includes an individual and any body corporate; and
- (b) "resident in the Federation" means a person who ordinarily resides within the Federation or carries on business from an office or other fixed place within the Federation but does not include an exempt company and "not resident in the Federation" shall be construed accordingly.

207. Notwithstanding any provision to the contrary in any enactment, no stamp duties are payable by any person with regard to any transaction in any securities issued or created by or in respect of a company exempt from taxes under sub-section (1) of Section 206.

Exemption from stamp duties.

**PART XXVIII**

**Re-domiciliation of Company Incorporated Outside of Saint Christopher and Nevis**

207A. (1) This Part shall apply to a company incorporated outside Saint Christopher and Nevis which opt to re-domicile in Saint Christopher.

(2) The Minister may make regulations[.]

Companies to which Part XXVIII applies.



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- (a) providing for eligibility of a company to re-domicile in Saint Christopher;
- (b) prescribing the form of application for registration as a company re-domiciled in Saint Christopher;
- (c) providing for the evidence to be submitted in support of an application for registration in accordance with paragraph (b) of this sub-section;
- (d) providing for the form and effect of registration as a company re-domiciled in Saint Christopher.

(3) Where a company is to be re-domiciled for the purpose of carrying on financial business then before delivering the application to be re-domiciled to the Registrar the applicant shall obtain the authorisation that is required to carry on such finance business.*(as amended by No. 14 of 2001)*

*(Part XXVIII as added by No. 16 of 1999)*

**PART XXIX**

**Miscellaneous and Final Provisions**

208. (1) The records, which a company is required by this Act to keep, may be kept in the form of a bound or loose-leaf book, or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

Form of company's records.

(2) A company shall take reasonable precautions -

- (a) to prevent loss or destruction of;
- (b) to prevent falsification of entries in; and
- (c) to facilitate detection and correction of inaccuracies in,

the records required by this Act to be kept, and a company which fails to comply with the provisions of this sub-section is guilty of an offence and liable to a fine not exceeding 2,500 dollars.

209. (1) If any record referred to in sub-section (1) of Section 208 is kept otherwise than in intelligible written form, any duty imposed on the company by this Act to allow examination of, or to furnish extracts from, such record shall be treated as a duty to allow examination of, or to furnish a copy of the extract from, the record in intelligible written form.

Examination of records and admissibility of evidence.

(2) The records kept by a company in compliance with this Act shall be admissible in the form in which they are made intelligible under sub-section (1) as *prima facie* evidence, before and after the dissolution of the company, of all facts stated therein.

210. If, on an application by the Attorney General, there is shown to be reasonable cause to believe that a person has, while an officer of a company, committed an offence in connexion with the management of the company's affairs and that evidence of the commission of the offence is to be found in any records of or under the control of the company, the Court may make an order -

Production and inspection of records where offence suspected.

- (a) authorizing a person named in it to inspect the records in question, or any of them, for the purpose of investigating and obtaining evidence of the offence; or
- (b) requiring the secretary of the company or an officer of it named in the order to produce and make available the records (or any of them) to a person named in the order at a place so named.

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<p>211. Where any proceedings are instituted under this Act against any person, nothing in this Act is to be taken to require any person to disclose any information which he is entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the Court.</p>	Legal professional privilege.
<p>212. A person may refuse to answer any question put to him pursuant to any provision of this Act if his answer would tend to expose that person, or the spouse of that person, to proceedings under the law of the Federation for an offence or for the recovery of any penalty.</p>	Right to refuse to answer questions.
<p>213. The Minister may, by Order, provide that private companies, or private companies satisfying conditions specified in the Order, shall be exempt from compliance with any provision of this Act so specified or that any such provision shall apply to such companies with such modifications as may be so specified.</p>	Relief for private companies.
<p>214. (1) If in proceedings for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor it appears to the Court that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court may relieve him, either wholly or partly, from his liability on such terms as it thinks fit.</p>	Power of Court to grant relief in certain cases.
<p>(2) If an officer or person mentioned in sub-section (1) has reason to apprehend that a claim will or might be made against him in respect of negligence, default, breach of duty or breach of trust, he may apply to the Court for relief; and the Court on the application has the same power to relieve him as it would have had if proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.</p>	
<p>215. (1) Where a company has been dissolved under this Act or the Acts repealed by Section 220, the Court may at any time within 10 years of the date of the dissolution, on an application made for the purpose by a liquidator of the company or by any other person appearing to the Court to be interested, make an order, on such terms as the Court thinks fit, declaring the dissolution to have been void and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved.</p>	Power of Court to declare dissolution of company void.
<p>(2) Thereupon such proceedings may be taken which might have been taken if the company had not been dissolved.</p>	
<p>(3) The person on whose application the order was made shall within 14 days after the making of the order (or such further time as the Court may allow), deliver the relevant act of the Court to the Registrar for registration.</p>	
<p>(4) A person who fails to comply with sub-section (3) is guilty of an offence and liable to a fine not exceeding 2,500 dollars and in the case of a continuing offence to a further fine not exceeding 250 dollars for each day on which the offence so continues.</p>	
<p>216. For the purpose of any Section of this Act where under or pursuant to this Act an officer of a company or other body corporate who is in default is guilty of an offence, the expression "officer in default" means any officer of the company or body corporate who knowingly and wilfully authorizes or permits the default, refusal or contravention mentioned in the Section.</p>	Punishment of offences.
<p>216A. (1) Where, contrary to the provisions of this Act, a person or company fails, within a specified period, to deliver to or file with the Registrar any document[s], the Registrar may impose and collect from the person or company the [a] penalty of one hundred dollars for every month or part thereof that the person or company fails to deliver or file the document, and the penalty collected may [shall] be deposited in the Consolidated Fund. <i>(as amended by No. 14 of 2001)</i></p>	General Penalty.

