

CHAPTER 122

COMPANIES ORDINANCE

*(Ordinances 11 of 1981, 9 of 1985, 13 of 1985, 11 of 1989,
5 of 1990, 9 of 1992, 21 of 1992, 1 of 1993, 4 of 1994,
8 of 1997, 13 of 1997 and Legal Notice 41 of 1994)*

AN ORDINANCE TO CONSOLIDATE, UPDATE AND REVISE THE LAW RELATING TO THE INCORPORATION, REGISTRATION AND WINDING UP OF TRADING COMPANIES, TO PROVIDE FOR THE CREATION OF EXEMPTED COMPANIES, TO PROVIDE FOR THE INCORPORATION AS EXEMPTED COMPANIES OF FOREIGN COMPANIES INCORPORATED IN CERTAIN OTHER JURISDICTIONS, TO PROVIDE FOR THE CONFIDENTIALITY OF INFORMATION RELATING TO EXEMPTED COMPANIES, AND FOR MATTERS CONNECTED THEREWITH AND ANCILLARY THERETO.

[20 January 1982]

Commencement

PART I

INTRODUCTION

1. This Ordinance may be cited as the Companies Ordinance.
2. (1) In this Ordinance, unless the context otherwise requires—
 - “auditor” means a person holding a currently valid certificate under the hand of the Permanent Secretary, Finance certifying that in his opinion such person is of good standing and qualified to undertake the audit of a company; *(Inserted by Ord. 11 of 1989 and Amended by L.N. 41/1994)*
 - “Court” means the Supreme Court of the Turks and Caicos Islands;
 - “company” except where the context excludes an exempted company, means a company formed and registered under this Ordinance or an existing company and includes a company for the time being registered under Part IX; *(Amended by Ord. 11 of 1989)*
 - “director” includes any person occupying the position of director, by whatever name called; *(Inserted by Ord. 1 of 1993)*
 - “exempted company” means a company registered as an exempted company under section 181;

Short title

Interpretation

“existing company” means a company which prior to the coming into operation of this Ordinance has been incorporated and its memorandum of association recorded in the Islands;

“Governor” means—

- (a) in relation to exempted companies, and foreign companies registered under Part X, the Governor acting in his discretion;
- (b) in relation to other companies, the Governor in Council;

(Inserted by L.N. 41/1994)

“Islands” means the Turks and Caicos Islands;

“Judge” means a Judge of the Supreme Court;

“limited life company” means an exempted company registered as a limited life company under section 198B; *(Inserted by Ord. 1 of 1993)*

“nominal capital” means the capital of the company authorised by the Memorandum of Association;

“officer” in relation to a company includes a manager or the secretary;

“prospectus” means any prospectus, notice, circular, advertisement or other invitation offering to the public for subscription or purchase any shares or debentures of a company; *(Inserted by Ord. 11 of 1989)*

“public notice” means a notice published in the *Government Gazette*;

“Registrar” means the Registrar of Companies appointed under section 3 and includes where appropriate, any Assistant Registrar of Companies;

“share” means a share in the share capital of a company and includes bearer shares, stock and fractions of a share;

“special resolution” means a special resolution as defined in section 58.

(2) Where by any enactment in this Ordinance it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall be guilty of an offence and liable on summary conviction to a fine of \$20 for every day during which the default, refusal or contravention continues.

(3) For the purpose of any enactment in this Ordinance which provides that an officer of a company who is in default shall be liable to a default fine, the expression “officer who is in default” means any officer of the company who knowingly and

wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

3. (1) The Governor may by instrument under the Public Seal appoint, and may remove, a person duly qualified by his knowledge of law and of records to be the Registrar of Companies for the purpose of this Ordinance, and may from time to time appoint, and remove, a substitute to act in the case of the illness or absence, or during a vacancy in the office, of such person.

Registrar

(2) The Registrar of Companies with the approval of the Governor may appoint and may remove one or more assistant Registrars of Companies, who may perform any of the duties assigned and exercise any of the powers and discretions conferred by this Ordinance to the Registrar. (*Amended by Ord. 11 of 1989*)

PART II

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ORDINANCE

4. (1) One or more persons may, by subscribing his or their names to a memorandum of association and otherwise complying with the requirements of this Ordinance in respect of registration, form an incorporated company with or without limited liability or, in the case of an exempted company, with both limited and unlimited liability. (*Amended by Ord. 4 of 1994*)

Mode of forming
company

(2) The memorandum of association may specify objects for which the proposed company is to be established and may provide that the business of the company shall be restricted to the furtherance of the specified objects:

Provided that if no objects are specified or if objects are specified but the business of the company is not restricted to the furtherance of those objects, then the company shall have full power and the authority to carry out any object not prohibited by this or any other Ordinance.

(*Substituted by Ord. 4 of 1994*)

5. The liability of the members of a company formed under this Ordinance may, according to the memorandum of association, 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 of association to contribute to the assets of the company in the event of its being wound up.

Mode of limiting
liability of
members

Memorandum of
association of a
company limited
by shares

6. (1) Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares (hereinafter referred to as a company limited by shares) the memorandum of association shall, subject to subsection (2) of this section, contain—

- (a) the name of the proposed company, with the addition of the word “Limited” or the abbreviation “Ltd” as the last word in such name;
- (b) a statement that the registered office of the company is within the Islands, and the address of such registered office;
- (c) *Repealed by Ord. 4 of 1994;*
- (d) a declaration that the liability of the members is limited; and
- (e) the amount of nominal capital with which the company proposes to be registered, divided into shares of a certain fixed amount (or, if it is stated therein that the shares are to be of no par value, the aggregate consideration for which such shares may be issued) which capital or aggregate consideration may be expressed in and subscribed for, or paid, in any one or more currencies. (*Amended by Ord. 11 of 1989*)

(2) No subscriber shall take less than one share.

(3) No company to which this section applies may divide its nominal capital into both shares of a fixed amount and shares of no par value. (*Inserted by Ord. 11 of 1989*)

Memorandum of
association of a
company limited
by guarantee

7. (1) Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up (hereinafter referred to as a company limited by guarantee) the memorandum of association shall contain—

- (a) the name of the proposed company, with the addition of the word “Limited” or the abbreviation “Ltd” as the last word in such name;
- (b) a statement that the registered office of the company is within the Islands and the address of such registered office;
- (c) *Repealed by Ord. 4 of 1994;*
- (d) a declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is

a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of the winding up of the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specific amount to be therein named.

(2) A company limited by guarantee may have a share capital. (*Inserted by Ord. 4 of 1994*)

8. (1) A company may, by special resolution, alter its memorandum of association with respect to the objects of the company, so far as may be required to enable it—

Objects of memorandum of association may be altered by special resolution

- (a) to carry on its business more economically and more efficiently;
- (b) to attain its main purpose by new or improved means;
- (c) to enlarge or change the local area of its operations;
- (d) to carry on business which under existing circumstances may conveniently or advantageously be combined with the business of the company;
- (e) to restrict or abandon any of the objects specified in the memorandum of association;
- (f) to sell or dispose of the whole or any part of the undertaking of the company; or
- (g) to amalgamate with any other company or body of persons:

Provided that if an application is made to the Registrar in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as is confirmed by the Registrar.

(2) An application under this section may be made—

- (a) if the nominal capital of the company is divided into shares of fixed amounts, by members holding not less than fifteen *per centum* in nominal value of the share capital for the time being issued of the company or any class of such capital;
- (b) if the share capital of the company is divided into shares of no par value, by members holding shares of the company for the time being issued giving

rights to not less than fifteen *per centum* of the dividends of the company; or

- (c) if the company is not limited by shares, not less than fifteen *per centum* of the persons for the time being entered on the register of the company as members:

Provided that an application shall not be made by any person who has consented to or voted in favour of the alteration.

(Substituted by Ord. 11 of 1989).

(3) An application under this section may not be made except within twenty-one days after the day on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) On an application under this section the Registrar may make an order confirming the alteration either wholly or in part and on such terms and conditions as he thinks fit, and may if he thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Registrar for the purchase of the interests of dissentient members and give such directions or make such orders as he may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company shall be expended in any such purchase.

(5) Within thirty days of the making of an order under subsection (4) the applicants therefor or the company concerned may appeal to the Court against such order and the Court, if it considers it just so to do, may—

- (a) quash the order;
- (b) confirm the order with alterations;
- (c) make any order as to costs.

In this subsection, “the making of an order” includes the giving of a direction. *(Inserted by Ord. 11 of 1989)*

(6) Where a company passes a special resolution altering its objects, if no application is made with respect thereto under this section, the company shall within thirty days from the end of the period for making such application deliver to the Registrar a certified copy of the special resolution authorising the same.

(7) If a company makes default in delivering any document to the Registrar as required by subsection (6), the company and every director, secretary or officer of the company who knowingly

or wilfully authorises or permits such default shall incur a penalty for each day during which the default continues.

(8) The validity of an alteration of the provisions of a company's memorandum of association with respect to the objects of the company shall not be questioned on the ground that it was not authorised by subsection (1) except in proceedings taken for the purpose (whether under this section or otherwise) before the expiration of twenty-one days after the date of the resolution in that behalf; and where any such proceedings are taken otherwise than under this section, subsections (6) and (7) shall apply in relation thereto as if the proceedings had been taken under this section and as if an order declaring the alteration invalid were an order cancelling it and as if an order dismissing the proceedings were an order confirming the alteration.

9. (1) A company may, by resolution of the directors, change the location of the registered office of the company to another location in the Islands.

Location of registered office may be changed

(2) Within thirty days of the date of the passing of the resolution changing the location of the registered office, every company shall deliver to the Registrar a certified copy of the resolution of the directors authorising the same.

(3) A company shall be deemed not to have changed its registered office if it fails to comply with the requirements of subsection (2).

(Substituted by Ord. 4 of 1994)

10. Where a company is formed on the principle of having no limit placed on the liability of its members (hereinafter referred to as an unlimited company) the memorandum of association shall contain the following things (that is to say)—

Memorandum of association of an unlimited company

- (a) the name of the proposed company;
- (b) the address of the registered office of the company;
- (c) *Repealed by Ord. 4 of 1994;*
- (d) a declaration that the liability of its members is unlimited. *(Inserted by Ord. 1 of 1993)*

11. The memorandum of association shall be signed by every subscriber, who shall indicate his address and occupation and the number of shares he takes, in the presence of at least one witness who shall likewise sign his name and state his address and occupation. It shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and fixed his seal thereto and there were in the memorandum contained on the part of himself, his heirs, executors and administrators a covenant to observe all the condi-

Signature and effect of memorandum of association

tions of such memorandum, subject to the provisions of this Ordinance.

Power of
company limited
by shares to alter
its share capital

12. (1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may by ordinary resolution alter the conditions of its memorandum to—

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

(Amended by Ord. 11 of 1989)

(2) The powers conferred by this section may not be exercised by the company except in general meeting.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Ordinance.

Special
resolution for
reduction of
share capital

13. (1) Subject to confirmation by the Court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular (but without prejudice to the generality of the foregoing power) may—

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

- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the needs of the company, and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Ordinance referred to as “a resolution for reducing share capital”.

(3) The requirements of confirmation by the Court under subsection (1) shall not apply to shares issued in accordance with the provisions of sections 35 or 198. (*Amended by Ord. 11 of 1989*)

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

Application to
Court for
confirming
order; objections
by creditors

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, the following provisions shall have effect, subject nevertheless to subsection (3)—

- (a) every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;
- (b) the Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or period on or 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;
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not been determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating as the Court may direct, the following amount—
 - (i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

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

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital the Court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (2) shall not apply as regards any class or any classes of creditors.

Order
confirming
reduction and
powers of Court
on making such
order

15. (1) The Court, if satisfied with respect to every creditor of the company who under section 14 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been 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 makes any such order, it may—

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

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

Registration of
order and minute
of reduction

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

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

(3) Notice of the registration shall be published in the *Gazette* if so directed by the Court.

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

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

17. (1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid or the reduced amount, if any, which is to be deemed to have been paid on the share as the case may be:

Liability of
members in
respect of
reduced shares

Provided that if any creditor entitled in respect of any debt or claim to object to the reduction of share capital is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the list of creditors, and after the reduction the company is unable, within the meaning of the provisions of this Ordinance with respect to winding up by the Court, to pay the amount of his debt or claim, then—

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

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

Penalty for concealment of names of creditors

18. Any director, secretary or other officer of the company who—

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

shall be guilty of an offence and liable on summary conviction to a fine of \$5,000 and to imprisonment for six months.

Every company to have at least one director and a secretary

18A. (1) Every company shall have not less than one director and a secretary.

- (2) A sole director of a company may also be the secretary.
(*Inserted by Ord. 4 of 1994*)

Articles prescribing regulations for companies

19. There shall, in the case of a company limited by shares and in the case of a company limited by guarantee or unlimited, be registered, with the memorandum, articles of association signed by the subscriber or subscribers to the memorandum and prescribing regulations for the company.

Regulations required in case of unlimited company or company limited by guarantee

20. (1) In the case of an unlimited company the articles must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.

(2) In the case of a company limited by guarantee, the articles shall state the number of members with which the company proposes to be registered and, where the company has a share capital, the amount of share capital with which the company proposes to be registered. (*Substituted by Ord. 4 of 1994*)

(3) Where an unlimited company or a company limited by guarantee has increased the number of its members beyond the registered number it shall, within fifteen days after the increase was resolved on or took place, give to the Registrar notice of the increase, and the Registrar shall record the increase.

(4) If default is made in complying with subsection (3), the company and every officer who is in default shall be liable to a default fine.

Adoption and application of Tables A or B

21. (1) Articles of association may adopt all or any of the regulations contained in Table A in the Second Schedule, and articles of association of an exempted company may adopt all or any of the regulations contained in Table B or in both such tables.

(2) Subject to subsection (3), in the case of a company limited by shares and registered after the commencement of this Ordinance, other than as an exempted company, in so far as the articles do not exclude or modify the regulations contained in Table A those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

(3) In the case of an exempted company registered after the commencement of this Ordinance, in so far as the articles do not exclude or modify the regulations contained in Table B, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

22. Articles shall—

- (a) be divided into paragraphs numbered consecutively; and
- (b) be signed by every subscriber of the memorandum of association in the presence of at least one witness who shall sign his name and state his address and occupation.

Printing and
signature of
articles

23. (1) Subject to the provisions of this Ordinance and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles. (*Amended by Ord. 11 of 1989*)

Alteration of
articles by
special
resolution

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Ordinance, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution. (*Amended by Ord. 11 of 1989*)

24. When registered the articles of association shall bind the company and the members thereof to the same extent as if every member had subscribed his name thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors and administrators to conform to all the regulations contained in such articles subject to the provisions of this Ordinance, and all moneys payable by any member to the company in pursuance of the conditions or regulations shall be deemed to be a debt due from such member to the company.

Adoption and
effect of articles
of association

25. (1) The memorandum of association and the articles of association in triplicate shall be delivered to the Registrar who shall file and retain the original thereof as records of the office and shall return the duplicates thereof endorsed with a memorandum of registration and a memorandum of the particulars set out in subsection (3).

Registration

(2) Each memorandum of association and the articles of association shall be numbered and filed consecutively and shall be endorsed with the date of the month and year of such filing.

(3) A register of companies shall be kept in which shall be entered the following particulars which shall be annexed to the memorandum of association or articles of association in so far as they are not included therein—

- (a) the name of the company;
- (b) the address of the registered office of the company;
- (c) the amount of nominal capital of the company and the number of shares into which it is divided and the fixed amounts thereof;
- (d) the names and addresses and occupations of subscribers to the memorandum of association and the number of shares taken by every subscriber;
- (e) the date of execution of the memorandum of association;
- (f) the date of filing the memorandum of association;
- (g) the registered number assigned to the company;
- (h) in the case of a company limited by guarantee or which has no limit placed on the liability of its members that the same is limited by guarantee or is unlimited;
- (i) in the case of an exempted company limited by shares and having a class of shareholders with unlimited liability, particulars of those classes of shareholders with limited liability and those classes with unlimited liability; and
- (j) in the case of an exempted company limited by guarantee and having a class of members with unlimited liability, particulars of those classes of members with limited liability and those classes with unlimited liability:

Provided that the Registrar may omit any of the particulars hereinbefore specified which he considers to be inappropriate to any particular case.

Fees

(4) Upon the filing of the memorandum and articles of association of any company the prescribed fees shall be paid to the Registrar.

(Amended by Ord. 4 of 1994)

Certificate of
incorporation

26. (1) Upon filing of the memorandum and articles of association a company shall be deemed to be registered and the

Registrar shall issue a certificate under his hand and seal of office that the company is incorporated and, in the case of a limited company, that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation every subscriber of the memorandum of association, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company and having perpetual succession and a common seal, with power (subject to section 30A) to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is hereinafter provided in this Ordinance. (*Amended by Ord. 11 of 1989*)

(3) A certificate of incorporation of a company issued under this Ordinance shall be conclusive evidence that compliance has been made with all the requirements of this Ordinance in respect of registration subject to compliance with the provisions of section 48 hereof.

(4) Every copy of a memorandum and articles of association filed and registered in accordance with this Ordinance or any extract therefrom certified under the hand and seal of the Registrar as a true copy shall be received in evidence in any Court without further proof.

27. *Repealed by Ord. 11 of 1989.*

Repealed

28. A copy of the memorandum of association having annexed thereto the articles of association shall be forwarded to every member, at his request on payment of such reasonable sum, not exceeding \$25 for each copy, as may be fixed by any rule of the company; and in the absence of any such rule, such copy shall be given gratuitously; and if any company makes default in forwarding a copy of the memorandum of association and articles of association to a member in pursuance of this section, the company so making default shall be guilty of an offence and liable on summary conviction to a fine of \$100.

