



10-S-092

SECURITIES COMMISSION OF THE BAHAMAS

INVESTMENT FUNDS ACT, 2003

INVESTMENT FUND LICENCE

Pursuant to Section 3(a)(iii) of the Investment Funds Act, 2003

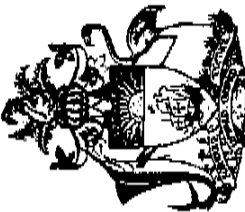
Ceres Fund Ltd.

is hereby licensed to carry on business as a STANDARD INVESTMENT FUND subject to the terms and conditions specified in the Act.

Issued this 29th day of June, 2011

Signed:

Chairman



IBC 01

Commonwealth of The Bahamas
The International Business Companies Act 1990
Certificate of Incorporation

(Section 11 and 12)

No. 63,431 B

CERES FUND LTD.

I, KEVA L. BAIN, ACT. DEPUTY, Registrar General of the Commonwealth of The Bahamas
Do hereby Certify pursuant to the International Business Companies Act, No. 2 of 1990 that all the
requirements of the said Act in respect of incorporation have been satisfied, and that

REGISTERED COPY
THIS COPY IS TO BE KEPT IN THE COMPANY REGISTER
this 15TH day of AUGUST 1997
280414
REGISTERED AGENT

CERES FUND LTD.

of the Commonwealth of The Bahamas as an International Business Company

AUGUST 1997

Given under my hand and seal
at Nassau in the Common-
wealth of The Bahamas

Before me,

ACT. DEPUTY REGISTRAR GENERAL

COMMONWEALTH OF THE BAHAMAS
THE INTERNATIONAL BUSINESS COMPANIES ACT, 2000

MEMORANDUM OF ASSOCIATION

OF

CERES FUND LTD

1. Name

The name of the Company is CERES FUND LTD.

2. Registered Office

The Registered Office of the Company will be Trinity Place Annex, cnr Frederick & Shirley Streets, PO Box N-4805, Nassau, Bahamas or such other place within the Bahamas as the Company may from time to time by a resolution of the Board determine.

3. Registered Agent

The Registered Agent of the Company will be Lex Management Limited, c/o Alexiou Knowles & Co., St Andrews Court, PO Box N-4805, Nassau, Bahamas or such other qualified person in the Bahamas as the Company may from time to time by a resolution of the Board determine.

4. Object and Powers

The Company has been established with the limited object of investing in securities of all kinds, including shares or other forms of participation in investment funds, with the view to the protecting capital whilst seeking returns commensurate with the chosen level of risk and in pursuit thereof the Company may purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer or otherwise dispose of such securities and without limiting the foregoing, may buy, sell, invest in, exchange or otherwise acquire, hold, deal with and turn to account any futures and forward contracts in any part of the world. To do all such other things with or without consideration or benefit as are incidental to or the Company may think conducive to the attainment of all or any of the above.

The Company shall have all such powers as are permitted by law for the time being in force in The Bahamas irrespective of corporate benefit which are necessary or conducive to the conduct, promotion or attainment of the object of the Company.

The Company shall have powers to settle any of its assets in trust to one or more trustees, to any company, association, partnership, foundation or similar entity; and, with respect to the transfer, the Board may provide that the Company, its creditors, its members or any person having a direct or indirect interest in the Company, or any of them, may be the beneficiaries, creditors, members, registered shareholders, partners or holders of any other similar interest.

The Company may by resolution of Directors exercise all the powers of the Company to borrow money and to mortgage or charge its undertakings and property or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligation of the Company or of any third party.

Any sale, transfer, lease, exchange or other disposition of more than fifty (50) per centum by value of the assets of the Company and any mortgage or charge of the undertakings and property of the Company shall for the purposes of Section 79 of the Act be regarded as in the usual or regular course of the business carried on by the Company.

The Company shall exist for an indefinite term or until removed from the Register.

4.1 The Company has no power to:

- 4.1.1 carry on banking or trust business;
- 4.1.2 carry on business as an insurance or reinsurance company;
- 4.1.3 carry on the business of providing the registered office or the registered agent for companies; or
- 4.1.4 carry on the business of “dealing” or “trading” in securities as an agent or providing “securities investment advice” as these terms are defined in the Securities Industry Act, 1999.