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(2) A company that fails or refuses to comply with the provisions of sub-section (1) of this Section shall be struck off the register of companies by the Registrar.

*(Section 216A. as added by No. 16 of 1999)*

217. Any person who knowingly or wilfully aids, abets, counsels, causes, procures or commands the commission of an offence punishable by this Act shall be liable to be dealt with, tried and punished as a principal offender.

Accessories and abettors.

218. (1) Where, on the application of the Attorney General or the Registrar, the Court is satisfied that any person has failed to comply with any requirement made by or pursuant to this Act, or has committed any breach of duty as an officer of the company, it may order that person to comply with that requirement or, so far as the breach of duty is capable of being made good, make good the breach.

General powers of the Court.

(2) The Court shall not make an order against any person under this Section unless the Court has given that person the opportunity of adducing evidence and being heard in relation to the matter to which the application relates.

219. (1) The Minister may by Order make provision for the purpose of carrying this Act into effect and, in particular, but without prejudice to the generality of the foregoing, for prescribing any matter which may be prescribed by this Act.

Orders.

(2) Except insofar as this Act otherwise provides, any power conferred thereby to make any Order may be exercised -

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
- (b) so as to make in relation to the cases in relation to which it is exercised -
  - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise), or
  - (ii) the same provision for all cases in relation to which the power is exercised or different provisions for different cases or classes of case, or different provisions as respects the same case or class of case for different purposes of this Act, or
  - (iii) any such provision either unconditionally or subject to any specified conditions.

(3) Without prejudice to any specific provision of this Act, any Order under this Act may contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister to be necessary or expedient for the purposes of the Order.

220. (1) The following Acts are repealed -

- (a) The Companies Act (Cap. 335); and
- (b) The International Business Companies Act.

Repeals, amendments and saving.

(2) Every existing company shall register under this Act within 18 months from the day sub-section (1) comes into force and the provisions of this Act shall apply to such companies accordingly except that no registration fee shall be payable by them for their registration under this Act.

(3) Where on the day sub-section (1) comes into force an existing company has been dissolved pursuant to any of the Acts repealed by that sub-section but the winding up and liquidation of its affairs have not been completed, the winding up and liquidation shall proceed in the same manner and with the same incidents as if this Act had not been enacted.

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(4) Any order or permission in respect of any existing company in force or effect immediately before the commencement of this Act made under any other Act shall be deemed to have been made under the provision of this Act and shall, except to the extent that it is inconsistent with the provisions of this Act, continue in force and effect until amended, repealed or replaced under this Act.

(5) The Minister may, by Order, make provision for any other transitional matter connected with the coming into force of this Act.

(6) The Registrar shall strike off the register of companies the name of an existing company which fails to register under this Act as required under sub-section (2) of this Section.

(7) Where a name of an existing company is struck off the register in accordance with sub-section (6) of this Section, then the Registrar shall publish in the official Gazette a notice to that effect.

(8) Where an existing company is struck off the register in accordance with the provisions of sub-section (6) of this Section, then the company shall stand dissolved.

(9) The liability, if any, of every director and member of a company which is dissolved pursuant to sub-section (8) of this Section shall continue and be enforceable as if the company had not been dissolved.

(10) A person who carries on business in the name of a company which was struck off pursuant to sub-section (6) of this Section commits an offence and is liable, upon conviction,

- (a) To a fine not exceeding 5,400 dollars and, in the case of an individual, to imprisonment for a term not exceeding 2 years, or both; and
- (b) In the case of a continuing offence, under this section, to an additional fine of 540 dollars for each day on which the offence continues.