Members to be provided with copy of memorandum and articles

29. (1) No company shall be registered by a name which—

Restrictions on registration of certain names

- (a) is identical with that by which a company in existence is already registered or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires;

- (b) contains the words “Chamber of Commerce” unless the company is a company which is to be registered under a licence granted by the Registrar in pursuance of section 78 without the addition of the word “Limited” or the abbreviation “Ltd” to its name;
- (c) except with the express written consent of the Permanent Secretary, Finance, contains, whether in English or any other language, the words “assurance”, “bank”, “Building Society”, “Commonwealth”, “Co-operative Society”, “fidelity”, “friendly society”, “guarantee”, “indemnity”, “insurance”, “re-insurance”, “trust”, “trustee”, “underwriter”, any derivatives of any of those words or any other word which in the opinion of the Registrar bears a similar connotation to any word referred to in this paragraph; or (*Substituted by Ord. 11 of 1989 and Amended by L.N. 41/1994*)
- (d) is, in the opinion of the Registrar undesirable or misleading.
- (2) Except with the consent of the Registrar no company shall be registered by a name which—
- (a) contains the words “royal”, “imperial”, or “empire”, or in the opinion of the Registrar suggests, or is calculated to suggest, the patronage of Her Majesty or of any member of the Royal Family or connection with Her Majesty's Government or any department thereof in the United Kingdom or elsewhere; or
- (b) contains the words “municipal” or “chartered” or any words which in the opinion of the Registrar suggest, or are calculated to suggest, connection with any public board or other local authority or with any society or body incorporated by Royal Charter.
- (3) In the event that a company is registered with an identical or similar name to a company already registered the Registrar may order the company last so registered to change its name.
- (4) In the event that a company is registered with a name which contravenes the provisions of this section, the company, with the sanction of the Registrar, may, and if the Registrar so orders, shall, change its name. (*Inserted by Ord. 11 of 1989*)
- (5) If a company fails within such reasonable time as the Registrar may specify in a written notice served upon the company to comply with an order under subsection (3) or (4), he may strike

the company off the register and thereupon the company shall be dissolved and Part VI shall apply *mutatis mutandis*. (*Inserted by Ord. 11 of 1989*)

(6) Section 176 shall not apply to a company struck off the register under this section but such a company may within thirty days from the date on which it was struck off apply to the Registrar to be restored to the register under a different name and the Registrar if he considers that name complies with the provisions of this Ordinance shall restore the company to the register on the payment of the fees, if any, prescribed for such restoration. (*Inserted by Ord. 11 of 1989*)

(7) A company that is not a limited life company shall not be registered by a name which includes at its end "Limited Life Company" or the abbreviation "LLC". (*Inserted by Ord. 1 of 1993*)

(8) A company that is not formed on the principle of having the liability of all its members limited to the amount unpaid on their shares or to such specified amount as all the members respectively undertake to contribute to the assets of the company in the event of its being wound up, shall not be registered with a name that ends with the words "Limited" or the abbreviation "Ltd". (*Inserted by Ord. 4 of 1994*)

30. (1) Any company may by special resolution change its name.

Change of name

(2) Where a company changes its name, the Registrar on receiving a certified copy of its resolution authorising the same together with a non-returnable fee of \$50 and on being satisfied that the change of name conforms with the provisions of section 29, shall enter the new name on the register in place of the former name and lodge the special resolution for registration and shall issue a certificate of change of name showing the new name of the company and the company shall within thirty days of the issue of such certificate cause notice of such change of name to be published in the *Gazette*.

(3) If a company makes default in advertising within the time stipulated in subsection (2) it shall be liable to a fine of \$20 for every day during which the default continues. (*Amended by Ord. 11 of 1989*)

30A. (1) Subject to the provisions of subsection (2) but notwithstanding anything contained in any other provision of this Ordinance or any other law, no body corporate, whether incorporated within or without the Islands, shall have any powers to hold land in the Islands unless it—

Certain companies may not hold land, etc

(a) is a company formed and registered under this Ordinance;

- (b) is not an exempted company registered under Part VII nor a foreign company registered under Part X;
- (c) has for the time being no member which is itself an exempted company or a company the beneficial ownership of which is wholly or in part directly or indirectly held by any exempted company; and
- (d) does not for the time being have any of its shares issued and outstanding as bearer shares pursuant to section 32.

(2) A body corporate which, immediately before 7 August, 1992, had power to hold land in the Islands shall continue to have such power if, but only if, it complies and thereafter continues to comply with the provisions of section 39 in all respects as if it had been formed and registered under Part II:

Provided that such compliance shall not be required in the case of a body corporate the shares of which are quoted on a stock exchange recognised by the Permanent Secretary, Finance for the purposes of this section. *(Amended by L.N. 41/1994)*

(3) Any conveyance, transfer, assignment, lease, mortgage or other instrument which purports to vest any interest arising at law or in equity in any land in the Islands, other than a registered land charge, in any body corporate which by virtue of this section does not have power to hold such land, shall not take effect according to its tenor but shall be absolutely void and of no effect.

(4) Any company which purports to be the holder of any land in the Islands at a time when there are outstanding any of its shares issued as bearer shares shall incur a penalty of \$50 for each day during which those circumstances continue, and the amount of such penalty may be sued for and recovered by the Treasurer in any court of competent jurisdiction.

(Inserted by Ord. 9 of 1992)

Validity of acts
of company

30B. (1) No act of a company and no conveyance or transfer of real or personal property to or by a company shall be invalid by reason of the fact that the company was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted—

- (a) in proceedings by a member or a director against the company to prevent the doing or continuation of unauthorised acts, or the transfer of real or personal property by or to the company;
- (b) in proceedings by the company, whether acting directly or through a liquidator or other legal representative or through shareholders of the company in a representative capacity, against the

incumbent or former officers or directors of the company for exceeding their authority; and

- (c) in proceedings by the Court to wind up the company, or in proceedings by the Court to restrain the company from performing unauthorised acts, or in any other proceedings instituted by the liquidator.

(2) For the purposes of paragraph (a) of subsection (1) if the unauthorised acts or transfers sought to be prevented are to be performed pursuant to any contract to which the company is a party, the Court may, if all of the parties to the contract are parties to the proceedings and if it deems the same to be equitable, set aside such contract, and in so doing may allow to the company or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the Court in setting aside the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained.

(Inserted by Ord. 4 of 1994)

PART III

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ORDINANCE

Prospectus

30C. (1) No share, stock or debenture shall be advertised for sale, issue or circulation or any prospectus issued or advertised, and no person shall by way of advertisement solicit funds for any company registered in the Islands or coming within the provisions of Part XI unless application has first been made to the Registrar and his authorisation has been obtained for such advertisement, issue or circulation.

Prospectus etc.
to be approved
by Registrar

(2) An application for the Registrar's authorisation under subsection (1) shall be accompanied with the prescribed fee and with such accounts and such other documents of the company as the Registrar may in his discretion request for examination.

(3) Every prospectus issued by or on behalf of a company shall comply with the rules set out in Part I of the Third Schedule and shall contain the matters specified in Part II of the Third Schedule.

(4) The Registrar may refuse to grant authorisation under this section, or may grant it subject to such conditions as he may in his discretion impose; in either case, he shall give notice in writing to the company of the reasons for his refusal or conditional grant, as the case may be.

(5) Any officer of any company and any agent or person contravening the provisions of subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine of \$5,000 and to imprisonment for 12 months.

(6) In this section, “company” includes a proposed company.

(Inserted by Ord. 4 of 1994)

Distribution of Capital

Share or interest
in company to be
personalty

31. The share or other interest of a member in a company shall be personal estate capable of being transferred in manner provided by the regulations of the company and shall not be of the nature of real estate; and save in the case of shares that are fully paid up each share shall in the case of a company having a capital divided into shares be distinguished by its appropriate number:

Provided that, if at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as they remain fully paid up and rank *pari passu* for all purposes with all the shares of the same class for the time being issued and fully paid up.

Shares may be
divided into
fractions

31A. (1) A company limited by shares, or a company limited by guarantee and having a share capital, if so authorised by its articles of association, may issue fractions of a share and, unless and to the extent otherwise provided for in such articles, a fraction of a share shall be subject to, confer or impose, as the case may be, the corresponding fraction of liabilities (whether in respect of nominal or par value, premiums, contributions, call or howsoever), limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share of the same class of shares.

(2) For the purposes of this Ordinance, the word “share” includes any fraction of a share issued in accordance with this section.

(Inserted by Ord. 11 of 1989)

31B. The nominal or par value of a share may be expressed in an amount which is a fraction or percentage of the lowest unit of legal tender in the currency in which the capital of the company is expressed. (*Inserted by Ord. 11 of 1989*)

Share values
may be
expressed in
certain fractions
or percentages

32. (1) (a) A company limited by shares if so authorised by its articles may with respect to any fully paid up shares issue under its common seal such shares as bearer shares stating that the bearer is entitled to the shares therein specified and may provide by coupons or otherwise for the payment of the future dividends on such shares.

Issue and effect
of bearer shares

(b) A bearer share shall entitle the bearer thereof to the shares therein specified and the shares may be transferred by delivery.

(2) (a) On the issue of a bearer share the company shall enter in the register the following particulars namely—

(i) the fact of the issue of such bearer shares;

(ii) a statement of the shares distinguishing each share by its number so long as the share has a number; and

(iii) the date of issue of such bearer shares.

(b) The holder of a bearer share shall, subject to the articles of the company, be entitled on surrendering it for cancellation to have his name entered as a member in the register of members.

(c) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a holder of a bearer share in respect of the shares therein specified without the bearer shares being surrendered and cancelled.

(d) Until the bearer share is surrendered, the particulars specified in subsection (1) shall be deemed to be the particulars required by this Ordinance to be entered in the register of members and on the surrender the date of the surrender must be entered.

(e) Subject to the provisions of this Ordinance, the holder of a bearer share may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Ordinance, either to the full extent or for any purposes defined in the articles.

(3) If any person falsely and deceitfully personates any owner of any share or interest in any company or of any bearer share or coupon issued in pursuance of this Ordinance and thereby obtains or endeavours to obtain any such share or interest or bearer share or coupon, or receives or endeavours to receive any money due to any such owner as if the offender were the true and lawful owner, he shall be guilty of an offence and shall be liable on conviction to imprisonment for ten years or for any term not less than three years.

Application of
premiums
received on issue
of shares

33. (1) Where a company issues shares at a premium (whether for cash or otherwise) a sum equal to the aggregate amount or value of the premium on those shares shall be transferred to an account to be called the share premium account and the provision of this Ordinance relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.

(2) The share premium account may, notwithstanding anything in subsection (1), be applied by the company in paying up unissued shares of the company to be issued to members as fully paid bonus shares, in writing off—

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

or in providing for the premiums payable on redemption of any redeemable preference shares or of any debenture of the company.

Power to issue
shares at a
discount

34. (1) Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued:

Provided that—

- (a) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company; (*Amended by Ord. 11 of 1989*)
- (b) the resolution must specify the maximum rate of discount at which the shares are to be issued;
- (bb) the shares to be issued at a discount must first be offered proportionately to all members of the company holding shares of the same class. Any such shares not taken after offering must be offered to members who took shares at such first offering in proportion to the number of shares taken. Any shares remaining after such second offering may, in

the discretion of the directors, be offered to persons who are not members; (*Inserted by Ord. 11 of 1989*)

- (c) not less than one year must at the date of the issue have elapsed since the date on which the company was entitled to commence business. (*Amended by Ord. 8 of 1997*)

(2) Within thirty days of the date on which a resolution under subsection (1)(a) is passed, an application may be made to the Court for cancellation of the resolution by the holders, in the case of a company limited by shares of not less than fifteen *per centum* of the shares of the company for the time being issued of the same class as those to which the resolution relates or, in the case of a company limited by shares of no par value, the holders of shares of the company for the time being issued giving rights to not less than fifteen *per centum* of the dividends of the company. Any such application may be made on behalf of the persons entitled to make it by one or more of their number as they may appoint in writing for the purpose. Upon hearing an application under this section, the Court may make such other order relating to the resolution, including an order as to costs, as it considers just. (*Substituted by Ord. 11 of 1989*)

(3) Every prospectus relating to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus. If default is made in complying with this subsection, the company and every officer of the company who is in default, shall be liable to a default fine.

35. (1) Subject to the provisions of this section a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed:

Power to issue
redeemable
preference shares

Provided that—

- (a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of redemption;
- (b) no such shares shall be redeemable unless they are fully paid;
- (c) the premium, if any, payable on redemption, must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed; and

(d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called “the capital redemption reserve fund”, a sum equal to the nominal amount of the shares redeemed, and the provisions of this Ordinance relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

(2) Subject to the other provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company's authorised share capital.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares it shall have the power to issue shares up to a nominal amount of the shares redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purpose of any enactments relating to stamp duty or to fees payable on the filing of memorandum of association and articles of association be deemed to be increased by the issue of shares in pursuance of this subsection:

Provided that where new shares are issued before the redemption of the old shares the new shares shall not, so far as relates to stamp duty or to fees payable on the filing of memorandum of association and articles of association be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(5) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

(6) No shares shall be redeemed under this section unless the directors of the company concerned are satisfied that after the redemption has taken place the company will be able to pay its debts as they fall due in the ordinary course of business and a statutory declaration by the chairman of the board of directors or the managing director affirming such satisfaction has been deposited with the Registrar and such deposit acknowledged by the Registrar in writing. (*Inserted by Ord. 11 of 1989*)

36. The subscribers of the memorandum of association of any company shall be deemed to have agreed to become members of the company to whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned and every other person who has agreed to become a member of a company whose name is entered on the register of members shall be deemed to be a member of the company.

Definition of member

37. Any transfer of the share or other interest of a deceased member of a company made by his personal representative, shall notwithstanding that such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Transfer by personal representative

38. (1) Every company shall cause to be kept in writing a register of its members at its registered office and there shall be entered in the register—

Register of members

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

Provided that in the case of shares in a company issued to bearer there shall only be entered in the register particulars of the number of shares, the date of issue of the shares, distinguishing each share by its number (so long as it has a number) and the fact that a certificate in respect thereof was issued to bearer.

(2) Any company making default in complying with this section shall incur a penalty of \$25 for every day during which the default continues and every director, secretary or officer of the company who knowingly or wilfully authorises or permits such contravention shall incur the like penalty.

(Substituted by Ord. 11 of 1989)

39. (1) Every company having a capital divided into shares shall make a list of all persons who on the fourteenth day following the day on which the General Meeting, or if there is more than one General Meeting in each year the first of such General Meetings, is held, are members of the company, other than any

Annual list of members, and return of capital, shares etc

person who is a member solely by virtue of his holding bearer shares, and such list shall state the names, addresses and occupations of all the members therein mentioned, and the number of shares held by each of them and shall contain a summary specifying—

- (a) the amount of the nominal share capital of the company and the number of shares into which it is divided;
- (b) the number of shares issued from the commencement of the company up to the date of the summary and whether issued for cash or other consideration;
- (c) the amount of calls made on each share;
- (d) the total amount of calls received;
- (e) the total amount of calls unpaid;
- (f) the total amount of shares forfeited;
- (g) the names and addresses of the persons, other than any person who was a member solely by virtue of his holding bearer shares, who have ceased to be members since the last list was made, and the number of shares held by each of them; and
(Amended by Ord. 11 of 1989)
- (h) the names, addresses and occupations of the directors and secretary of the company.

The above list and summary shall be contained in a separate part of the register of the company and a copy shall be forwarded to reach the Registrar within twenty-eight days after the said General Meeting, together with the prescribed fee, such copy to be kept by the Registrar in his office with the original memorandum and articles of association:

Provided however that a company which has failed to forward to the Registrar any copy required to be forwarded in any year shall be deemed not to have made any default in complying with the provisions of this section relating to the time within which such copy is required to be forwarded if the company forwards the copy either—

- (a) within such further period, if any, as the Registrar, acting in his discretion, may by notice addressed to the company specify; or
- (b) within the period of twelve months next following such General Meeting, whichever be the shorter, together with (in addition to the appropriate fee payable under the foregoing provisions of this section) a late filing fee of \$5 for each day after the

last day for making such returns or otherwise such lesser fee as the Registrar may direct.

(Amended by Ord. 11 of 1989 and Ord. 4 of 1994)

(2) Save in the case of a company limited by shares with a registered nominal capital of not less than \$10,000 any change in the shareholdings in the company or of the members of the company shall be notified to the Registrar within thirty days of such change and details of the new shareholdings or members or directors or secretary whichever, shall be given with such notification.

(3) Any change in the directors or secretary of the company shall be notified to the Registrar within fourteen days of such change and details of the new directors or secretary shall be given with such notification.

40. Subject to the proviso to section 39(1), if any company having a nominal share capital divided into shares makes default in complying with the provisions of this Ordinance with respect to forwarding such lists of members or summary as is hereinbefore mentioned to the Registrar, such company shall incur a penalty of \$50 for every day during which such default continues and every director, secretary and officer of the company who knowingly or wilfully authorises or permits such default shall incur the like penalty, and such default may be deemed to be reasonable cause for the purposes of section 173.

Penalty on
company not
making returns

41. A certificate, under the common seal of the company, specifying any shares or stock held by any member of a company, shall be *prima facie* evidence of the title of the member to the shares or stock therein specified and unless endorsed in writing to the contrary, shall be evidence that such shares or stock are fully paid to the respective face value thereof.

Certificate of
shares or stock

42. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, hereinafter mentioned. Except when closed as hereinafter provided it shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection) be open to the inspection of any member *gratis*, and every such member may receive a copy of such register, or any part thereof, or of such list or summary of members as is hereinbefore provided, on payment of \$2 for every hundred words required to be copied. If such inspection or copy is refused, the company shall incur for each refusal a penalty of \$10 and a further penalty of \$10 for every day during which such refusal continues, and every director, manager and officer of the company who knowingly authorises or permits such refusal shall incur the like

Inspection of
register

penalty, and in addition to the above penalty, the Registrar may by order compel an immediate inspection of the register.

Notice of
increase of
nominal capital
and of members
to be given to
Registrar

43. (1) Where a company has a nominal share capital divided into shares, whether such shares have or have not been converted into stock, notice of any increase in such capital beyond the registered nominal share capital, and where a company has not a nominal share capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the Registrar, in the case of an increase of nominal share capital within thirty days from the date of the passing of the resolution by which such increase has been authorised; and in the case of an increase of members, within thirty days from the time at which such increase of members has been resolved on or has taken place; and the Registrar shall forthwith record the amount of such increase of capital or members.