5. Currency of Shares

Shares in the Company shall be issued in the currency of the United States of America (US\$), in the currency of the United Kingdom of Great Britain and Northern Ireland (GBP), and in the currency of the European Union (Euro) as set out in this Memorandum of Association.

6. Authorised Share Capital

The authorised share capital of the Company is:

- 6.1 US\$24,000 divided into twenty one Classes of shares of one series each as:
 - 6.1.1 2000 non-participating voting Sponsor Shares with a par value of US\$1.00 per share having the rights set out in this Memorandum of Association; and
 - 6.1.2 22 Classes of Ordinary Shares of one series each denominated “A”, “B”, “C”, “D”, “E”, “F”, “G”, “H”, “I”, “L”, “M”, “O”, “Q”, “R”, “S”, “T”, “U”, “V”, “W”, “X”, “Y” and “Z” each class comprising 100,000 Ordinary Shares with a par value of US\$ 0.01 per share, having the rights set out in this Memorandum of Association and such additional designations, powers, preferences, rights, qualifications, limitations and restrictions not inconsistent herewith as the Company by way of resolution of the Board shall determine; and
- 6.2 GBP 3,000 comprising three Classes of Ordinary Shares of one series each denominated “J”, “N” and “P”, such classes comprising 100,000 Ordinary Shares each with a par value of GBP0.01 per share, having the rights set out in this Memorandum of Association and such additional designations, powers, preferences, rights, qualifications, limitations and restrictions not inconsistent herewith as the Company by way of resolution of the Board shall determine; and

- 6.3 EURO 1,000 comprising one Class of Ordinary Shares of one series denominated “K”, the class comprising 100,000 Ordinary Shares with a par value of EURO0.01 per share, having the rights set out in this Memorandum of Association and such additional designations, powers, preferences, rights, qualifications, limitations and restrictions not inconsistent herewith as the Company by way of resolution of the Board shall determine.

7. The Sponsor Shares: Voting and General Rights

The rights and privileges attaching to the Sponsor Shares of the Company are as follows:

- 7.1 upon a winding-up of the Company, Sponsor Shares will participate only in any surplus which remains after the payment to the holders of the different Classes of Ordinary Shares of an amount equal to the realisable value of the assets less the liabilities and after payment of the costs of winding up;
- 7.2 upon a purchase, redemption or other acquisition by the Company of the Sponsor Shares by way of a reduction of capital or otherwise, the holders of such shares shall be entitled only to the amounts paid-up thereon on subscription;
- 7.3 they shall be entitled to receive notice of, and to vote at all general meetings of members without restriction and the holders thereof shall be entitled to exercise one vote per Sponsor Share.

8. Ordinary Shares: Voting and General Rights

The rights and privileges attaching to the Ordinary Shares in the share capital of the Company are as follows:

- 8.1 in the event of a winding up of the Company, the holders of Ordinary Shares of each class shall, to the extent of the initial contribution to the capital of that Class of Ordinary Shares made upon subscription therefor, have a preferred claim in respect of the assets of the Company attributable to the Ordinary Shares of that Class only and there shall be divided between them the surplus remaining after the payment of all liabilities, fees and a provision for the reasonable expenses of winding up;
- 8.2 on a purchase, redemption or other acquisition by the Company of some or all of the Ordinary Shares of any Class by way of reduction of capital or otherwise, the holders of the Ordinary Shares so affected shall be entitled to receive in cash an amount per affected Ordinary Share which is no less than the pro rata proportion of the net assets of the Company attributable to that Class which have been valued in a manner determined by the Board but which may, in any event, not be less than the probable realisation price of such assets determined at arm's length and in good faith. Where such a reduction in capital occurs simultaneously with a reduction in capital affecting the Sponsor Shares, then the amount payable to the holders of the Sponsor Shares shall be taken into account in the determination of the net assets of the Company attributable to the Ordinary Shares;
- 8.3 the holders of Ordinary Shares are entitled to receive notices of and to attend all annual general meetings of members where they are entitled to vote at;
- 8.4 the holders of Ordinary Shares may vote only attend and vote at extra-ordinary meetings on the resolutions set out in Article 73 of the Articles of Association;
- 8.5 at meetings at which Ordinary Shareholders may attend and vote the holders of Class “A” to “I”, and “L” to “Z” Ordinary Shares, excluding holders of Classes “N” and “P”