*(Sections 220(6) to 220(10) as added by No. 13 of 1998)*

220A. (1) A company which stood dissolved by virtue of the provisions of Section 220(8) of this Act may, upon application to the Registrar, be re-registered under this Act, except that the application shall be submitted to the Registrar not later than the 15th day of December, 1999. *(as added by No. 16 of 1999)*

Registration of dissolved companies.

(2) Any action done by the Registrar from the 3rd day of October, 1998, up to the day immediately prior to the coming into force of this Act *(No. 16 of 1999)* to re-register any company that stood dissolved by virtue of the provisions of section 220(8) of this Act is hereby validated. *(as added by No. 16 of 1999)*

(2A) Any action done by the Registrar from the 16th day of March, 2000, up to the day immediately prior to the coming into force of this Companies Amendment Act *(No. 14 of 2001)* [to] re-register any company that stood dissolved by virtue of Section 220(8) of this Act is hereby validated. *(as added by No. 14 of 2001)*

(3) Notwithstanding the provisions of this Section, the Registrar may, within a period of three months after the expiration of the period referred to in sub-section (1) of this Section, if it is equitable or in the public interest to do so and upon application, register any company that fails to comply with the provisions of sub-section (1) of this Section, except that such company shall pay a penalty of fifty dollars to the Registrar in respect of each week or part thereof it was late to register under this Act. *(as added by No. 16 of 1999)*

(4) Notwithstanding the provisions of this Section[,] the Registrar may, if it is equitable or in the public interest to do so and upon application, register, up to the 5th day of October, 2001, any company that failed to comply with the provisions of this Section, except that the company shall pay a penalty of fifty dollars in respect of each week it is late, that is to say, from the 15th day of March[,] 2001, up to the 5th day of October[,] 2001. *(as added by No. 14 of 2001)*

*The Companies Act, 1996 - 22.*

220B. The Registrar may register the memorandum and articles of association of a company or register special resolution altering the memorandum of association to change the name of a company if the name of the company is identical or similar to the name of the company that has been struck off the register and dissolved under the Acts that were repealed by Section 220 of this Act[,] provided that[,]

Use of names.

- (a) the company has been struck off the register and dissolved for a continuous period of more than three years; and
- (b) no application made to declare the dissolution of the company void under Section 215 remains undetermined.

*(Section 220B as added by No. 14 of 2001)*

221. (1) The Minister may by Order provide that companies, which intend to carry on or which are carrying on any business specified in the Order as being finance business, shall be subject to such regulations as the Minister may prescribe.

Regulation of finance business.

(2) An Order under this Section may provide for the payment of annual and other fees and for the imposition of fines and daily default fines for breaches of the matters specified in the Order.

(3) Where a company is to be incorporated for the purpose of carrying on business that falls within the provisions of sub-section (1) of this Section, the subscribers to the Memorandum [and Articles] of Association shall, before delivering the Memorandum [and Articles of Association] to the Registrar pursuant to sub-section (1) of Section 5 of this Act, obtain the authorisation that is required to carry on finance business. *(as added by No. 13 of 1998)*

(4) An existing company or external company which intends or wishes, as the case may be, to carry on finance business that falls within the provisions of sub-section (1) of this Section shall, before carrying on such finance business, obtain the authorisation that is required to carry on finance business. *(as added by No. 13 of 1998)*

222. (1) Subject as otherwise provided in sub-sections (2) and (3), the provisions of this Act shall not extend or apply to companies formed under or subject to the Nevis Business Corporation Ordinance 1984, the Nevis Limited Liability Company Ordinance 1995 or any other Ordinance of the Nevis Island Assembly.

Application of this Act.

(2) Any company falling within sub-section (1) which does business in the Federation shall be subject to and comply with all requirements of this Act in the same manner as a company formed hereunder.

(3) For the purpose of sub-section (2) only, a company falling within sub-section (1) shall not be considered to do business in the Federation by reason only that it engages in Nevis in one or more of the activities which for tax exemption purposes are not considered to be the doing of business in Nevis under the Ordinance under which it was formed.

(4) The Minister may determine and by Order proclaim that the provisions of this Act shall as from the date specified in the Order extend and apply to any company or companies falling within sub-section (1).

(5) In the exercise of his power under sub-section (4), the Minister shall take into account any matter which he may have discussed with the person who is responsible for the Ministry of Finance within the Nevis Island Administration and such other matters as he considers appropriate, but shall in particular have regard to -

- (a) the protection of the public against financial loss due to dishonesty, incompetence or malpractice by persons carrying on business in or from within the Federation; or
- (b) the protection of the reputation of the Federation as a financial centre.

*The Companies Act, 1996 - 22.*

WALFORD V. GUMBS  
*Speaker.*

Passed the National Assembly this 2nd day of December, 1996.

F. ALPHONSO LEWIS  
*Clerk of the National Assembly.*