(2) Upon the filing of notice of increase of nominal share capital of any company the prescribed fees shall be paid to the Registrar. (*Amended by Ord. 4 of 1994*)

(3) If such notice is not given within the period aforesaid, the company in default shall incur a penalty of \$50 for every day during which such neglect to give notice continues, and every director and secretary of the company who knowingly or wilfully authorises or permits such default shall incur a like penalty.

Remedy for
improper entry
or omission of
entry in register

44. If the name of any person is without sufficient cause entered in or omitted from the register of members of any company or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved or any member of the company or the company itself may apply for an order from the Magistrate that the register be rectified; and the Magistrate may either refuse such application with or without costs, to be paid by the applicant, or he may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such application, and any damages the party aggrieved may have sustained. The Magistrate may in any proceeding under this section decide any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members and the company; and generally, the Magistrate may in any such proceedings decide any question that it may be necessary or expedient to decide for the rectification of the register:

Provided that the Magistrate may direct an issue to be tried on which any question of law may be raised.

45. Whenever any order has been made rectifying the register, in the case of a company required by this Ordinance to send a list of its members to the Registrar, the Magistrate shall by his order direct that due notice of such rectification be given to the Registrar.

Notice to
Registrar of
rectification of
register

46. The register of members shall be *prima facie* evidence of any matter by this Ordinance directed or authorised to be inserted therein.

Register to be
evidence

Liability of Members

47. In the event of a company being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges and expenses of the winding up and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following—

Liability of
present and past
members of
company

- (a) a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for a period of six months or upwards prior to the commencement of the winding-up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member;
- (c) a past member shall not be liable to contribute to the assets of the company unless existing members are able to satisfy the Court that they do not have the financial resources to pay the contributions required to be made by them in pursuance of this Ordinance;
- (d) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member except where such member or past member holds or held shares of a class which are expressly stated in the memorandum of association to carry unlimited liability as provided in section 182(3);
(Amended by Ord. 4 of 1994)
- (e) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of associa-

tion except where the amount of the undertaking of such members is unlimited as provided in section 182(4); (*Amended by Ord. 4 of 1994*)

- (f) nothing in this Ordinance shall invalidate any provisions contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract; and
- (g) no sum due to any member of a company in his character of a member by way of dividends, profits or otherwise shall be deemed to be a debt of the company payable to such member in a case of competition between himself and any other creditor not being a member of the company, but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributors amongst themselves.

PART IV

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ORDINANCE

Provisions for Protection of Creditors

Registered office
of company

48. Every company shall have a registered office in a building situate within the Islands, to which all communications and notices may be addressed. If any company carries on business without having such an office it shall incur a penalty of \$25 for every day during which business is so carried on. (*Amended by Ord. 11 of 1989*)

Notice of
situation of
registered office

49. (1) Every company shall give notice of the situation of its registered office and of any change thereof to the Registrar, and the Registrar shall make a record of such notice.

(2) Every company shall cause notice of the situation of its registered office and of any change thereof to be published in the *Gazette*.

(3) A company shall be deemed not to have complied with the provisions of this Ordinance with respect to having a registered office if it fails to comply with the applicable requirements of subsections (1) or (2).

(4) Any member of the public shall be entitled on payment of the prescribed fee to be informed by the Registrar of the location of the registered office of any company registered under this Ordinance.

(Substituted by Ord. 4 of 1994)

50. (1) Every company whether limited by shares or guarantee or unlimited shall paint or affix, and shall keep painted or affixed, its name, in letters easily legible, on the outside of its registered office and of every office or place in which the business of the company is carried on or in any corridor, passage or hallway adjacent proximate thereto, in a conspicuous position.

Publication of
name of
company

(2) Every company whether limited by shares or guarantee or unlimited shall have its name printed in legible characters in all notices, advertisements and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills or parcels, invoices, receipts and letters of credit of the company.

(Substituted by Ord. 4 of 1994)

51. If any company does not paint or affix, and keep painted or affixed, its name in manner directed by this Ordinance it shall be liable to a penalty of \$25 for not so painting or affixing its name and for every day during which such name is not so kept painted or affixed, and every director, secretary and officer of the company who knowingly or wilfully authorises or permits such default shall be liable to the like penalty; and if any director, secretary and officer of such company or any person on its behalf uses or authorises the use of any seal purporting to be a seal of the company, whereon its name is not so engraved as hereinafter mentioned or issues or authorises the issue of any notice, advertisement or other official publication of such company or signs or authorises to be signed on behalf of such company any bill of exchange, promissory note, endorsement, cheque or order for money or goods or issues or authorises to be issued any bill, invoice, receipt or letter of credit of the company wherein its name is not set out in the manner aforesaid he shall be liable to a penalty of \$200 and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque or order for money or goods for the amount thereof unless the same is duly paid by the company.

Penalties on non-
publication of
name

52. (1) Every limited company shall keep in writing a register of all mortgages, debentures and charges specifically affecting property of the company and shall enter in such register in respect of each mortgage, debenture or charge a short description of the property mortgaged or charged, the amount of charge created and

Register of
mortgages

the names of the mortgagees, debenture holders or persons entitled to such charge.

(2) If any property of a limited company is mortgaged or charged without such an entry as is mentioned in subsection (1) being made, every director and secretary of the company who knowingly or wilfully authorises or permits the omission of such entry, shall incur a penalty of \$200.

(3) The register of mortgages, debentures and charges required by subsection (1) shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director and secretary of the company authorising or knowingly or wilfully permitting such refusal, shall incur a penalty of \$50 for every day during which such refusal continues and in addition to the above penalty, the Magistrate may by order compel an immediate inspection of the register.

Register of directors and officers

53. Every company shall keep at its registered office a register containing the names, addresses and the occupations of its directors and secretary.

Penalty on company not keeping a register of directors

54. If any company makes default in keeping a register of its directors and secretary in compliance with the requirements of sections 52 or 53, or in notifying to the Registrar any change that takes place in such directors or secretary in accordance with section 39(3) such company shall incur a penalty of \$25 for every day during which such default continues, and every director and secretary of the company who shall knowingly or wilfully authorise or permit such default shall incur the like penalty. (*Amended by Ord. 11 of 1989*)

Penalty for carrying on business without a member

55. If any company carries on business in contravention of section 4 when it is without a member for a period exceeding six months every person who is a director, secretary or officer of such company during the time it so carries on business shall be severally liable for the payment of the whole of the debts of the company contracted during such time.

Provisions for Protection of Members

General meetings

56. Save for the first general meeting, which shall be held within fifteen months of the date of the certificate of incorporation of the company, a general meeting of every company shall be held at least once in every year at the registered office of the company or such other place as may be determined by the company in general meeting or in the case of the first general meeting at such place as the subscriber or subscribers determine.

57. (1) Every company shall cause to be kept proper books of accounts including day books of account with respect to—

Accounts

- (a) all sums of money received and expended by the company and the matter in respect of which the receipt and expenditure take place;
- (b) all sales and purchases of goods by the company; and
- (c) the assets and liabilities of the company.

(2) For the purpose of subsection (1) proper books of accounts shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

58. (1) A resolution passed by a company shall be deemed to be special whenever a resolution has been passed by not less than seventy-five *per centum* of such members of the company for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy at any general meeting of which notice specifying the intention to propose such resolution has been duly given.

Definition of
special
resolution

(2) At any meeting mentioned in this section, unless a poll is demanded by a member, a declaration of the chairman that the resolution has been carried shall be conclusive evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against the same.

(3) Notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held, whenever such notice is given in writing to all members and the meeting held in manner prescribed by the regulations of the company. (*Amended by Ord. 11 of 1989*)

(4) In computing the majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled on such a poll. A member shall have one vote for each voting share or, if the company has no provisions for voting shares, for each share held by him in the company.

59. In default of any regulations as to voting every member shall have one vote, and in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which fourteen days clear notice has been served on every member and in default of any regulations as to the persons to summon a meeting, two members shall be competent to summon the same; and in default of any regulations as to who is to be

Provisions where
no regulations as
to meetings

chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Requisitioning of
meetings

59A. (1) A requisition under this section may be made—

- (a) in the case of a company having a capital divided into shares of fixed amounts, by members holding not less than fifteen *per centum* of the shares of the company for the time being issued;
- (b) in the case of a company having capital divided into shares of no par value, by members holding shares of the company for the time being issued giving rights to not less than fifteen *per centum* of the dividends of the company; or
- (c) in the case of a company not having capital divided into shares, by members being in number not less than fifteen *per centum* of the total number of persons for the time being entered on the register of the company as members.

(2) Notwithstanding any provision of this Ordinance or anything in the articles of the company, on the happening of one of the following events, that is to say—

- (a) the failure to hold a meeting of the company as required by section 56;
- (b) by default of the company or any director or officer thereof in complying with any of the provisions of section 8(4), 30(2), 34(2), 40 or 42 or any order or direction made under any such provision; or
- (c) persons entitled to requisition under this section wishing to propose a special resolution;

a requisition may be made requiring the directors of the company to call a general meeting for the transaction of any business specified in such requisition.

(3) A requisition under this section shall be in writing signed by the requisitionists and deposited at the registered office of the company.

(4) If the directors fail to convene a meeting within twenty-one days of the date of the deposit of a requisition under subsection (3) the requisitionists may themselves convene a meeting within three months of such date in the same manner as that in which a meeting is convened by the directors. Any expenses reasonably incurred by the requisitionists in convening and holding such a meeting shall be repaid by the company and an

equivalent amount shall be retained by the company from remuneration due to the defaulting directors.

(Inserted by Ord. 11 of 1989)

60. A copy of any special resolution passed by any company under this Ordinance shall be forwarded within thirty days to the Registrar and shall be recorded by him.

Recording of special resolutions

61. (1) A copy of every special resolution for the time being in force shall be annexed to, or embodied in, every copy of the memorandum and articles of association that may be issued after the passing of such resolution.

Copies of special resolutions

(2) If any company makes default in complying with the provisions of this section it shall incur a penalty of \$50 for each copy in respect of which such default is made, and every director, secretary and officer of the company who shall knowingly or wilfully authorise or permit such default shall incur the like penalty.

61A. (1) Subject to any express provisions of this Ordinance, a resolution in writing signed by all members of a company entitled to attend and vote at a general meeting of a company shall be as valid and effective as if passed at a general meeting of the company.

Resolutions assented to in writing

(2) A copy of a resolution given validity and effect by subsection (1) shall within thirty days of its making be forwarded, together with the prescribed fee, if any, to the Registrar and shall be recorded by him:

Provided that this subsection shall not apply to a resolution which but for the provisions of this section would have been valid and effective if passed as an ordinary resolution.

(Inserted by Ord. 11 of 1989)

61B. (1) Where the Attorney General decides that it is necessary or desirable for the detection or prevention of any crime the maximum punishment for the commission of which exceeds six months imprisonment or a fine of \$1,000, he may appoint one or more competent inspectors to examine the affairs of any company, including a company in voluntary liquidation, and report thereon in such manner as he may direct. A decision of the Attorney General under this subsection shall be final and shall not be subject to appeal to, or review by, any court or other authority.

Attorney General may order report on affairs of a company

(2) Upon conclusion of the examination the inspectors shall report their opinion to the Attorney General in writing.

(3) Any person who discloses the contents, or any part of the contents of a report made under this section otherwise than—

- (a) in the performance of his duties under this Ordinance or of official duties for which he is responsible; or
- (b) pursuant to an order or direction of a court,

commits an offence and is liable to a fine of \$10,000 and to imprisonment for a term of twelve months or to both such fine and imprisonment.

(Inserted by Ord. 11 of 1989)

Appointment of
inspector to
report on affairs
of companies

62. The Court may appoint one or more than one competent inspector to examine into the affairs of any company and to report thereon in such manner as the Court may direct—

- (a) in the case of a company having a capital divided into shares, upon the application of members holding not less than fifteen *per centum* of the shares of the company for the time being issued;
- (b) in the case of a company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the total number of persons for the time being entered on the register of the company as members; and
- (c) in the case of any company, upon the application of the Attorney General. *(Inserted by Ord. 11 of 1989)*

Powers of
inspectors

63. It shall be the duty of all directors, secretary, officers and agents of the company to produce for examination by an inspector appointed under section 61B or 62 all books, accounts and documents relating to the company, and any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly, and any director, secretary, officer or agent who refuses or neglects to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, shall be guilty of an offence and liable on summary conviction to a fine of \$450. *(Amended by Ord. 11 of 1989)*

Report of
inspectors

64. (1) Upon the conclusion of the examination the inspectors shall report their opinion to the Court in writing.

(2) Such report shall be filed by the Registrar of the Court, but shall not, unless the Court so directs, be open to public inspection.

(3) All expenses of and incidental to any such examination and report shall be defrayed by the members upon whose applica-

tion the inspectors were appointed, unless the Court shall direct the same to be paid out of the assets of the company, which it is hereby authorised to do.

65. Any company as aforesaid may, by special resolution, appoint inspectors for the purpose of examining the affairs of such company and inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Court, except that instead of making the report to the Court, they shall make the same in such manner and to such persons as the company in general meeting direct, and the directors, secretary, officers and agents of the company shall incur the same penalties in case of any refusal or neglect to produce any book or document hereby required to be produced to such inspectors, or to answer any questions, as they would have incurred if such inspectors had been appointed by the Court.

Inspection by
resolution of the
company

66. The report of any inspectors appointed under this Ordinance, or any copy thereof certified and signed by the inspectors, shall be admissible in any legal proceeding as *prima facie* evidence of the opinion of the inspectors in relation to any matter contained in such report.

Inspectors' report
admissible as
evidence

Notices

67. Any list, return, notice or information in writing or other document required by this Ordinance to be made, given or supplied to the Registrar shall be in the prescribed form and authenticated by the signature of an officer of the company or, in the case of an exempted company, the person for the time being appointed as its resident representative under section 192. (*Amended by Ord. 11 of 1989*)

Returns, etc., to
Registrar

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

Service of notice
on company

69. Any document to be served by post on the company shall be posted in such time as to admit to its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof, and in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into a Post Office.

Postal service

70. Any summons, notice, order or proceeding requiring authentication by the company may be signed by any director, secretary or other authorised officer of the company, and need not

Authentication
of summons,
notices etc

be under the common seal of the company, and may be in writing or in print or partly in writing and partly in print.

Evidence of proceedings of meetings

71. Every company shall cause minutes of all resolutions and proceedings of general meetings of the company, and of meetings of the directors to be duly kept in writing and maintained in a sound condition at its registered office; and any such minutes as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as *prima facie* evidence in all legal proceedings; and until the contrary is proved, every general meeting of the company, or meeting of the directors in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly held and convened and all resolutions passed thereat, or proceedings had, to have been duly passed and had, and all appointments of directors, secretaries, officers or liquidators shall be deemed to be valid, and all acts done by such directors, secretaries, officers and liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications. (Amended by Ord. 11 of 1989)

Security for costs in actions brought by companies

72. Where a company is plaintiff in any action, suit or other legal proceedings any Judge having jurisdiction in the matter, if he is satisfied that there is reason to believe that if the defendant is successful in his defence the assets of the company will be insufficient to pay his costs, may require sufficient security to be given for such costs and may stay all proceedings until such security is given.

Declaration in action against members

73. In any action or suit brought by the company against any member to recover any call or other money due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company and is indebted to the company in respect of a call made or other moneys due whereby a right of action has accrued to the company.

Arbitration

Powers of companies to refer matters to arbitration
Cap. 47

74. Any company may from time to time by writing under its common seal agree to refer and may refer to arbitration, in accordance with the provisions of the Arbitration Ordinance, any existing or future difference, question or other matter whatsoever in dispute between itself and any other company or person; and the companies which are parties to the arbitration may in accordance with the said Ordinance delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the

companies themselves or by the directors or other managing body of such companies.

General Penalty

75. (1) Where a duty is imposed by this Ordinance on any company, director, secretary or officer of any company and no special penalty or fine has been provided for the breach of such duty then any such company, director, secretary or officer guilty of such breach shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500 and if it is a continuing breach to a fine of \$50 for each day of such continuing breach.

General penalty

(2) All fines recovered under this Ordinance shall be paid into the Consolidated Fund.

Unlimited Liability of Directors

76. The liability of the directors of a company may, if so provided by the articles of association, be unlimited.

Articles of association may provide for unlimited liability of directors

77. In the event of a company being wound up the provisions of section 47 as respects the contribution to be required from any director whose liability is unlimited by virtue of section 76 shall have effect subject to the following modifications—

Modification of section 47

- (a) subject to the provisions hereinafter contained, any such director, whether past or present shall, in addition to his liability (if any), to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding up a member of an unlimited company;
- (b) no contribution required from any past director who has ceased to hold such office for a period of one year or upward prior to the commencement of such winding up, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company;
- (c) no contribution required from any past director in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company;
- (d) subject to the provisions contained in the regulations of the company, no contribution required from any director shall exceed the amount (if any) which he is liable to contribute as an ordinary member,

unless the Court thinks it necessary to require such contribution in order to satisfy the debts and liabilities of the company and the costs, charges and expenses of the winding up.

Power of directors to bind company

77A. (1) In favour of a person dealing with a company in good faith, any transaction decided upon by the directors is deemed to be one which it is within the capacity of the company to enter into, and the power of the directors to bind the company is deemed to be free of any limitation under the memorandum or articles.

(2) A party to a transaction so decided on is not bound to enquire as to the capacity of the company to enter into it or as to any such limitation on the powers of the directors, and is presumed to have acted in good faith unless the contrary is proved.

(Inserted by Ord. 11 of 1989)

Associations Not for Profit

Circumstances in which the Registrar may licence a company to be registered without "limited" in its name

78. (1) Where any association is about to be formed as a limited company, if it is proved to the satisfaction of the Registrar that it is to be formed for the purpose of promoting commerce, art, science, religion, charity or any other useful object, and that it is the intention of such association to apply the profits (if any) or other income of the association in promoting its objects, and to prohibit the payment of any dividend to the members of the association, the Registrar may by licence under his hand direct such association to be registered with limited liability without the addition of the word "limited" or the abbreviation "Ltd" to its name, and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to all the obligations by this Ordinance imposed on companies, except that none of the provisions of this Ordinance that require a company to use the word "limited" or the abbreviation "Ltd" as any part of its name, or to publish its name, or to send a list of its members, directors or secretary to the Registrar, shall apply to an association so registered. *(Amended by Ord. 11 of 1989)*

(2) The licence aforesaid may be granted upon such conditions and subject to such regulations as the Registrar may think fit to impose, and such conditions and regulations shall be binding on the association, and shall be inserted or endorsed on the memorandum and articles of association.