Ordinary Shares, will be entitled to exercise only one vote per Ordinary Share. The holders of Classes “J”, “N” and “P” Ordinary Shares will be entitled to exercise a number of votes per Ordinary Share equal to an appropriate market rate at which one Pound Sterling can be converted into United States dollars, as determined by the Board in its discretion. The holders of Class “K” Ordinary Shares will be entitled to exercise a number of votes per Ordinary Share equal to an appropriate market rate at which one Euro can be converted into United States dollars, as determined by the Board in its discretion.

9. Rights Attaching to Additional Classes of Shares

Subject to the provisions of clauses 7, 8 and 10, any shares may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, returns of capital or otherwise, as the Board may from time to time by resolution determine.

10. Modifying rights

The rights, privileges and conditions attaching to any Class of shares may be modified either with the consent in writing of the holders of three quarters of the total number of the shares of that Class in issue or with the sanction of the resolution passed in the same manner mutatis mutandis as a special resolution at a separate general meeting of the holders of the shares of that Class.

11. General Provisions

11.1 The Sponsor Shares and Ordinary Shares shall have such additional designations, powers, preferences, rights, qualifications, limitations and restrictions not inconsistent herewith, as the Company shall by resolution of the Board determine and the Board may fix any such designations, powers, preferences, rights, qualifications, limitations and restrictions in their discretion.

11.2 Except as otherwise provided herein, shares comprising the Ordinary Shares shall rank and stand on an equal footing with the Sponsor Shares.

11.3 The designations, powers, preferences, rights, qualifications, limitations and restrictions of each additional Class and series of shares that the Company is authorised to issue shall be fixed by resolution of the Board but all the aforesaid rights as to voting, dividends, redemption and distribution shall be identical within each separate Class.

11.4 Whilst the authorised capital is divided into different Classes or series of shares, the rights attached to any Class or series (unless otherwise provided by the terms of issue of the shares of that Class or series) may, whether or not the Company is being wound up, be varied in accordance with the Articles of Association of the Company.

11.5 The rights conferred upon the holders of the shares of any Class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that Class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

11.6 Ordinary Shares in the Company may be issued as registered non-certificated shares which are issued by way of an entry into the Share Register and may not be exchanged for shares issued to bearer.

11.7 Shares in the Company may be transferred subject to the prior or subsequent approval of the Company as evidenced by a resolution of the Board.

12. Amendment

Subject to the provisions of this memorandum relating to the amendment of the rights attaching to any Class or series of Shares, the Company may amend its Memorandum of Association and Articles of Association by a resolution of members or by a resolution of directors.

13. Interpretation

The meanings of words in this Memorandum of Association are as defined in the Articles of Association of the Company. The headings above the various clauses shall not be taken into account in interpreting this Memorandum of Association.

Signed this 28th day of September 2012

Jacques van Eeden

Chikuni Shenjere-Mutiswa



CONSOLIDATED VERSION

No. 45 of 2000
AN ACT TO PROVIDE FOR THE INCORPORATION,
REGISTRATION AND OPERATION OF
INTERNATIONAL BUSINESS COMPANIES

[Date of Assent - 29th December, 2000]

No. 19 of 2001. {Incorporating amendments of 7th September 2001, which are deemed to come into operation on 29th December, 2000.}

Enacted by the Parliament of The Bahamas.