Contracts

Common seal and how contracts may be made

79. (1) Every company registered under the provisions of this Ordinance shall have a common seal upon which its name is engraved in legible letters.

(2) Contracts on behalf of any company may be made as follows—

- (a) any contract which, if made between private persons, would be by law required to be in writing, and, if made according to English law, to be under seal, may be made on behalf of the company in writing under the common seal of the company;
- (b) any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company;
- (c) any contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing may be made by parol on behalf of the company by any person acting under the express or implied authority of the company.

(3) Any contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.

(4) All contracts made according to this section shall be effectual in law and shall be binding upon the company and its successors and all other parties thereto, their heirs, executors, or administrators, as the case may be.

(5) Where a contract purports to be made by a company, or by a person as agent for a company, at a time when the company has not been formed, then subject to any agreement to the contrary the contract has effect as one entered into by the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly. (*Inserted by Ord. 11 of 1989*)

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

Bills of exchange
and promissory
notes

81. (1) A company may by writing under its common seal empower any person either generally or in respect of any special matters as its attorney to execute deeds on its behalf.

Execution of
deeds abroad

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were made under its common seal.

Power for
company to have
official seal for
use abroad

82. (1) A company whose objects require or comprise the transaction of business outside the Islands may, if authorised by its articles, have for use in any territory, district or place not situate in the Islands, an official seal, which shall be a facsimile of the common seal of the company.

(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) A company having an official seal for use in any such territory, district or place may by writing under its common seal authorise any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is party in the territory, district or place.

(4) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period (if any) specified in the instrument conferring the authority, or if no period is so specified, then until notice of the revocation or determination of the agent's authority has been given to such person.

(5) The person affixing any such official seal shall by writing under his hand certify on the deed or other instrument to which the seal is affixed the date on which and the place at which it is affixed.

Authentication
of documents

83. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company and need not be under its common seal.

Arrangements and Reconstructions

Power to
compromise with
creditors and
members

84. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, then the Court may, on the application of the company or of any creditor or member of the company, or, where a company is 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, summoned in such manner as the Court directs.

(2) If a majority in number representing seventy-five *per centum* in value of the creditors or class of creditors, or members or class of members as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all creditors or the class of creditors, or

on the members or class of members, as the case may be, and also on the company or where a company is in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) shall have no effect until a copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of association of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes a default in complying with subsection (3), the company and every director, secretary and officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a fine of \$25 for each copy in respect of which default is made.

(5) In this section the expression “company” means any company liable to be wound up under this Ordinance and the expression “arrangement” includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both these methods.

85. (1) Where an application is made to the Court under section 84 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are specified in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purpose of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as “a transferor company”) is to be transferred to another company (in this section referred to as “the transferee company”), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters—

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

Provisions for
facilitating
reconstruction
and
amalgamation of
companies

- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (d) the dissolution, without winding up, of any transferor company;
- (e) the provision to be made for any person who, within such time and in such manner as the Court directs, dissents from the compromise or arrangement; and
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and any such property shall, if the order so directs, be freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof to be delivered to the Registrar for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every director, secretary and officer of the company who is in default shall be liable to a default fine.

(4) In this section the expression “property” includes property, rights and powers of every description, and the expression “liabilities” includes duties.

Power to acquire
shares of
dissentient
shareholders

86. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as “the transferor company”) to another company, whether a company within the meaning of this Ordinance or not (in this section referred to as “the transferee company”) has, within four months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than ninety *per centum* in value of the shares affected, the transferee company may at any time within two months after the expiration of the said four months give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless, on an application made by the dissenting shareholder within one month from the date on which the notice was given, the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the

shares of the approving shareholders are to be transferred to the transferee company.

(2) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall on the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4) In this section the expression “dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

PART V

WINDING UP OF COMPANIES UNDER THIS ORDINANCE

Preliminary

87. The term “contributory” means every person liable to contribute to the assets of a company in the event of the same being wound up under this Ordinance; and for the purpose of any proceedings for determining the persons who are to be deemed contributories, and of any proceedings prior to the final determination of such persons, includes any person alleged to be a contributory.

“Contributory”
defined

88. The liability of any person to contribute to the assets of a company in the event of its being wound up shall be taken to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter provided for enforcing such

Nature of
liability of
contributory

liability; and it shall be lawful in case of bankruptcy of any contributory to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

Death of
contributory

89. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs and devisees shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability, and shall be contributories accordingly.

Bankruptcy of
contributory

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

Repealed

91. *Repealed by Ord. 11 of 1989.*

Winding up by Court

Circumstances in
which company
may be wound
up by Court

- 92.** A company may be wound up by the Court if—
- (a) the company has passed a special resolution requiring the company to be wound up by the Court; or
 - (b) the company does not commence its business within a year from its incorporation or suspends its business, or does not carry on business for a period of six consecutive months; or
 - (c) there is no member of the company; or
 - (d) the company is unable to pay its debts; or
 - (e) the Court is of the opinion that it is just and equitable that the company should be wound up; or
 - (f) the company, being a financial institution licensed under the Banking Ordinance or under any enactment repealing or replacing that Ordinance, has had its licence to carry on banking business revoked.

Cap. 118

93. A company shall be deemed to be unable to pay its debts if—

Company, when deemed unable to pay its debts

- (a) a creditor by assignment or otherwise to whom the company is indebted at law or in equity in a sum exceeding \$500 then due, has served on the company by serving or having served at its registered office a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum or to secure or compound for the same to the reasonable satisfaction of the creditor; or
- (b) execution or other process issued on a judgement, decree or order obtained in the Court in favour of any creditor at law or in equity in any proceedings instituted by such creditor against the company, is returned unsatisfied in whole or in part; or
- (c) it is proved to the satisfaction of the Court that the company is unable to pay its debts as they fall due in the ordinary course of business. (*Amended by Ord. 11 of 1989*)

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

Application for winding up to be made by petition

Provided that in the case of a company to which the provisions of paragraph (f) of section 92 apply, if no application for winding up has been made to the Court under the provisions of this section by the company or a creditor or contributory, the Attorney General shall apply to the Court under this section for the winding up of the company.

(*Amended by Ord. 11 of 1989*)

95. The Judge may do in chambers any act which the Court is hereby authorised to do.

Sitting in chambers

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

Commencement of winding up

Court may grant
injunction

97. The Court may at any time after the presentation of a petition for winding up a company under this Ordinance and before making an order for winding up the company, upon the application of the company, or any creditor or contributory of the company, or the Attorney General in a case in which he has made the application for the winding up of the company, restrain further proceedings in any action, suit or proceeding against the company upon such terms as the Court thinks fit; and the Court may also at any time after the presentation of such petition and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the company.

Powers of Court
on hearing
petition

98. Upon hearing the petition the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally and may make any interim order or any other order that it thinks just, and any such order shall be published in the *Gazette*.

Stay of
proceedings after
order for
winding up

99. When an order has been made for winding up of a company no suit, action or other proceedings shall be proceeded with or commenced against the company except with the leave of the Court and subject to such terms as the Court may impose.

Copy of order to
be forwarded to
Registrar

100. When an order has been made for winding up of a company a copy of such order shall forthwith be forwarded by the company to the Registrar, who shall make a minute thereof in his books relating to the company.

Power of Court
to stay any
proceedings

101. The Court may at any time after an order has been made for winding up of a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding up ought to be stayed, make an order staying the same either altogether or for a limited time, on such terms and subject to such conditions as it thinks fit and any such order shall be published in the *Gazette*.

Effect of order
on share capital
of company
limited by
guarantee

102. When an order has been made for winding up a company limited by guarantee and having a capital divided into shares any share capital that may not have been called up shall be deemed to be assets of the company and to be a debt due to the company from each member to the extent of any sums that may be unpaid on any shares held by him and payable at such time as may be appointed.

Court may have
regard to wishes
of creditors or
contributories

103. The Court may, as to all matters relating to the winding up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held and conducted in such manner as the Court

directs for the purposes of ascertaining their wishes and may appoint a person to act as chairman of any such meeting, and to report to the Court the result of such meeting and regard shall be had, as respects creditors, to the value of the debts due to each creditor, and as respects contributories, to the number of votes conferred on each contributory by the regulations of the company.

Official Liquidators

104. For the purpose of conducting the proceedings in winding up a company and assisting the Court therein, there may be appointed one or more than one person to be called an official liquidator or official liquidators; and the Court may appoint to such office such person or persons, either provisionally or otherwise, as it thinks fit, and if more persons than one are appointed to such office, the Court shall declare whether any act hereby required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons. The Court may also determine whether any and what security is to be given by any official liquidator on his appointment; if no official liquidator is appointed, or during any vacancy in such office, all the property of the company shall be in the custody of the Court.

Appointment of
official
liquidators

105. (1) An official liquidator may resign or be removed by the Court on due cause shown; and any vacancy in the office of an official liquidator appointed by the Court shall be filled by the Court.

Resignation,
removals, filling
of vacancies and
compensation

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

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

Style and duties
of official
liquidator

107. An official liquidator shall have power, with the sanction of the Court—

Powers of
official
liquidator

- (a) to bring or defend any action, suit, prosecution or other legal proceedings, whether civil or criminal, in the name and on behalf of the company;

- (b) to carry on the business of the company so far as may be necessary for the beneficial winding up thereof;
- (c) to sell the real and personal property, effects and choses in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- (d) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents; and for that purpose to use, when necessary, the company's seal;
- (e) to prove, rank, claim and draw a dividend in the matter of the bankruptcy or insolvency of any contributory for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of bankruptcy or insolvency, as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors;
- (f) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, and from time to time raise upon the security of the assets of the company any requisite sum or sums of money; and the drawing, accepting, making or endorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of the carrying on of the business thereof;
- (g) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any moneys due from a contributory or from his estate which cannot be conveniently done in the name of the company; and in any such case any moneys due shall, for the purpose of enabling him to take such letters or recover such moneys, be deemed to be due to the official liquidator himself; and
- (h) to do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

108. The Court may by any order provide that the official liquidator may exercise any of the powers mentioned in section 107 without the sanction or intervention of the Court, and where an official liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

Discretion of
official
liquidator

109. The official liquidator may with the sanction of the Court appoint an attorney to assist him in the performance of his duties.

Appointment of
attorney to be
official
liquidator

Ordinary Powers of Court

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

Collection and
application of
assets

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

Provisions as to
representative
contributories

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

Power to require
delivery of
property

113. (1) The Court may at any time after making an order for winding up the company make an order on any contributory for the time being on the list of contributories, to pay in manner directed by the order, any moneys due from him or from the estate of the person whom he represents, to the company, exclusive of any moneys payable by him or the estate by virtue of any calls made or to be made by the Court in pursuance of this Part.

Power to order
payment of debts
by contributory

(2) The Court may, in making such an order when the company is not limited, allow to the contributory by way of set-off any moneys due to him or the estate which he represents from the company on any independent dealing or contract with the

company, but not any moneys due to him as a member of the company in respect of any dividend or profit.

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

Power to make
calls

114. The Court may at any time after making an order for winding up of a company and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being on the list of contributories to the extent of their liability, for payment of all or any sum it thinks necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the call is made may partly or wholly fail to pay their respective portions of the same.

Power to order
payment into
bank

115. The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into a bank to the account of the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Regulation of
account

116. All moneys, bills, notes and other securities paid and delivered into a bank in the event of a company being wound up by the Court, shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in or investment and payment and delivery out of the same as the Court may direct.

Default by
representative
contributory

117. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering either or both the personal and real estate of such deceased contributory, and of compelling payments thereout of the moneys due.

Order to be
conclusive
evidence

118. Any order made by the Court in pursuance of this Ordinance upon any contributory shall, subject to any right of appeal, be conclusive evidence that the moneys, if any, thereby appearing to be due, and all other pertinent matters stated in such order are to be truly stated as against all persons, and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall be only *prima facie* evidence for the purpose of

charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the making of the order.

119. The Court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

Power to exclude creditors not proving within time fixed

120. The Court shall adjust the rights of the contributories amongst themselves and distribute any surplus that may remain amongst parties entitled thereto.

Court to adjust rights of contributories

121. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges and expenses incurred in winding up any company in such order of priority as the Court thinks just.

Orders as to costs

122. When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

Dissolution of company

123. Any order made under section 122 shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such company.

Registrar to record dissolution

124. If the official liquidator makes default in reporting to the Registrar, in the case of a company being wound up by the Court, the order that the company be dissolved, he shall be liable on summary conviction to a penalty of \$25 for every day on which he is so in default.

Penalty for not reporting dissolution of company

Extraordinary Powers of Court

125. (1) The Court may, after it has made an order for winding up the company, summon before it any director, secretary and officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may think capable of giving information concerning the trade, dealings, estate or effects of the company; and the Court may require any such director, secretary, officer or person to produce any books, papers, deeds, writings or other documents in his custody or power relating to the company.

Powers of Court to summon persons suspected of having property of company

(2) If any person so summoned fails to attend, after being tendered a reasonable sum for his expenses to come before the

Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination; nevertheless, where any person claims any lien on papers, deeds, writings or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to such lien.

Examination of parties by Court

126. The Court may examine upon oath, either orally or upon written interrogatories, any person appearing or brought before it in manner aforesaid concerning the affairs, dealings, estate or effects of the company, and may reduce into writing the answers of every person, and require him to subscribe the same.

Power to arrest contributory in certain cases

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

Powers of Court cumulative

128. Any powers conferred on the Court by this Ordinance shall be deemed to be in addition to and not in restriction of any other powers subsisting either at law or in equity of instituting proceedings against any contributory or the estate of any contributory or against any debtor of the company for the recovery of any call or sums due from such contributory or debtor or his estate, and such proceedings may be instituted accordingly.

Enforcement of Orders

Power to enforce orders

129. (1) All orders made by the Court under this Ordinance may be enforced in the same manner in which orders of such Court made in any suit pending therein may be enforced.

(2) Appeals from any order or decision made or given in the matter of a winding up of a company before the Judge may be made to the Court of Appeal in the same manner, and subject to the same rules and conditions as an appeal from any order or decision of the Court.

Voluntary Winding Up of Company

- 130.** A company may be wound up voluntarily—
- Circumstances in which company may be wound up voluntarily
- (a) when the period, if any, fixed for the duration of the company by the articles of association expires, or the event, if any, occurs, upon the occurrence of which it is provided, by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; or
 - (b) if the company has passed a special resolution requiring the company to be wound up voluntarily.
- 131.** A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising such winding up.
- Commencement of voluntary winding up
- 132.** When a company is wound up voluntarily the company shall, from the date of the commencement of such winding up, cease to carry on its business, except in so far as may be required for the beneficial winding up thereof, and all transfers of shares except transfers made to or with the sanction of the liquidator or any alteration in the status of the members of the company taking place after the commencement of such winding up shall be void, but its corporate state and all its corporate powers shall (whether otherwise provided by its regulations or not) continue until the affairs of the company are wound up.
- Effect of voluntary winding up on status of company
- 133.** Notice of any special resolution passed for winding up a company shall be published in the *Gazette*. (*Amended by Ord. 11 of 1989*)
- Notice of resolution to wind up voluntarily
- 134.** The following consequences shall ensue upon the voluntary winding up of a company—
- Consequences of voluntary winding up
- (a) the property of the company shall be applied to satisfaction of its liabilities *pari passu*, and subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company;
 - (b) a liquidator or liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property;
 - (c) the company in general meeting shall appoint such person or persons as it thinks fit to be liquidator or

- liquidators and may fix the remuneration to be paid to him or them;
- (d) if one liquidator only is appointed, all the provisions shall apply to him;
 - (e) upon the appointment of liquidators all the powers of the directors and secretary shall cease, except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers;
 - (f) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment or in default of such determination by any number not less than two;
 - (g) the liquidators may without the sanction of the Court exercise any powers conferred by this Ordinance on the official liquidators;
 - (h) the liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
 - (i) the liquidators may, at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being on the list of contributories to the extent of their liability to pay all or any sums that the liquidators think necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions thereof;
 - (j) the liquidators shall pay the debts of the company and shall adjust the rights of the contributories amongst themselves.

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

135. Where a company limited by guarantee and having a capital divided into shares is being wound up voluntarily, any share capital that may not have been called upon shall be deemed to be assets of the company, and to be a debt due from each member to the company to the extent of any sums that may be unpaid on any

shares held by him, and payable at such time as may be appointed by the liquidators.

136. A company about to be or in the course of being wound up voluntarily may by a special resolution delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them and of filling any vacancies among the liquidators, or may by a like resolution enter into any arrangements with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised; and any act done shall have the same effect as if it had been done by the company. (Amended by Ord. 11 of 1989)

Power of company to delegate authority to appoint liquidators

137. Any arrangement entered into between a company about to be wound up voluntarily and its creditors shall, subject to the right of appeal under section 138, be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by seventy-five *per centum* in number and value of creditors. (Amended by Ord. 11 of 1989)

Arrangement when binding on creditors

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

Right of creditor or contributory to appeal

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

Liquidators or contributories in voluntary winding up may apply to Court

140. Where a company is being wound up voluntarily the liquidators may, from time to time during the continuance of such winding up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution, or for any other purposes they think fit; and in the event of the winding up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year and of each succeeding year from the commencement of the winding up, or as soon thereafter as may be

Liquidators may call general meetings

convenient, and shall lay before such meeting an account showing their acts and the manner in which the winding up has been conducted during the preceding year. (*Amended by Ord. 11 of 1989*)

Vacancy among liquidators

141. If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation or otherwise, the company in general meeting may, subject to any arrangement with its creditors, fill such vacancy, and a general meeting for the purpose of filling such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the Court.

Power to appoint liquidators

142. If from any cause whatever there is no liquidator acting in the case of a voluntary winding up, the Court may, on the application of a contributory appoint a liquidator or liquidators; and the Court may on due cause shown remove any liquidators and appoint another liquidator to act in the matter of a voluntary winding up.

Liquidators' account on conclusion of winding up

143. As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which such winding up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidator; and the meeting shall be called by notice published in the *Gazette* or otherwise as the Registrar may direct, specifying the time, place and object of such meeting; and such advertisement shall be published in the *Gazette* one month at least before the meeting.

Liquidators to report meeting to Registrar

144. The liquidators shall make a return to the Registrar of such meeting having been held and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved; and if the liquidators make default in making such return to the Registrar they shall be guilty of an offence and liable on summary conviction to a fine of \$50 for every day during which such default continues.

Costs of voluntary liquidation

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

146. The voluntary winding up of a company shall not be a bar to the right of any creditor of such company to have the same wound up in Court, if the Court is of the opinion that the rights of such creditors will be prejudiced by a voluntary winding up.

Saving of rights
of creditors

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

Power to adopt
proceedings of
voluntary
winding up

Winding up Subject to the Supervision of the Court

148. When a resolution has been passed by a company to wind up voluntarily, the Court may make an order directing that the voluntary winding up should continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just.

Power to direct
voluntary
winding up to be
subject to
supervision

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

Petition for
winding up
subject to
supervision

150. The Court, in determining whether a company is to be wound up altogether by the Court or subject to the supervision of the Court, in the appointment of any liquidator, and in all other matters relating to the winding up subject to supervision, may have regard to the wishes of such of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held and regulated in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as Chairman of any such meeting and to report the result of such meeting to the Court, and regard shall be had, as respects creditors, to the value of the debts due to each creditor, and as respects contributories to the number of votes conferred on each contributory by the regulations of the company.

Court may have
regard to wishes
of creditors

151. (1) Where an order is made by the Court for a winding up subject to the supervision of the Court, the Court may, by that or any subsequent order, appoint any additional liquidator or liquidators; and any liquidator so appointed shall have the same powers, be subject to the same obligations, and in all respects

Power to appoint
additional
liquidators in
winding up
subject to
supervision

stand in the same position as if he had been appointed by the company.

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

Effect of order for winding up subject to supervision of Court

152. Where an order is made for a winding up subject to the supervision of the Court, the liquidators appointed to conduct such winding up may, subject to any restriction imposed by the Court, exercise all their powers without the sanction or intervention of the Court in the same manner as if the company were being wound up altogether voluntarily; but, save as aforesaid, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes (including the staying of actions, suits and other proceedings) be deemed to be an order of the Court for winding up the company by the Court, and shall confer on the Court full authority to make calls or to enforce calls made by liquidators and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court, and in any provision of this Ordinance empowering the Court to direct any act or thing to be done to or in favour of the official liquidators, the expression “official liquidators” shall be construed as meaning the liquidators conducting the winding up subject to the supervision of the Court.

Appointment in certain cases of voluntary liquidators as official liquidators

153. Where an order for winding up subject to the supervision of the Court is afterwards superseded by an order directing the company to be wound up compulsorily, the Court may in such last mentioned order or in any subsequent order appoint the voluntary liquidators or any of them, either provisionally or permanently and either with or without the addition of any other persons, to be official liquidators.

Supplementary Provisions

Dispositions after the commencement of the winding up voided

154. Where any company is being wound up by the Court or subject to the supervision of the Court all dispositions of the property, effects and choses in action of the company, and every transfer of shares, or alteration in the status of the members of the company made between the commencement of the winding up and the order for winding up shall, unless the Court otherwise orders, be void.

Books of the company to be evidence

155. Where any company is being wound up all books, accounts and documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

156. (1) Where any company has been registered under this Ordinance and is about to be dissolved, the books, accounts and documents of the company and of the liquidators may be disposed of—

As to disposal of books, accounts and documents of the company

- (a) where the company has been wound up by or subject to the supervision of the Court in such manner as the Court directs; and
- (b) where the company has been wound up voluntarily in such manner as the company by special resolution directs. (*Amended by Ord. 11 of 1989*)

(2) After the lapse of two years from the date of dissolution of the company, no responsibility shall rest on the company, the liquidators or any person to whom the custody of the books, accounts and documents has been committed, by reason that the same, or any of them, cannot be made available to any party or parties claiming to be interested therein.

157. Where an order has been made for winding up a company by the Court or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the company of its books and papers in the possession of the company as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise.

Inspection of books

158. Any person to whom any chose in action belonging to the company is assigned in pursuance of this Ordinance may bring or defend in his own name any action or suit relating to such chose in action.

Power of assignee to sue

159. In the event of any company being wound up under this Ordinance, all debts payable on a contingency and all claims against the company, whether present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made so far as is possible of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or which for some other reason do not bear a certain value.

Debts of all descriptions to be proved

160. (1) Subject to subsection (3) in a winding up there shall be paid in priority to all other debts—

Preferential payments

- (a) all rates, taxes, assessments or impositions imposed or made under the provisions of any Ordinance applicable to the Islands, and having become due and payable within twelve months next before the relevant date;

- (b) all wages or salary of any clerk or servant in respect of services rendered to the company during four months before the relevant date;
 - (c) all wages of any workman or labourer not exceeding \$400 in respect of services rendered to the company during two months before the relevant date.
- (2) The foregoing debts shall—

- (a) rank equally amongst themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(4) Where any payment on account of wages or salary has been made to any clerk, servant, workman or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(6) Where it appears that there are numerous claims for wages by workmen and others employed by the company, it shall be sufficient if one proof for all such claims is made either by a foreman or by some other person on behalf of all such creditors. There shall be annexed to such proof and form part thereof a

schedule setting forth the names of the workmen and others and the amounts severally due to them. Any proof made in compliance with this subsection shall have the same effect as if separate proofs had been made by each of the said claimants.

(7) In this section the expression “relevant date” means—

- (a) as respects a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and
- (b) in any other case, the date of the commencement of the winding up.

161. The liquidator may, with the sanction of the Court where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of a special resolution of the company where the company is being wound up altogether voluntarily, pay any classes of creditors in full or make such compromise or other arrangements as the liquidators may think expedient with creditors or persons claiming to be creditors or persons having or alleging themselves to have any claim, whether present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable. (*Amended by Ord. 11 of 1989*)

General scheme
of liquidation
may be
sanctioned

162. The liquidators may, with the sanction of the Court where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of a special resolution of the company where the company is being wound up altogether voluntarily, compromise all calls and liabilities capable of resulting in debts, and all claims whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding up of the company, upon the receipt of such sums, payable at such times and generally upon such terms as may be agreed upon, with power for the liquidators to take securities for the discharge of such debts or liabilities and to give complete discharge in respect of all or any such calls, debts or liabilities. (*Amended by Ord. 11 of 1989*)

Power to
compromise

163. (1) Subject to subsection (2), where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first mentioned company may, with the sanction of a special resolution of the company by whom they were

Liquidators may
accept shares,
etc., as a
consideration for
sale of property
of company

appointed, conferring on the liquidators either a general authority or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale, shares, policies or other like interests in such other company for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, policies or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up.

(2) Notwithstanding subsection (1) if any member of a company being wound up who has not voted in favour of the special resolution referred to in that subsection expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do such one of the following things as the liquidators may elect, that is to say, either to abstain from carrying such resolution into effect or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter provided, such purchase money to be paid before the company is dissolved and to be raised by the liquidators in such manner as may be determined by special resolution.

(3) No special resolution shall be deemed invalid for the purpose of this section by reason that it is passed before or concurrently with any resolution for winding up the company or for appointing liquidators; but if an order be made within a year for winding up the company by, or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

Mode of
determining
price

Cap. 47

Certain
attachments and
executions to be
void

Avoidance of
preference in
certain cases

164. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute the same, such dispute shall be settled by arbitration in accordance with the provisions of the Arbitration Ordinance.

165. Where any company is being wound up by the Court or subject to the supervision of the Court, any attachment, distress or execution put forth against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

166. (1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered, by or against any

company unable to pay its debts as they become due from its own moneys in favour of any creditor, or of any person in trust for any creditor, with a view to giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors shall, if the company making, taking, paying or suffering the same is wound up under the provisions of this Ordinance within three months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against any liquidator in the winding up.

(2) Subject to the other provisions of this Ordinance with respect to the avoidance of preferences, nothing in this Ordinance shall invalidate, in the case of winding up—

- (a) any payment by the company being wound up to any of its creditors;
- (b) any payment or delivery to the company being wound up;
- (c) any conveyance or assignment by the company being wound up for valuable consideration;
- (d) any contract, dealing or transaction by or with the company being wound up for valuable consideration:

Provided that both the following conditions are complied with, namely—

- (i) that the payment, delivery, conveyance, assignment, contract, dealing or transaction, as the case may be, takes place before the date of the presentation of a petition for winding up the company in the case of a company being wound up by the Court or subject to the supervision of the Court, or a resolution for winding up the company in the case of a voluntary winding up; and
- (ii) that the person (other than the company) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not, at the time of the payment, delivery, conveyance, assignment, contract, dealing or transaction, notice of the company being unable to pay its debts as they become due from its own moneys before that time.

(3) Any conveyance or assignment made by any company of all its estate and effects to trustees for the benefit of all or any of its creditors shall be void to all intents.

Power to assess damages against delinquent directors and officers

167. (1) Where, in the course of the winding up of any company under this Ordinance, it appears that any past or present director, secretary, official or other liquidator or any officer of such company has misapplied or retained in his own hands or become liable or accountable for any moneys of the company or been guilty of any misfeasance or breach of trust in relation to the company the Court may, on the application of any liquidator or any creditor or contributory of the company notwithstanding that the offence is one for which the offender is criminally responsible examine into the conduct of such director, secretary or other officer and compel him to repay any moneys so misapplied or retained or for which he has become liable or accountable together with interest at such rate as the Court thinks just or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) Where in the course of the winding up of any company under this Ordinance, it appears to the Court on the application of any liquidator, creditor or contributory that the company continued to trade at a time when any past or present director knew or ought reasonably to have known that the company was unable to pay its debts as they fell due in the ordinary course of business the Court may order such director to be made a contributory without limit or subject to such limit as the Court deems just. (*Inserted by Ord. 11 of 1989*)

Repealed

168. *Repealed by Ord. 13 of 1985.*

Prosecution of delinquent directors in the case of winding up by Court

169. If it appears to the Court in the course of winding up by, or subject to the supervision of the Court, that any past or present director, secretary, officer or member of such company has been guilty of an offence in relation to the company for which he is criminally responsible, the Court may on the application of any person interested in such winding up or of its own motion direct the official liquidators or the liquidators (as the case may be) to prosecute the offender and may order the costs and expenses to be paid out of the assets of the company.

Prosecution of delinquent directors, etc., in case of voluntary winding up

170. If it appears to the liquidator in the course of a voluntary winding up that any past or present director, secretary, officer or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible the liquidator may, with the previous sanction of the Court, prosecute such offender, and all expenses properly incurred by him in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

171. If any person upon any examination upon oath or affirmation authorised under this Ordinance or in any affidavit, deposition or solemn affirmation in or about the winding up of any company, or otherwise in or about any matters arising under this Ordinance, wilfully and corruptly gives false evidence he shall be guilty of an offence and liable on conviction to a fine of \$5,000 and to imprisonment for two years.

Penalty for
perjury

Power of Court to make Rules

172. The Court may, as often as circumstances require, make such rules concerning the mode of proceedings to be had for winding up a company in the Court, as may from time to time seem necessary, but until such rules are made the general practice of the Court, including the practice in use at the commencement of this Ordinance in winding up companies shall so far as the same is applicable and not inconsistent with this Ordinance, apply to all proceedings for winding up a company.

Rules of Court

PART VI

REMOVAL OF DEFUNCT COMPANIES UNDER THIS ORDINANCE

173. Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may strike the company off the register and the company shall thereupon be dissolved. (*Amended by Ord. 11 of 1989*)

Company not
operating may be
struck off
register

174. Where a company is being wound up, and the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, he may strike the company off the register and the company shall thereupon be dissolved.

Company being
wound up may
be struck off
register if no
liquidator ap-
pointed or affairs
fully wound up

175. The Registrar shall forthwith publish in the *Gazette* a notice to the effect that the company in question has been struck off the register, the date on which it has been struck off and the reason therefor.

Registrar to
publish fact of
company being
struck off
register

176. If a company or any member, creditor or interested party thereof feels aggrieved by the company having been struck off the register in accordance with the provisions of this Ordinance, the Registrar or the Court, on the application of such company, member, creditor or interested party made within two years or such longer period not exceeding ten years as the Registrar may allow from the date on which the company was so struck off, may if satisfied that the company was at the time of the striking off

Company,
creditor, member
or interested
party may apply
to Registrar to be
reinstated

thereof carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, on payment by the company of a reinstatement fee equivalent to the original incorporation or registration fee, and on such terms and conditions as to the payment of unpaid annual fees or otherwise as the Registrar or the Court may determine, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the Registrar or the Court may by the same or any subsequent 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 name of the company had not been struck off. (*Amended by Ord 11 of 1989*)

Liability of
members of
company to
remain

177. The striking off the register of any company under the provisions of this Ordinance shall not affect the liability (if any) of any director, secretary, officer or member of the company, and such liability shall continue and may be enforced as if the company had not been dissolved.

Registrar not
liable for any act
performed under
this Part

178. No liability shall attach for any act performed or thing done by the Registrar in accordance with the provisions of this Part of this Ordinance.

Property to be
vested in
Governor

179. Any property vested in or belonging to any company struck off the register under this Ordinance shall after a period of twelve months during which time no person has laid proper claim to the same, vest in the Governor for the benefit of the Islands, and shall be subject to the disposition of the Governor for the benefit of the Consolidated Fund. (*Amended by L.N. 41/1994*)

PART VII

EXEMPTED COMPANIES

What companies
may apply to be
registered as
exempted
companies

180. A company may apply to be registered as an exempted company, if its objects are to be carried out mainly outside the Turks and Caicos Islands. (*Amended by Ord. 1 of 1993*)

Registration of
exempted
companies

181. (1) On being satisfied that the provisions of sections 182, 183 and 184 have been complied with, the Registrar shall register the company as an exempted company, and shall issue a certificate to that effect.

(2) A certificate issued by the Registrar under subsection (1) may contain the name of the exempted company in both the

English language and a foreign language if—

- (a) an application in that behalf is made to the Registrar by or on behalf of the company or the proposed company; and
- (b) the application is accompanied with a translation of the name of the company into the English language certified in such manner and by such person as the Registrar may require.

(Inserted by Ord. 4 of 1994)

(3) From the date of incorporation specified in the certificate of incorporation, the subscriber or subscribers to the memorandum of association, together with such other persons as may from time to time become members of the exempted company, shall be a body corporate by the name contained in the memorandum of association. *(Amended by Ord. 4 of 1994)*

(4) From the date of incorporation specified in the certificate of incorporation, an exempted company shall have perpetual succession and a common seal but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is provided in this Ordinance.

(5) A certificate of incorporation of an exempted company issued under this Ordinance shall be conclusive evidence that compliance has been made with all the requirements of this Ordinance in respect of incorporation and registration.

(6) Every copy of a memorandum of association filed and registered in accordance with this Ordinance or any extract therefrom certified under the hand and seal of the Registrar as a true copy shall be received in evidence in any Court of the Islands without further proof.

182. (1) A proposed company applying for registration as an exempted company shall submit to the Registrar a memorandum of association which shall contain the following particulars—

- (a) the name of the proposed company; and
- (b) the address in the Islands at which the registered office of the proposed company is to be situate; and
- (c) where the proposed company is to be limited by shares—
 - (i) the amount of the capital of the company and the number of shares into which it is divided and the fixed amounts thereof if such shares have a nominal or par value or the aggregate consideration for which the said shares may be issued if they are without nominal or par value;

Memorandum of
association of
exempted
companies

always provided that the said capital, or, as the case may be, the aggregate consideration may be expressed in and subscribed for in the currency of any country; and

- (ii) a declaration that the liability of the members is limited or, where the memorandum contains a declaration in the terms specified in subsection (3), a declaration specifying the liability of members holding shares of each particular class; or
- (d) where the proposed company is to be limited by guarantee, a declaration that each member undertakes to contribute to the assets of the company in the event of the company being wound up during the time that he is a member, or within one year afterwards, for the payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of the winding up of the company, and for the adjustment of the rights of the contributories amongst themselves—
 - (i) such amount as may be required not exceeding a specified amount to be therein named; or
 - (ii) where the memorandum contains a declaration in the terms specified in subsection (4), an unlimited amount; or
- (e) where the proposed company is to be an unlimited company, a declaration that the liability of its members is unlimited.

(Amended by Ord. 1 of 1993 and Ord. 4 of 1994)

(2) The name of a proposed company contained in its memorandum of association may end with the words “International Business Company” or the abbreviation “IBC” which shall serve to identify it as an exempted company. *(Inserted by Ord. 21 of 1992)*

(3) Where the capital of an exempted company limited by shares is divided into shares of more than one class, the memorandum of association may contain a declaration that in a winding up of the company, the liability of the members holding the shares of a particular class shall be unlimited either generally or respecting specified classes of creditors of the company or unlimited for a specified period of time. *(Inserted by Ord. 4 of 1994)*

(4) Where an exempted company limited by guarantee has more than one class of member, the memorandum of association

may contain a declaration that in a winding up of the company the amount of the undertaking of the members of a particular class shall be unlimited either generally or respecting specified classes of creditors of the company or unlimited for a specified period of time. (*Inserted by Ord. 4 of 1994*)

183. A proposed exempted company applying for registration as an exempted company shall submit to the Registrar a declaration signed by a subscriber to the effect that the operation of the proposed company will be conducted mainly outside the Islands.