PART I

PRELIMINARY

**Short title
and commen-
encement.**

1. This Act may be cited as the International Business Companies Act, 2000 and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

**Interpre-
tation.**

2. (1) In this Act -
"agent" includes registered agent;
"Articles" means the Articles of Association of a company incorporated under this Act;
"authorised capital", in relation to a company, means the sum of the aggregate par value of all shares which the company is authorised by its Memorandum to issue plus the amount, if any, stated in its Memorandum as authorised capital to be represented by shares without par value which the company is authorised by its Memorandum to issue;

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

- (a) the aggregate of the amounts designated as capital of all outstanding shares without par value of the company and shares without par value held by the company as treasury shares; and
- (b) the amounts as are from time to time transferred from surplus to capital by a resolution of the directors;

"company" unless the context otherwise requires, means an international business company incorporated under this Act.

"Companies Act" means the Companies Act of The Bahamas;

"continued" means continues in accordance with Part VIII;

"court" means the Supreme Court or a Judge thereof;

"member" includes a person who holds shares in a company;

"Memorandum" means the Memorandum of Association of a company incorporated under this Act;

"Register" means the Register of International Business Companies maintained by the Registrar in accordance with section 15(1);

"registered agent" means the person who is at any particular time performing the functions of registered agent of a company incorporated under this Act;

"Registrar" means the Registrar of Companies;

"Registrar of Companies" means the Registrar General;

"securities" includes shares and debt obligations of

every kind, and options, warrants and rights to acquire shares or debt obligations;

"surplus", in relation to a company, means the excess, if any, at the time of the determination, of total assets of the company over the sum of its total liabilities, as shown in the books of account plus its issued and outstanding share capital;

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

(2) A company that is incorporated under the Companies Act or under the laws of a jurisdiction outside The Bahamas shall be a company incorporated under this Act if it is continued as a company incorporated under this Act and references to a "company incorporated under this Act" shall be construed accordingly.

(3) Unless otherwise defined in the Articles "resolution of directors" means -

(a) a resolution approved at a duly constituted meeting of directors or a Committee of directors of a company by affirmative vote of a simple majority or such larger majority as may be specified in the Articles of the directors present at the meeting who voted and did not abstain; or

(b) a resolution consented to in writing by a simple majority or such larger majority as may be specified in the Articles of all the directors or of all the members of the Committee of the directors, as the

19 of 2001.

19 of 2001.

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

(4) Unless otherwise defined in the Articles "resolution of members" means -

(a) a resolution approved at a duly constituted meeting of the members of a company by the affirmative vote of -

(i) a simple majority, or such larger majority as may be specified in the Articles, of the votes of the shareholders present at the meeting and entitled to vote thereon and who voted and did not abstain, or

(ii) a simple majority, or such larger majority as may be specified in the Articles of the votes of the shareholders of each class or series of shares present at the meeting and entitled to vote thereon as a class or series and who voted and did not abstain and of a simple majority or such larger majority as may be specified in the Articles, of the votes of the remaining shareholders entitled to vote thereon

present at the meeting and who voted and did not abstain; or

- (b) a resolution consented to in writing by -
 - (i) a simple majority or such larger majority as may be specified in the Articles, of the shareholders entitled to vote thereon, or
 - (ii) a simple majority, or such larger majority as may be specified in the Articles, of the votes of the shareholders entitled to vote thereon as a class or series and of a simple majority, or such larger majority as may be specified in the Articles, of the votes of the holders of the remaining shares entitled to vote thereon.

19 of 2001.

PART II CONSTITUTION OF COMPANIES

**Incorp-
oration.**

3. Subject to the requirements of this Act, two or more persons may, by subscribing to a Memorandum incorporate a company under this Act.

**Persons
who can
incorp-
orate Int-**

4. No person other than a bank or trust company licensed under the Banks and Trust Companies Regulation Act, 2000 shall incorporate an International Business Company unless such person is licensed and approved under the

**ernational
Business
Companies.
19 of 2001.
No criminal
objects or
purposes.**

Financial and Corporate Service Providers Act, 2000.

5. Act - A company shall not be incorporated under this
- (a) for the purposes of facilitating any criminal activity; or
 - (b) for any object or purpose which is prohibited by this Act or by any other law in force in The Bahamas.