Declaration by
proposed
company

184. A proposed company applying for registration as an exempted company shall tender such registration fee as may be prescribed. (*Amended by Ord. 4 of 1994*)

Fee for
registration of an
exempted
company

184A. (1) Any company for the time being registered under the provisions of this Ordinance other than those contained in this Part, if its objects enable it to carry on business mainly outside the Islands and it intends thenceforth only to carry on business mainly outside the Islands, may by special resolution elect to be treated as an exempted company and may thereupon apply for registration as an exempted company under this Part. (*Inserted by Ord. 11 of 1989 and Amended by Ord. 1 of 1993*)

Non-exempted
companies may
become
exempted
companies

(2) Upon payment of the fees prescribed for the first registration of an exempted company having the same nominal capital and upon the Registrar certifying that it has been established to his satisfaction that the company is in full compliance with the provisions of this Ordinance and that thenceforth it is able and intends to carry on business mainly outside the Islands, he shall register it as an exempted company and all documents filed previously by the company which are not applicable to, or required to be filed by, exempted companies shall be returned to the registered office of the company. (*Inserted by Ord. 11 of 1989*)

(3) A company which elects in accordance with subsection (1) shall on compliance with the foregoing provisions of this section be deemed to be for all purposes an exempted company and shall thenceforth comply with the provisions of this Part accordingly. (*Inserted by Ord. 11 of 1989*)

185. (1) Subject to subsections (2) and (3) and to any other specific provision of this Ordinance, all the provisions of this Ordinance shall apply to exempted companies.

Application of
Ordinance to
exempted
companies

(2) The following provisions of this Ordinance shall not

apply to exempted companies—

SECTION

6. *Memorandum of association of a company limited by shares*
7. *Memorandum of association of a company limited by guarantee*
8. *Objects of memorandum of association may be altered by special resolution*
10. *Memorandum of association of an unlimited company*
13. *Special resolution for reduction of share capital*
- 25(3)(c). *Company registry to include details of capital and shares*
- 25(4). *Registration*
35. *Power to issue redeemable preference shares*
36. *Definition of member*
37. *Transfer by personal representative*
38. *Register of members*
39. *Annual list of members, and return of capital, shares etc.*
40. *Penalty on company not making returns*
42. *Inspection of register*
44. *Remedy for improper entry or omission of entry in register*
45. *Notice to Registrar of rectification of register*
46. *Register to be evidence*
- 49(2). *Notice of situation of registered office*
- 50(1). *Publication of name of company*
52. *Register of mortgages*
53. *Register of directors and officers*
54. *Penalty on company not keeping a register of directors*
56. *General meetings*
- 92(c). *Circumstances in which company may be wound up by Court*
207. *Definition of foreign companies*
208. *Documents, etc., to be delivered to Registrar by foreign companies*
210. *Registration of foreign companies incorporated in a foreign country*
211. *Return to be delivered to Registrar where documents, etc., altered*
212. *Obligation to state name of company, whether limited, and country where incorporated*
213. *Service on foreign company to which Part X applies*
214. *Deeds executed out of and within the Islands*
215. *Removing company's name from register*
216. *Penalties for failing to comply with provisions of Part X*
217. *Interpretation of Part X*
(Amended by Ords. 5 of 1990 and 4 of 1994)

(3) Exempted companies are exempted from the provisions of section 71 (*Evidence of proceedings of meetings*) insofar as they relate to—

- (a) ordinary resolutions;
- (b) minutes of annual general meetings and meetings of directors.

(4) A proposed exempted company when making its application under section 180, or an exempted company by special resolution in general meeting, may elect to be bound by one or more, but not all, of the provisions of this Ordinance from which it is exempted by this section or by any other specific provision of this Ordinance and from the time of the passing of such resolution the company shall be so bound unless and until such time as the company rescinds such resolution by a special resolution in general meeting.

(5) The shares of an exempted company may be either non-negotiable in which case they shall be transferred only on the books of the company, or they may be negotiable or to bearer:

Provided that no share shall be issued as negotiable or to bearer unless the same shall be fully paid and non-assessable.

(6) Negotiable or bearer shares of an exempted company may be exchanged for non-negotiable shares and *vice versa*.

*(Substituted by Ord. 11 of 1989 and
Amended by Ords. 5 of 1990 and 4 of 1994)*

186. An exempted company may by special resolution alter its memorandum of association, and shall within one month from the date of such special resolution deliver to the Registrar a certified copy thereof.

Alteration of
memorandum of
association

187. In January of each year after the year of its registration each exempted company shall furnish to the Registrar a return which shall be in the form of a declaration that—

Annual return

- (a) since the previous return or since registration, as the case may be, there has been no alteration in the memorandum of association, other than an alteration in the name of the company effected in accordance with section 30 or an alteration already reported in accordance with section 186;
- (b) the operations of the exempted company since the last return or since registration of the exempted company, as the case may be, have been mainly outside the Islands; and
- (c) the provisions of sections 191 and 192 have been and are being complied with.

Annual fees

188. Every exempted company shall pay the prescribed annual fee at such times and in such manner as may be prescribed. *(Substituted by Ord. 4 of 1994)*

Failure to
comply with
sections 187 or
188

189. (1) Subject to the provisions herein contained any exempted company which fails to comply with the provisions of section 187 or 188 shall be deemed to be a defunct company, and shall thereupon be dealt with as such in accordance with the provisions of Part VI, but without prejudice to its being registered again as though it were being registered for the first time;

Provided that an exempted company to which this subsection applies may before the expiration of the period of notice given to it under subsection (2) notify the Registrar that it has passed a resolution under section 190A and upon the payment of all fees due and owing by it under this Ordinance the company shall not be deemed a defunct company to which Part VI applies but shall be treated as a company which is not an exempted company and the provisions of this Ordinance shall apply to it accordingly. *(Substituted by Ord. 11 of 1989 and Amended by Ord. 5 of 1990)*

(2) Before taking action under this section the Registrar shall give one month's notice to the defaulting company, and if the default is made good before the expiry of such notice the provisions of sections 187 and 188 shall be deemed to have been complied with.

False statement
in declaration

190. (1) If any declaration under section 183 or 187 contains any false statement or misrepresentation of a material matter the company shall on proof thereof be liable to be dissolved immediately and removed from the register, and in such case any fee tendered under section 184 or 188 shall be forfeited and paid into the Consolidated Fund.

(2) Every director and officer of a company who makes or permits the making of any such declaration knowing it to be false shall be guilty of an offence and liable on summary conviction to a fine of \$1,000 and to imprisonment for three months.

An exempted
company may
become a
company which
is not exempted

190A. An exempted company may by special resolution elect to be treated as a company which is not an exempted company and upon giving notice of such special resolution to the Registrar (and paying the prescribed fee, if any) the company, if in full compliance with the provisions of this Ordinance, shall thenceforth be treated as a company which is not an exempted company and the provisions of this Ordinance shall apply accordingly. *(Inserted by Ord. 11 of 1989)*

Prohibited
Enterprises

191. An exempted company shall not trade in the Islands with any person, firm or corporation except in furtherance of the

business of the exempted company carried on outside the Islands or where such trade is of a minor nature:

Provided that nothing in this section shall be construed so as to prevent the exempted company effecting and concluding contracts in the Islands, and exercising in the Islands all of its powers necessary for the carrying on of its business outside the Islands or trading with other exempted companies.

192. (1) Every exempted company shall appoint a representative resident in the Islands for the purpose of accepting service of any process. Such representative shall be a natural person of full capacity or a company other than an exempted company.

Exempted company to have representative resident in Islands

(2) Within thirty days of submitting its memorandum of association to the Registrar under section 182 an exempted company shall notify the Registrar of the name and address in the Islands of its representative and shall notify the Registrar within seven days of any change in such name or address.

(3) The representative for the time being notified to the Registrar by any company shall be deemed to be the person upon whom the service on the company of any proceeding, notice or any other document may be made.

(4) For the purposes of the application of section 42 to any exempted company, the address of its representative notified under this section shall be deemed to be its registered office.

(Substituted by Ord. 11 of 1989)

193. An exempted company is prohibited from making any invitation to the public in the Islands to subscribe for any of its shares or debentures.

Prohibited sale of securities

194. If an exempted company carries on any business in the Islands in contravention of the provisions of this Part, then (without prejudice to any other proceedings that may be taken in respect of the contravention) the exempted company, and every director, secretary and officer of the exempted company who is responsible for the contravention shall be guilty of an offence and may on summary conviction be liable to a fine of \$100 for every day during which the contravention occurs or continues and the exempted company shall be liable to be dissolved immediately and removed from the register.

Penalty for carrying on business contrary to provisions of Part VII

195. (1) Every exempted company may purchase, receive, take or otherwise acquire, own and hold, sell, lend, exchange, transfer or otherwise deal in and with its own shares but no exempted company may redeem or purchase its own shares except in accordance with section 198.

Powers of an exempted company respecting its own shares

(2) If an exempted company (hereinafter called “the first company”) holds a majority of the shares which confer the right to vote in the election of directors of another exempted company (hereinafter called “the second company”) and if the second company holds any shares in the first company, the second company shall not exercise any right conferred by the last mentioned shares to vote on any resolution, whether special or ordinary, or to be counted for purposes of determining whether a quorum exists, and any purported exercise of any such right shall be invalid and ineffectual for any purposes:

Provided that this subsection shall not apply to any shares held by a company solely in a fiduciary capacity.

(Substituted by Ord. 11 of 1989)

Registration of
charges

195A.* (1) In this section and in section 195B, unless otherwise specified—

“charge” means charge, mortgage, debenture or other encumbrance or any other form of security interest, fixed or floating, over property other than an interest arising by operation of law, and a reference to the creation of a charge includes a reference to the acquisition of property which is the subject of a charge;

“company” means exempted company;

“property” includes undertaking.

(2) A company may create a charge over its property, whether existing or future and wherever situate, in accordance with the law chosen by the company, and the charge shall be binding on the company in accordance with the requirements of the chosen law.

(3) The company, or any other person with the consent of the company shall, if it is desired to register the charge, pay to the Registrar the prescribed fee and file with the Registrar, in the prescribed form, a notice in duplicate containing the following particulars—

- (a) in the case of a charge created by the company, the date of its creation, and in the case of a charge which is existing on property acquired by the company, the date of the acquisition of the property;
- (b) the amount secured by the charge;
- (c) a description of the property charged sufficient to identify that property;

* This section was not in force as at the Revision Date.

- (d) the name and address of the company (and its company registration number), the person filing the particulars (if different from the company) and the person having an interest in the charge; and
- (e) details of any prohibition or restriction (if any) contained in the instrument (if any) creating the charge on the power of the company to create any future charge ranking in priority to or equally with the charge in respect of which the filing is made,

and the person filing notice of particulars of a charge may also file the name and address of the person who has custody of the original or true copy of the instrument (if any) by which the charge is created.

(4) The Registrar shall keep, with respect to each company, a register of charges and he shall, forthwith on the receipt of notice of the particulars of a charge, endorse on the duplicate the date and time of receipt, and enter the particulars in the register; and the date and time of entry in the register shall be deemed to be the date and time when the Registrar certifies the receipt of the particulars.

(5) The Registrar shall, on entering in the register the particulars of the charge, forthwith issue to the company and to the person filing the particulars (if different from the company) a certified extract from the register which shall bear the date and time when the Registrar certifies the receipt of the particulars.

(6) Where more than one notice of particulars of a charge are presented for registration on the same day or on different days but at so short an interval from each other that in the opinion of the Registrar there is doubt as to their order of priority, the Registrar may refuse registration until he has heard and determined the rights of the parties interested thereunder.

(7) Where any person proposing to take a charge over the property of a company has, with the consent in writing of the company, applied in the prescribed form to the Registrar for a stay of the registration of any notice of particulars of a charge affecting the property to be comprised in or affected by the proposed charge, the Registrar may stay the registration of any such notice for a period not exceeding twenty-one days after the date of the application (the suspension period), and a note shall be made in the register accordingly.

(8) If within the suspension period the applicant files a notice of particulars for the registration of the proposed charge, such notice shall have priority over any other notice affecting the property to be comprised in or affected by the proposed charge which may be presented for registration during the suspension period, and shall be registered in accordance with this section.

(9) Where the debt in respect of which a charge registered under this section was created is paid in whole or in part, or where the property charged is released from the charge or ceases to form part of the property of a company, the company shall file with the Registrar a certificate, countersigned by the person disclosed on the register to have an interest in the charge, attesting to the fact or facts, as the case may be.

(10) Where it is desired to file a certificate pursuant to subsection (9) and—

- (a) the person disclosed on the register to have an interest in the charge refuses to sign or authorise a person to sign on his behalf, or cannot be found; or
- (b) the company refuses to authorise a person to sign on its behalf,

the Court may, on the application of the company or of any other person having an interest in the charge, and on such terms as it considers just, authorise the filing of the certificate without that signature.

(11) The Registrar shall, on the receipt of a certificate filed pursuant to subsections (9) or (10), and on the receipt of such evidence in support of the certificate as he thinks fit, enter in the register of charges a memorandum of satisfaction in whole or in part, or a memorandum of the fact that the property charged has been released from the charge or has ceased to form part of the property of the company concerned, as the case may be, and he shall note in the memorandum the date of the receipt of the certificate.

(12) The Registrar shall issue to the company, to the person entitled to the benefit of the charge and to any other person disclosed on the register to have an interest in the charge a copy of the memorandum entered pursuant to subsection (11).

(13) A company or any other person having an interest in a charge registered under this section may apply to the Court for the rectification of any omission or misstatement of any particular relating to the registration of the charge or to the entry of a memorandum of satisfaction or release, and the Court may, on being satisfied that there is an omission or misstatement and on such terms as it considers just, order that the omission or misstatement be rectified.

(14) Subsection (13) does not affect the right of any person having an interest in a charge created over the property of a company to file further particulars of the charge supplementing or varying the registered particulars, and subsections (4), (5) and (9) shall have effect accordingly.

(15) A person taking a charge over the property of a company shall be taken to have notice of any matter disclosed on the register.

(Inserted by Ord. 13 of 1997)

195B. * (1) Any proceedings taken in the Islands in relation to a charge over the property of a company where the property is affected by more than one charge shall be governed by the law of the Islands and, notwithstanding the provisions of any other law, in any such proceedings the following provisions shall apply—

Priorities of
charges

- (a) charges created prior to the date on which this section comes into force shall continue to rank in the order in which they would have ranked had this section not come into force, and where they would have taken priority over a charge created on or after the date on which this section comes into force they shall continue to take such priority after the coming into force of this section;
- (b) charges created on or after the date on which this section comes into force and registered under this section shall rank in order of the date and time of entry in the register as provided in section 195A (4), and shall take priority over an unregistered charge created on or after the date on which this section comes into force, so however that a floating charge registered under this section shall not take priority over a fixed charge created after the registration of the floating charge (whether or not the fixed charge is itself registered) unless in respect of the floating charge there is entered on the register a prohibition or restriction mentioned in section 195A(3)(e);
- (c) charges created on or after the date on which this section comes into force but which are unregistered shall rank among themselves in the order in which they would have ranked had this section not come into force, so however that where any of such charges is subsequently registered paragraph (b) shall apply.

(2) Nothing in this section shall be construed so as to require the registration, in order to preserve its priority, of a charge created prior to the date on which this section comes into force and the registration of such a charge shall not affect its priority pursuant to subsection (1)(a).

* This section was not in force as at the Revision Date.

(3) Notwithstanding subsections (1) and (2), the parties to a registered charge may, with the consent in writing of the person entitled to the benefit of any subsisting registered charge which may be adversely affected, agree to alter the order in which the charge is to rank in relation to that other subsisting or a future registered charge (whether by reference to a foreign law or otherwise), and such agreement shall have effect for the purpose of determining the order of priority in relation to the property affected and shall be noted in the register.

(4) Where a company incorporated prior to the date on which this section comes into force has not created a charge which remains in existence at that date over any of its property, the company may file a declaration to that effect with the Registrar, and charges created and registered on or after that date shall rank in accordance with subsection (1)(b).

(5) If any declaration by a company under subsection (4) contains any false statement or misrepresentation of a material fact, a charge created over the property of the company which remains in existence at the date on which this section comes into force shall nevertheless take priority over a charge created on or after that date, whether registered or unregistered, as provided in subsection (1)(a), and the person entitled to the benefit of a charge created on or after that date may demand repayment forthwith by the company of the sum secured by the charge, together with interest, and the company shall satisfy the demand.

(Inserted by Ord. 13 of 1997)

Repealed

196. *Repealed by Ord. 4 of 1994.*

Exemption from
taxes

197. (1) For a period of twenty years from its date of incorporation an exempted company shall be exempt from—

- (a) any tax or duty to be levied on profits or income or on capital assets, gains or appreciations; and
- (b) any such tax or duty, or tax in the nature of estate duty or inheritance tax, payable on the shares, debentures or other obligations of a company.

(2) The exemption from taxes or duties conferred by subsection (1) shall—

- (a) be evidenced by a certificate issued at no extra charge in the name of the Governor;
- (b) not apply so as to exempt a company from increases in fees charged under this Ordinance; and

- (c) not apply so as to exempt from any tax on land a company or corporation that is a land holding corporation as defined in the Land Holding Companies (Share Transfer Duty) Ordinance.

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(3) Nothing in this section shall be construed as exempting any person ordinarily resident in the Islands from the provisions of any Ordinance imposing any tax.

(4) An exempted company registered before 2 August, 1993* may—

- (a) if it had obtained the undertaking referred to in the original section 197, at any time after 2 August, 1993 and before the expiration or the lapsing of the undertaking; or
- (b) if it had not obtained such undertaking, at any time after 2 August, 1993;

apply to the Registrar for the certificate referred to in subsection (2), on payment of a fee of \$100, and such certificate shall have effect for 20 years from the date of issue.

(Substituted by Ord. 1 of 1993)

198. (1) Subject to the provisions of this section, an exempted company may, if authorised to do so by its articles of association, issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder.

Redemption and
purchase of
shares

(2) Subject to the provisions of this section, an exempted company may, if authorised to do so by its articles of association, purchase its own shares, including any redeemable shares.

- (3) (a) No share may be redeemed or purchased unless it is fully paid.
- (b) An exempted company may not redeem or purchase any of its shares if as a result of the redemption or purchase there would no longer be any other member of the company holding shares.
- (c) Redemption of shares may be effected in such manner as may be authorised by or pursuant to the company's articles of association.
- (d) If the articles of association do not authorise the manner of purchase, an exempted company shall not purchase any of its own shares unless the manner of purchase has first been authorised by a special resolution of the company in general meeting.

* This is the date when Ord. 1 of 1993 commenced, and repealed and replaced section 197.