**Contra-
vention
of sec-
tion 5.**

6. Where a company is incorporated under this Act for any criminal activity including drug trafficking or any relevant offence under the Proceeds of Crime Act, 2000 or for any prohibited purpose the company shall forthwith be struck off the Register by the Registrar publishing notice to that effect in the Gazette but section 164(5) shall apply to such company for the purposes of liability:

Provided that before being struck off, the Registrar shall give the company the opportunity of being heard within seven days before the striking off.

**Personal
liability.**

7. No member, director, officer, agent or liquidator of a company incorporated under this Act shall be liable for any debt, obligation or default of the company unless it is proved that he did not act in good faith or unless it is specifically provided in this Act or in any other law for the time being in force in The Bahamas and except in so far as he may be liable for his own conduct or acts.

Mode of

8. The liability of the members of a company

**limiting
liability
of members.**

incorporated under this Act may, according to the Memorandum -

- (a) be limited either to the amount, if any, unpaid on the shares respectively held by them (in this Act termed "a company limited by shares");
- (b) be limited to such amount as the members may respectively undertake by the Memorandum to contribute to the assets of the company in the event of its being wound up (in this Act termed "a company limited by guarantee"); or
- (c) have no limit placed on the liability of its members (in this Act termed "an unlimited liability company").

**Company
limited
both by
shares and
by guaran-
tee.**

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

Powers.

10. Subject to any limitations in its Memorandum or Articles, this Act or any other law for the time being in force in The Bahamas, a company incorporated under this Act has the power, irrespective of corporate benefit, to perform all acts and engage in all activities necessary or conducive to the conduct, promotion or attainment of the objects or purposes of the company, including the power to do the following -

- (a) issue registered shares but not shares issued to bearer;

- (b) issue the following -
 - (i) voting shares,
 - (ii) non-voting shares,
 - (iii) shares that may have more or less than one vote per share,
 - (iv) shares that may be voted only on certain matters or only upon the occurrence of certain events,
 - (v) shares that may be voted only when held by persons who meet specified requirements,
 - (vi) no par value shares,
 - (vii) unnumbered shares;
- (c) issue common shares, preferred shares, or redeemable shares;
- (d) issue shares that entitle participation only in certain assets;
- (e) issue options, warrants or rights, or instruments of a similar nature, to acquire any securities of the company;
- (f) issue securities that, at the option of the holder thereof or of the company or upon the happening of a specified event, are convertible into, or exchangeable for, other securities in the company or any property then owned or to be owned by the company;
- (g) purchase, redeem or otherwise acquire and hold its own shares;
- (h) guarantee a liability or obligation of any person and to secure any of its

19 of 2001.

obligations by mortgage, pledge or other charge, of any of its assets for that purpose; and

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

**Validity
of acts of
company.**

11. (1) No act of a company incorporated under this Act and no transfer of real or personal property by or to a company so incorporated is invalid by reason only of the fact that the company was without capacity or power to perform the act or to transfer or receive the property, but the lack of capacity or power may be pleaded in the following cases -

- (a) in proceedings by a member against the company to prohibit the performance of any act or the transfer of real or personal property by or to the company; or
- (b) in proceedings by the company, whether acting directly or through a receiver, trustee or other legal representative or through members in a derivative action, against the incumbent or former directors of the company for loss or damage due to their unauthorised act.

(2) For the purposes of subsection (1)(a), the court may set aside and prohibit the performance of a contract if -

- (a) the unauthorised act or transfer sought to be set aside or prohibited is being,

or is to be, performed or made under any contracts to which the company is a party;

(b) all the parties to the contract are parties to the proceedings; and

(c) it appears fair and reasonable in the circumstances to set aside or prohibit the performance of the contract;

and in so doing the court may, in applying this subsection, award to the company or to the other parties such compensation as may be reasonable except that in determining the amount of compensation the court shall not take into account anticipated profits to be derived from the performance of the contract.

Name.

12. (1) The word "Limited", "Corporation", "Incorporated", "Gesellschaft mit beschränkter Haftung", "Societe Anonyme" or "Sociedad Anonima" or its respective abbreviation "Ltd.", "Corp.", "Inc.", "GmbH", or "S.A." shall be at the end of the name of every company incorporated under this Act with limited liability, provided that a company incorporated under the laws of a jurisdiction outside The Bahamas and continued as a company incorporated under this Act may use the name designated in the Articles of continuation.