- (e) The premium (if any) payable on redemption or purchase must have been provided for out of the profits of the company or out of the share premium account of the company before or at the time the shares are redeemed or purchased.
- (f) Subject to the provisions of subsection (5) shares may only be redeemed or purchased out of profits of the company or out of the proceeds of a fresh issue of shares made for the purposes of the redemption or purchase.
- (g) Shares redeemed or purchased under this section shall be treated as cancelled on redemption or purchase, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption or purchase of shares by a company is not to be taken as reducing the amount of the company's authorised share capital.
- (h) Without prejudice to paragraph (g), where an exempted company is about to redeem or purchase shares, it has power to issue shares up to the nominal value of the shares to be redeemed or purchased as if those shares had never been issued:

Provided that where new shares are issued before the redemption or purchase of the old shares the new shares shall not, so far as relates to fees payable on or accompanying the filing of any return or list, be deemed to have been issued in pursuance of this subsection if the old shares are redeemed or purchased within one month after the issue of the new shares.

- (4) (a) Where under this section shares of an exempted company are redeemed or purchased wholly out of the profits of the company, the amount by which its issued capital is diminished in accordance with paragraph (g) of subsection (3) on cancellation of the shares redeemed or purchased, shall be transferred to a reserve called "the capital redemption reserve".
- (b) If the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.
- (c) Paragraph (b) does not apply if the proceeds of the fresh issue are applied by the company in making a

purchase of its own shares in addition to a payment out of capital under subsection (5).

(d) The provisions of this Ordinance relating to the reduction of the share capital of an exempted company shall apply as if the capital redemption reserve were paid-up share capital of the company, except that the reserve may be applied by the company in paying up its unissued shares to be allotted to members of the company as fully-paid bonus shares.

(5) (a) Subject to the provisions of this section, an exempted company may, if so authorised by its articles of association, make a payment in respect of the redemption or purchase of its own shares otherwise than out of its profits or the proceeds of a fresh issue of shares.

(b) References in the succeeding provisions of this subsection to payment out of capital are, subject to paragraph (f), to be read as referring to any payment so made, whether or not it would be regarded apart from this subsection as a payment out of capital.

(c) The amount of any payment which may be made by an exempted company out of capital in respect of the redemption or purchase of its own shares is such an amount as, taken together with—

(i) any available profits of the company which are being applied for the purposes of the redemption or purchase; and

(ii) the proceeds of any fresh issue of shares made for the purpose of the redemption or purchase,

is equal to the price of redemption or purchase, and the payment out of capital permitted under this paragraph is referred to in the succeeding provisions of this subsection as the capital payment for the shares. Nothing in this paragraph shall be taken to imply that a company shall be obliged to exhaust any available profits before making any payment.

(d) Subject to paragraph (f), if the capital payment for shares redeemed or purchased and cancelled is less than their nominal amount, the amount of the difference shall be transferred to the company's capital redemption reserve.

(e) Subject to paragraph (f), if the capital payment is greater than the nominal amount of the shares

redeemed or purchased and cancelled the amount of any capital redemption reserve, share premium account or fully paid share capital of the company may be reduced by a sum not exceeding, or by sums not in the aggregate exceeding, the amount by which the capital payment exceeds the nominal amount of the shares.

- (f) Where the proceeds of a fresh issue are applied by an exempted company in making any redemption or purchase of its own shares in addition to a payment out of capital under this subsection, the references in paragraphs (d) and (e) to the capital payment are to be read as referring to the aggregate of that payment and those proceeds.

(6) A payment out of capital by an exempted company for the redemption or purchase of its own shares is not lawful unless immediately following the date on which the payment out of capital proposed to be made the company shall be able to pay its debts as they fall due in the ordinary course of business.

- (7) (a) Where an exempted company is being wound up and at the commencement of the winding up any of its shares which are or are liable to be redeemed have not been redeemed or which the company has agreed to purchase have not been purchased, then subject to the following provisions of this subsection the terms of redemption or purchase may be enforced against the company; and when shares are redeemed or purchased under this subsection they shall be treated as cancelled:

Provided that this paragraph shall not apply if—

- (i) the terms of redemption or purchase provided for the redemption or purchase to take place at a date later than the date of the commencement of the winding up; or
- (ii) during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.
- (b) There shall be paid in priority to any amount which the company is liable by virtue of paragraph (a) to pay in respect of any shares—

- (i) all other debts and liabilities of the company (other than any due to members in their character as such); and
- (ii) if other shares carry rights whether as to capital or as to income which are preferred to the rights as to capital attaching to the first mentioned shares, any amount due in satisfaction of those preferred rights,

but, subject to that, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.

- (8) (a) Any redeemable preference shares issued by an exempted company before 31 December, 1989 are subject to redemption in accordance with the provisions of this section.
- (b) Any capital redemption reserve fund established by an exempted company before 31 December, 1989 is to be known as the company's capital redemption reserve and be treated as if it had been established for the purposes of subsection (4); and accordingly, a reference in any law, the articles of association of any company or any other instrument to a company's capital redemption reserve fund is to be construed as a reference to the company's capital redemption reserve.
(Substituted by Ord. 11 of 1989)

PART VIIA

LIMITED LIFE COMPANIES

198A.(1) An exempted company may at any time apply to the Registrar to be registered as a limited life company.

(2) An application may also be made under subsection (1) at the same time as an application is made—

- (a) to register a proposed company as an exempted company under section 180;
- (b) to re-register a non-exempted company as an exempted company under section 184A; or
- (c) to register a foreign company as being continued in the Islands as if it had been incorporated as an exempted company under section 205.

Exempted
company may
apply to be
registered as a
limited life
company

(3) An application under subsections (1) and (2) shall in addition to any other fee that may be payable, be accompanied by an application fee of \$100.

(Inserted by Ord. 1 of 1993)

Registration as a
limited life
company

198B.(1) The Registrar shall register as a limited life company an exempted company that has made an application under section 198A—

- (a) where the company was not already registered as a company prior to the application, if—
 - (i) it has at least two subscribers;
 - (ii) the memorandum of association of the company limits the life of the company to a period of 50 years from the date of its incorporation or less; and
 - (iii) the name of the company includes at its end “Limited Life Company” or the abbreviation “LLC”; or
- (b) where the company was already registered as a company prior to the application, if—
 - (i) the Registrar has been supplied with a declaration that it has at least two members;
 - (ii) the Registrar has been supplied, where the duration of the company is not already limited to a period of 50 years or less, with a certified copy of a special resolution of the company altering its memorandum of association to limit the duration of the company to a period of 50 years from the date of its incorporation or less; and
 - (iii) the Registrar has been supplied, in accordance with section 30, with a copy of a special resolution of the company changing its name to a name that includes at its end “Limited Life Company” or the abbreviation “LLC”.

(2) On registering an exempted company as a limited life company the Registrar shall—

- (a) in the case of a company referred to in subsection (1)(a), certify in the certificate of incorporation issued in accordance with section 26(1) or the certificate of registration by way of continuation issued in accordance with section 205 that the company is registered as a limited life company; and

(b) in the case of a company referred to in subsection (1)(b), certify under his hand and seal of office that the company is registered as a limited life company stating the date of such registration.

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

(Inserted by Ord. 1 of 1993)

198C. A limited life company may by special resolution alter its memorandum of association extending the duration of the company to such period or periods not exceeding in aggregate 150 years from the date of the incorporation of the company. *(Inserted by Ord. 1 of 1993)*

Maximum duration of a limited life company

198D. (1) The articles of association of a limited life company may prohibit the transfer of any share or other interest of a member of the company absolutely or may provide that the transfer of any share or other interest of a member requires either the unanimous resolution of all the members, or a resolution passed by such proportion of the members as the articles may specify.

Contents of articles of association

(2) The articles of association of a limited life company may provide that a person ceases to be a member of the company upon the happening of any one or more of the events specified in the articles, and may further provide that the rights of such former members shall be limited to an entitlement to receive such value for their shares in the company as may be determined by the articles of association.

(3) The articles of association of a limited life company may provide that the affairs of the company may be managed by its members in their capacity as such, or by some person designated as manager with such rights, powers and duties as may be specified in the articles; and in such a case the company shall be exempt from the requirements of section 18A. *(Inserted by Ord. 1 of 1993 and Amended by Ord. 4 of 1994)*

(4) The articles of association may designate a person to be the liquidator of the company in the event of the company being in dissolution pursuant to section 198E.

(5) The articles of association of a limited life company may provide that where the company has commenced winding up and dissolution by virtue of section 198E(1)(c), the winding up and dissolution of such a company may be discontinued by the unanimous resolution of all the members of the company passed within 30 days of the events specified in section 198E(1)(c), resolving to discontinue the winding up and dissolution and

continue the existence of the company as if the winding up and dissolution had never occurred:

Provided that no such resolution shall be effective unless there remain not less than two members of the company.

Winding up of a
limited life
company

198E. (1) A limited life company shall automatically and without further action be in voluntary winding up and dissolution—

- (a) when the period fixed for the duration of the company expires;
- (b) if the members of the company pass a special resolution requiring the company to be wound up and dissolve; or
- (c) subject to any contrary provisions in the articles of association, upon the happening of any one or more of the following events—
 - (i) the bankruptcy, death, insanity, retirement, resignation, withdrawal, expulsion, termination, cessation, or dissolution of a member;
 - (ii) the transfer of any share or other interest in the company in contravention of the articles of association;
 - (iii) the redemption, repurchase or cancellation of all the shares of a member of the company; or
 - (iv) the occurrence of any event (whether or not relating to the company or a member) of which it is provided in the articles of association that the company is to be dissolved.

(Amended by Ord. 4 of 1994)

(2) The provisions of sections 130 to 147 inclusive, shall apply to the winding up and dissolution of a limited life company to the extent that they are not excluded or modified by subsections (3), (4), (5), (6) and (7). *(Amended by Ord. 4 of 1994)*

(3) Sections 130 and 131 shall not apply to the winding up and dissolution of a limited life company. *(Amended by Ord. 4 of 1994)*

(4) Section 132 shall apply to a limited life company as if the words “except transfers made to or with the sanction of the liquidator or” were omitted. *(Amended by Ord. 4 of 1994)*

(5) Where a limited life company is in winding up and dissolution by virtue of subsection (1) the person, if any, designated in the articles of association, shall without further action become the liquidator, failing which the director or, as the

case may be, the manager shall without further action become the liquidator, failing which the provisions of section 142 shall apply.

(5a) Where a person has without further action become the liquidator pursuant to subsection (2), section 134(b) and (c) shall not apply. (*Inserted by Ord. 4 of 1994*)

(6) Section 134(e) shall apply to a limited life company as if the words “except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers” were omitted.

(7) Any reference to the passing of a resolution for the winding up of a company in sections 130 to 147 inclusive, shall be construed as including a reference to the happening of an event causing a limited life company to be wound up and dissolved.

(8) The liquidator of a limited life company, or in the event of there being no liquidator, the director, or as the case may be, the manager of the company shall cause to be published in the *Gazette* notice of the winding up and dissolution of a company pursuant to this section but failure to so publish the same shall not prejudice the validity of the winding up and dissolution. (*Inserted by Ord. 4 of 1994*)

(*Inserted by Ord. 1 of 1993 and Amended by Ord. 4 of 1994*)

198F. (1) A company ceases to be a limited life company if—

- (a) the Registrar removes its name from the register under section 206; or
- (b) the Registrar issues a certificate of change of name in accordance with section 30(2) which records a change of name for the company that does not include at its end “Limited Life Company” or “LLC”; or
- (c) the company passes a special resolution to alter its memorandum of association to provide for a period of duration for the company that exceeds or is capable of exceeding 150 years from the date of its incorporation;

and in the case of paragraph (b) or (c) the company pays a deregistration fee of \$100.

(2) On a company ceasing to be a limited life company—

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

Cancellation of
registration

(b) the certificate issued by virtue of section 198B(2) ceases to have effect.

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

(Inserted by Ord. 1 of 1993)

Section 38 to apply to a limited life company

198G. Notwithstanding section 185(2), the provisions of section 38 shall apply to a limited life company. *(Inserted by Ord. 1 of 1993)*

Definition

198H. In this Part, unless the context otherwise requires, “transfer” means with respect to any shares, the transfer, sale, assignment, mortgage, creation or permission to subsist of any pledge, lien, charge or encumbrance over, grant of any option, interest or other rights in, or other disposition of any such shares, any part thereof or any interest therein, whether by agreement, operation of law or otherwise. *(Inserted by Ord. 1 of 1993)*

PART VIII

CONFIDENTIAL RELATIONSHIPS IN RELATION TO EXEMPTED COMPANIES

Interpretation

199. In this Part, unless the context otherwise requires—

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“bank” and “financial institution” have the meanings ascribed to them in the Banking Ordinance;

“business of a professional nature” includes the relationship between a professional person and a principal, however the latter may be described;

“confidential information” includes information concerning any property which the recipient thereof is not, otherwise than in the normal course of business, authorised by the principal to divulge;

“criminal” in relation to an offence means an offence contrary to the criminal law of the Islands;

“normal course of business” means the ordinary and necessary routine involved in the efficient carrying out of the instructions of a principal including compliance with such laws and legal process as arises out of and in connection therewith and the routine exchange of information between licensees;

“principal” means a person who has imparted to another confidential information in the course of the transaction of business of a professional nature;

“professional person” includes a public or government official, a bank, a trust company, an attorney, an accountant, an estate agent, an insurer, a broker and every kind of commercial agent and adviser whether or not answering to the above descriptions and whether or not licensed or authorised to act in that capacity and every person subordinate to or in the employ or control of such person for the purpose of his professional activities;

“property” includes every present, contingent and future interest or claim, direct or indirect, legal or equitable, positive or negative, in any money, moneys worth, realty or personalty, movable or immovable, rights and securities thereover and all documents and things evidencing or relating thereto.

(Amended by L.N. 41/1994)

200. (1) Subject to subsection (2), this Part has application to all confidential information with respect to business of a professional nature of an exempted company which arises in or is brought into the Islands and to all persons coming into possession of such information at any time thereafter whether they be within the jurisdiction or thereout.

Application and
scope

(2) This Part of this Ordinance has no application to the seeking, divulging or obtaining of confidential information—

- (a) in compliance with the directions of the Supreme Court pursuant to section 201;
- (b) by or to—
 - (i) any professional person acting in the normal course of business or with the consent, express or implied, of the relevant principal;
 - (ii) a police officer of the rank of Inspector or above investigating an offence committed or alleged to have been committed within the jurisdiction;
 - (iii) a police officer of the rank of Inspector or above, specifically authorised by the Governor in that behalf, investigating an offence committed or alleged to have been committed outside the Islands, which offence, if it had been committed in the Islands, would have been an offence against its laws;
 - (iv) the Permanent Secretary, Finance, or, in relation to particular information specified by the

Governor, such other person as the Governor may authorise; (*Amended by L.N. 41/1994*)

- (v) a bank or financial institution in any proceedings, cause or matter when and to the extent to which it is reasonably necessary for the protection of the bank's interest, either as against its customers or as against third parties in respect of transactions of the bank or financial institution for or with its customers;
 - (vi) the relevant professional person with the approval of the Permanent Secretary, Finance, when necessary for the protection of himself or any other person against crime; (*Amended by L.N. 41/1994*)
- (c) in accordance with the provisions of this or any other Ordinance.

Directions regarding the giving in evidence of confidential information

201. (1) Whenever a person intends or is required to give in evidence in, or in connection with, any proceeding being tried, inquired into or determined by any court, tribunal or other authority (whether within or without the Islands) of any confidential information within the meaning of this Part of this Ordinance, he shall before so doing apply for directions and any adjournment necessary for that purpose shall be granted. (*Amended by Ord. 11 of 1989*)

(2) Application for directions under subsection (1) shall be made to, and be heard and determined by, a Judge of the Supreme Court sitting alone and *in camera*. At least seven days' notice of any such application shall be given to the Attorney General and, if the Judge so orders, to any person in the Islands who is a party to the proceedings in question. The Attorney General may appear as *amicus curiae* at the hearing of any such application and any party on whom notice has been served as aforesaid shall be entitled to be heard thereon, either personally or by counsel.

(3) Upon hearing an application under subsection (2) a Judge shall direct—

- (a) that the evidence be given; or
- (b) that the evidence shall not be given; or
- (c) that the evidence be given subject to conditions which he may specify whereby the confidentiality of the information is safeguarded.

(4) In order to safeguard the confidentiality of a statement, answer or testimony ordered to be given under subsection (3)(c) a Judge may order—

- (a) divulgence of the statement, answer or testimony to be restricted to certain named persons;
- (b) evidence to be taken *in camera*;
- (c) reference to the names, addresses and descriptions of any particular persons to be by alphabetical letters, numbers or symbols representing such persons, the key to which shall be restricted to persons named by him.

(5) Every person receiving confidential information by operation of subsection (2) is as fully bound by the provisions of this Part of this Ordinance as if such information had been entrusted to him in confidence by a principal.

(6) In considering what order to make under this section a Judge shall have regard to—

- (a) whether such order would operate as a denial of the rights of any person in the enforcement of a just claim;
- (b) any offer of compensation or indemnity made to any person desiring to enforce a claim by any person having an interest in the preservation of secrecy under this Part of this Ordinance; and
- (c) in any criminal case, the requirements of the interests of justice.

(7) In this section, unless the context otherwise requires—

“court” includes a Judge and a Magistrate, and, except arbitrators, all persons legally authorised to take evidence;

“given in evidence” and its cognates means make a statement, answer an interrogatory or testify during or for the purposes of any proceedings;

“proceeding” means any court proceeding, civil or criminal, and includes a preliminary or interrogatory matter leading to or arising out of a proceeding.

202. (1) Subject to the provisions of section 200(2), whoever—

- (a) being in possession of confidential information however obtained;
 - (i) divulges it; or
 - (ii) attempts, offers or threatens to divulge it; or
- (b) wilfully obtains or attempts to obtain confidential information,

Offences and
penalties

shall be guilty of an offence and liable on summary conviction to a fine of \$5,000 and to imprisonment for two years.

(2) Whoever commits an offence under subsection (1) and receives or solicits on behalf of himself or another any reward for so doing shall be liable to double the penalty therein prescribed and to a further fine equal to the reward received and also to forfeiture of the reward.

(3) Whoever, being in possession of confidential information clandestinely, or without the consent of the principal, makes use thereof for the benefit of himself or another shall be guilty of an offence and on summary conviction liable to the penalty prescribed in subsection (2) and for that purpose any profit accruing to any relevant transaction shall be regarded as a reward.

(4) Whoever being a professional person, entrusted as such with confidential information, the subject of the offence, commits an offence under subsection (1), (2) or (3) shall be liable to double the penalty therein prescribed.

(5) For the removal of doubt it is declared that, subject to subsection (2) of section 200, a bank which gives a credit reference in respect of a customer without first receiving the authorisation of that customer shall be guilty of an offence under subsections (1) and (4).

Regulations

203. The Governor may make regulations for the administration of this Part of this Ordinance.

Attorney
General's fiat

204. No prosecution shall be instituted under this Part of this Ordinance without the consent of the Attorney General.

PART IX

TRANSFER OF COMPANIES FROM AND TO ANOTHER JURISDICTION

Continuation in
the Islands of
company
incorporated
elsewhere

205. (1) Subject to subsection (10) a company incorporated as a company or corporation under the laws of any country other than the Islands, or of any jurisdiction within any such country other than the Islands (in this section referred to as a “foreign company”), may if it appears to the Registrar that there is no provision in the law of that country or jurisdiction preventing such application, apply to the Registrar to be registered as being continued in the Islands as if it had been incorporated as an exempted company under this Ordinance.

(2) An application for registration as an exempted company in accordance with subsection (1) shall be made in the manner prescribed in Part II of this Ordinance provided that the

requirement that an application be accompanied by the original memorandum of association, if any, shall be deemed to be complied with if the application is accompanied by a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and if the instrument is not written in the English language, a certified translation thereof, and shall also be accompanied by such fee as would be payable if the foreign company was being incorporated as an exempted company under Part VII of this Ordinance.

(3) Such application shall in addition be supported by such material as the Registrar may require to satisfy himself—

- (a) that such application is not prohibited by the country or jurisdiction in which the foreign company has been incorporated; and
- (b) that the consent of such number or proportion of the shareholders, debenture-holders and creditors of the foreign company as may be required by the laws of the country or jurisdiction of incorporation to such application has been obtained.

(4) Subject to the provisions of this Ordinance the Registrar may in his discretion grant a permit for the registration of such foreign company as one which may be continued as an exempted company in the Islands:

Provided that no such permit for the registration of a foreign company may be granted if—

- (a) its winding up has commenced;
- (b) a receiver of its property has been appointed;
- (c) there is any scheme or order in relation thereto whereby the rights of creditors are suspended or restricted; or
- (d) any proceedings for breach of the laws of the country or jurisdiction of incorporation have been commenced against such foreign company, not being proceedings arising out of an event which on the date of the occurrence thereof did not constitute such a breach.

(5) A permit for the registration of a foreign company as one which may be continued as an exempted company in the Islands shall be endorsed on the memorandum submitted to the Registrar and shall be in such form as the Registrar shall determine and such memorandum endorsed with the permit shall as soon as possible be returned to the applicant or the person or persons acting on its behalf.

(6) If such permit is endorsed on the memorandum of a foreign company such company may, within three years after the date of the grant of the permit, file the memorandum with the Registrar, who before accepting such memorandum for filing shall satisfy himself that it is duly endorsed with a permit and that it conforms with the requirements of this Ordinance.

(7) Upon the due filing of the memorandum the Registrar shall retain and forthwith register the memorandum and the name of the company, specifying that it is registered as an exempted company in a register of foreign companies in the Islands, and shall then forthwith issue under his hand and seal a certificate of continuation in the Islands with the date of registration and its status as an exempted company specified therein and, subject to this section, upon the issue of such certificate of continuation the company shall be deemed thereafter to be a company incorporated under this Ordinance and domiciled in the Islands so, however that it may within a period of six months from the date of registration in writing elect to continue to be subject to the laws of the jurisdiction under which it was constituted, whereupon the company shall continue to be subject to the laws of that jurisdiction as they had effect upon the date of the first application for registration save in so far as those laws upon that date conferred upon the company a right or a power which may not be granted under this Ordinance.

(8) The registration of a company under this section shall not operate—

- (a) to create a new legal entity;
- (b) to prejudice or affect the continuity of the company;
- (c) to affect the property of the company;
- (d) to render defective any legal or other proceedings instituted or to be instituted, by or against the company or any other person.

(9) Upon the registration of a company under this section—

- (a) so much of its constitution as would, if it had been incorporated under this Ordinance, have been required by this Ordinance to be included in its memorandum of association shall be deemed to be the registered memorandum of association of the company; and
- (b) so much of its constitution as does not, by virtue of the preceding paragraph, comprise its memorandum of association shall be deemed to be the registered articles of association of the company, and shall be binding on the company and its members accordingly save in so far as the company has after its

registration made an election in writing under subsection (7) to continue to be subject to the laws of the jurisdiction under which it was constituted.

(10) No company which could not have been incorporated under this Ordinance shall be registered under this section.

(11) The provisions of Part VII of this Ordinance shall be applied to such foreign company registered as being continued in the Islands.

(12) In this section “company” includes any entity having a legal personality separate and distinct from its members or founders.

206. (1) A company registered under this Ordinance may, where the laws of such country or jurisdiction so allow, upon obtaining the consent of the Registrar apply to the proper officer of any country other than the Islands or any jurisdiction within such country for an instrument of continuation permitting such company to continue in being as if it had been incorporated under the laws of that other country or jurisdiction; and on and after the date of the instrument of continuation the company shall become a company under the laws of that other country or jurisdiction and be domiciled therein and shall be subject to such laws as permitted or required (as the case may be) by the laws of that other country or jurisdiction.

Continuation
outside Islands
of company
incorporated
under this
Ordinance

(2) No company may apply to the Registrar for his consent under subsection (1) unless—

- (a) the holders of not less than three quarters of the debentures of the company, if any, of each class, and where any shares of the company are in existence, holders of not less than three quarters of such shares of each class, have authorised such application; and
- (b) the company has caused to be published in the *Gazette* not less than fourteen days before submitting an application to the Registrar a notice of its intention to make such application; and
- (c) it lodges with the Registrar an affidavit sworn by a director of the company in which are set out the names and addresses of its creditors and the total amount of its indebtedness to creditors.

(3) The Registrar shall not give his approval to a company applying for its continuation in another country or jurisdiction unless he is satisfied that—

- (a) the requirements of subsection (2) have been complied with;

- (b) the intended transfer of domicile is unlikely to be detrimental to the rights or proper interests of any of the creditors of the company; and
- (c) the company at the time of such application is not in breach of any of its duties or obligations under this Ordinance,

and may make his approval conditional upon such provisions as he thinks necessary being made by the company to safeguard the rights and proper interests of any member, debenture-holder or creditor of the company or any such class of such members, debenture-holders or creditors or upon the company taking such steps as he considers necessary to remedy any such breach as aforesaid.

(4) Upon an instrument of continuation continuing the company in another country or jurisdiction being executed by the proper officer of that country or jurisdiction, the company shall forthwith notify the Registrar of the particulars of such instrument and the company shall be deemed to have ceased to be a company incorporated in the Islands from the date when its continuation in that other country or jurisdiction takes effect, and the Registrar shall remove its name from the register:

Provided that nothing in this subsection shall—

- (a) prevent such a company from being registered in the Islands as a foreign company at any time after it has ceased to be a company incorporated in the Islands; or
 - (b) take away or affect the jurisdiction of any court in the Islands to hear and determine any proceedings commenced therein by or against the company before it ceased to be a company registered in the Islands.
- (5) For the purposes of this section—
- (a) a person who has, in the Islands or elsewhere, commenced proceedings against a company, other than proceedings to recover a debt alleged to be owed by the company to the taxation or revenue authority of any country or jurisdiction, or has counter claimed against a company in proceedings commenced by the company shall be deemed to be a creditor of the company;
 - (b) no person shall be deemed to be a creditor of a company in respect of any debt owed to the taxation or revenue authority of any country or jurisdiction.

PART X

COMPANIES INCORPORATED OUTSIDE THE ISLANDS
CARRYING ON BUSINESS WITHIN THE ISLANDS

207. This Part shall apply to all foreign companies, that is to say, all bodies corporate incorporated outside the Islands which after the commencement of this Ordinance established a place of business, or commence carrying on business (which expression in this Part includes, without limiting its generality, the sale by or on behalf of a foreign company of its shares or debentures) within the Islands, and all bodies corporate incorporated outside the Islands which before the commencement of this Ordinance established a place of business, or carried on business within the Islands and continues to carry on or have an established place of business within the Islands at the date of commencement of this Ordinance.

Definition of
foreign
companies

208. (1) Every foreign company shall within one month after becoming a foreign company as herein defined, deliver to the Registrar for registration—

Documents, etc.
to be delivered to
Registrar by
foreign
companies

- (a) a copy, certified under the public seal of the country, city, place or Registrar under the laws of which the foreign company has been incorporated, of its charter, statutes or memorandum and articles of association or other instrument constituting or defining its constitution and if the instrument is not written in the English language a certified translation thereof;
- (b) a list of its directors containing such particulars with respect to the directors as are by this Ordinance required to be contained with respect to directors in the register of the directors of a company;
- (c) the names and addresses of some one or more than one person resident in the Islands authorised to accept on its behalf service of process and any notices required to be served on it; and
- (d) shall pay to the Registrar a fee of \$250 upon registration and thereafter a similar fee upon each anniversary of such registration.

(2) Any person for the time being notified under paragraph (c) of subsection (1) to the Registrar by any foreign company shall be deemed to be the person upon whom service on that company of any process, notice or other document may be made. (*Inserted by Ord. 11 of 1989*)

*Repealed***209.** *Repealed by Ord. 21 of 1992.*Registration of
foreign
companies
incorporated in a
foreign country**210.** (1) Upon compliance with the provisions of section 208, the Registrar shall issue a certificate under his hand and seal of office that the company is registered under this Ordinance.

(2) A certificate of registration of a company issued under this section shall be conclusive evidence that compliance has been made with all the requirements of this Ordinance in respect of registration.

Return to be
delivered to
Registrar where
documents, etc.,
altered**211.** If in the case of any foreign company any alteration is made in—

- (a) its charter, statutes or memorandum and articles of association or any such instruments as aforesaid; or
- (b) the names or addresses of the persons authorized to accept service on its behalf;

the foreign company shall within twenty-one days after the date on which particulars of the alterations could, in due course of post and if dispatched with due diligence, have been received in the Islands from the place where the foreign company is incorporated, deliver to the Registrar for registration a return containing the particulars of the alteration.

Obligation to
state name of
company,
whether limited,
and country
where
incorporated**212.** (a) Every foreign company shall state the country in which the foreign company is incorporated in every prospectus inviting subscriptions for its shares or debentures in the Islands;

- (b) Every foreign company shall—
 - (i) conspicuously exhibit on every place where it carries on business in the Islands the name of the foreign company or company incorporated in a foreign country and the country in which it is incorporated; and
 - (ii) cause the name of the foreign company or company incorporated in a foreign country and of the country in which it is incorporated to be stated in legible characters on all its bill heads, letter paper, notices, advertisements and other official publications; and
 - (iii) if the liability of the members of the foreign company or company incorporated in a foreign country is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and on all its bill heads, letter paper, notices, advertisements and other

official publications in the Islands, and to be affixed on every place where it or its agents carries on its business in the Islands.

213. Any process or notice required to be served on a foreign company or company incorporated in a foreign country shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under the provisions of paragraph (c) of section 208 or paragraph (b) of section 211 and left at or sent by post to the address which has been so delivered:

Service on
foreign company
to which Part X
applies

Provided that—

- (a) where any such foreign company or company incorporated in a foreign country makes default in delivering to the Registrar the name and address of a person resident in the Islands who is authorised to accept on behalf of the foreign company or company incorporated in a foreign country service of process or notices; or
- (b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served,

a document may be served on the foreign company or company incorporated in a foreign country by leaving it at or sending it by post to any place of business established in the Islands by the foreign company.

214. (1) Any deed of any foreign company which may be executed out of the Islands may be registered in the Islands if executed under the common seal of such foreign company in the presence of one witness at least; if—

Deeds executed
out of and within
the Islands

- (a) the execution of such deed, and the seal thereto affixed is the common seal of the foreign company; and
- (b) the same was affixed thereto by the authority of the board of directors or officers of such foreign company and in conformity with the articles of association of such foreign company; and
- (c) there is affixed the signature of the directors, secretary or officers to any such deed (where such signatures are required by the charter, statutes, memorandum or articles of association of such foreign company),

and the signatures to such deed of the directors, secretary or officers by whom such seal may have been affixed, may be proved

by the affidavit or solemn declaration of one of such witnesses or of the directors, secretary, or other officers affixing such seal, to be sworn or made before a notary public.

(2) Every deed made in the Islands on behalf of any such foreign company and executed under the hand of any person empowered by instrument in writing under the common seal of such foreign company either generally or in respect of any specified matters, as its attorney to execute deeds on its behalf in the Islands, shall be binding on such foreign company and shall have the same effect as if it were under the common seal of the foreign company.

Removing
company's name
from register

215. If any foreign company ceases to have a place of business in the Islands it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given the obligation of the foreign company to deliver any document to the Registrar shall cease:

Provided that where the Registrar is satisfied by any other means that the foreign company has ceased to carry on or have a place of business in the Islands he may close the file of the foreign company and thereupon the obligation of the foreign company to deliver any document to the Registrar shall cease.

Penalties for
failing to comply
with provisions
of Part X

216. If any foreign company or company incorporated in a foreign country fails to comply with any of the foregoing provisions of this Part, the foreign company or company incorporated in a foreign country and every officer or agent of the foreign company or company incorporated in a foreign country shall be guilty of an offence and liable on summary conviction to a fine of \$500 or in the case of a continuing offence to a fine of \$50 for every day during which default continues.

Interpretation of
Part X

217. For the purpose of this Part—
“director”, in relation to a foreign company, includes any person in accordance with whose directions or instructions the directors of the foreign company are accustomed to act; and
“place of business” includes a share transfer or registration office.

PART XI

APPLICATION OF ORDINANCE TO COMPANIES FORMED OR REGISTERED IN THE ISLANDS PRIOR TO THIS ORDINANCE

Application to
existing
companies

218. In the application of this Ordinance to existing companies, it shall be the same manner—

- (a) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Ordinance as a company limited by shares;
- (b) in the case of a company limited by guarantee, as if the company had been formed and registered under this Ordinance as a company limited by guarantee; and
- (c) in the case of a company other than a limited company, as if the company had been formed and registered under this Ordinance as an unlimited company.

219. A reference express or implied, to the date of incorporation of an existing company shall be construed as a reference to the date on which the company was incorporated and recorded under the provisions of the law at that time in force in the Islands.

Date of
incorporation

220. The articles of association of an existing company shall so far as the same are not contrary to any express provisions of this Ordinance remain in force until altered or rescinded.

Articles of
association
remain

221. *Expired.*

PART XII

GENERAL

222. The Registrar may at any time and from time to time prohibit the sale of any shares or debentures of any foreign company or exempted company in the Islands or any invitation in the Islands to subscribe for any shares or debentures of a foreign company or exempted company and in the event of any violation by a foreign company or exempted company of such prohibition the foreign company or exempted company and each of its directors and officers shall be guilty of an offence and liable on summary conviction to a fine of \$1,000 and also in respect of an offence by any director or officer to imprisonment for three months.

Power of
Registrar to
prohibit sale of
securities

222A. (1) The Registrar shall maintain under appropriate conditions all documents and papers lodged with him under this Ordinance and shall keep in a separate file or bundle the documents and papers relating to each company. He shall also keep such other indices, registers and records as are required for the efficient discharge of his responsibilities.

Maintenance of
company records
and public
inspection
thereof

(2) Any person at any time during the prescribed hours, may, on the payment of the prescribed fee, inspect any index, register or record maintained under subsection (1) or the contents of any file or bundle relating to any company and obtain a copy of any document therein.

(3) The Registrar, if he finds it convenient so to do, may at the request of any person and on the payment of the prescribed fee—

- (a) search a file or bundle in his custody;
- (b) make any facsimile, reproduction or copy of any document in his custody or any extract from such document;
- (c) report on a search made by him and transmit it or any copy, document or extract made by him by mail or any electronic means.

(Inserted by Ord. 11 of 1989)

Power of
Registrar to
examine
registers

223. The Registrar may at any time between 10:00 a.m. and 12:00 noon, and 2:00 p.m. and 4:00 p.m. on any business day (Saturdays, Sundays, and any Public Holiday excluded) at the registered office of any company examine the certificate of incorporation, the register of members, the register of mortgages and the register of directors of that company and any person, without excuse, the burden of proof of which shall be on that person, hindering the Registrar from or in his examination shall be guilty of an offence and liable upon summary conviction to a fine of \$200 and to imprisonment for two months.

Regulations

224. The Governor may make regulations for carrying out the purposes of this Ordinance and, without prejudice to the generality of the foregoing, may make regulations prescribing—

- (a) the form of any document;
- (b) any fee that may be prescribed under this Ordinance and such other fees to be paid for doing, or forbearing from doing anything;
- (c) the days and hours during which the office of the Registrar shall be open for business of any class;
- (d) the conditions upon which members of the public have access to any file, bundle or document in his custody;
- (e) such other things as may be incidental to, or conducive of, such purposes.

(Inserted by Ord. 11 of 1989 and Amended by Ord. 4 of 1989)

225. *Expired.*

226. Nothing in this Ordinance shall be construed so as to relieve any company of its obligation under any other Ordinance to apply for, obtain and observe the conditions of any licence required by any such Ordinance as a condition for the carrying on of any particular kind of business.

Requirement as to licences under any other law

227. (1) The Registrar shall not be liable for any act done, or omission made, by him in good faith and without recklessness in the performance of his duties and the exercise of his powers and discretions under this Ordinance.

Registrar to have certain immunities

(2) The provisions of this section are in addition to, and not in derogation from, the provisions of section 178.

(Inserted by Ord. 11 of 1989)