(2) The Minister may by Order add to the list of words and abbreviations contained in subsection (1) words and abbreviations which would indicate that a company is incorporated with limited liability.

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

(a) is identical with that under which a company in existence is already incorporated under this Act or registered

under the Companies Act or so nearly resembles the name of another company as to be calculated to deceive, except where the company in existence gives its consent;

- (b) contains the words "Assurance", "Bank", "Building Society", "Chamber of Commerce", "Chartered", "Cooperative", "Imperial", "Insurance", "Municipal", "Royal", "Trust", or a word conveying a similar meaning, or any other word that, in the opinion of the Registrar, suggests or is calculated to suggest the patronage of or any connection with Her Majesty or any member of the Royal Family or the Government of The Bahamas, a department thereof, a statutory corporation or board or a local or municipal authority;
- (c) is indecent, offensive or, in the opinion of the Registrar is otherwise objectionable.

(4) A company may amend its Memorandum to change its name.

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

- (a) is identical with a name under which a company in existence was incorporated under this Act or registered under the Companies Act; or
- (b) so nearly resembles the name of another company in existence which was incorporated under this Act or registered

under the Companies Act as to be calculated to deceive or confuse, the Registrar may, whether or not the consent of the company in existence has been obtained pursuant to subsection (3)(a), give notice to the last registered company to change its name and if it fails to do so within 60 days from the date of the notice the Registrar shall direct the company to change its name to such name as the Registrar deems appropriate, and the Registrar shall publish a notice of the change in the Gazette.

(6) Where a company is incorporated under a name that may be calculated to deceive the public, the Registrar may give notice to the company to change such name and if it fails to do so within 60 days from the date of the notice the Registrar shall direct the company to be removed from the Register.

(7) Subject to subsections (3) and (5), where a company changes its name, the Registrar shall enter the new name on the Register in place of the former name, and shall issue a new certificate of incorporation indicating the change of name.

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

(9) Subject to subsection (3), the Registrar may, upon a request made by any person and payment of the prescribed fee, reserve for 90 days a name for future adoption by a company under this Act.

Memorandum.

13. (1) The Memorandum shall include the following particulars -

- (a) the name of the company;
- (b) the location in The Bahamas of the registered office of the company;
- (c) the location in The Bahamas of the registered agent of the company;
- (d) subject to subsection (2), the objects or purposes for which the company is to be incorporated;
- (e) the currency in which shares in the company shall be issued;
- (f) in the case of a company limited by shares, a statement of the authorised capital of the company setting forth the aggregate of the par value, if any, that the company is authorised to issue and the amount, if any, to be represented by shares without par value that the company is authorised to issue;
- (g) in the case of a company limited by guarantee, a statement that each member undertakes to contribute to the assets of the company, in the event of a winding up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding up the company and for the adjustment of the rights of the contributors amongst themselves, such amounts as may be required, not exceeding

- an amount to be specified therein;
- (h) in the case of a company limited both by shares and by guarantee, the statements referred to in paragraphs (f) and (g);
- (i) in the case of an unlimited liability company, a statement that the liability of the members is unlimited;
- (j) a statement of the number of classes and series of shares, the number of shares of each such class and series and the par value of shares with par value and that the shares may be without par value if this is the case;
- (k) a statement of the designations, powers, preferences and rights, and the qualifications, limitations or restrictions of each class and series of shares that the company is authorised to issue, unless the directors are to be authorised to fix any such designations, powers, preferences, rights, qualifications, and in that case, an express grant of such authority as may be desired to grant to the directors to fix by resolution any such designations, powers, preferences, rights, qualifications, limitations and restrictions that have not been fixed by the Memorandum.

(2) For the purposes of subsection (1)(d), if the Memorandum contains a statement either alone or with other objects or purposes that the object or purpose of the company

is to engage in any act or activity that is not prohibited under any law for the time being in force in The Bahamas, the effect of that statement is to make all acts and activities that are not illegal part of the objects or purposes of the company, subject to any limitations in the Memorandum.

(3) The Memorandum shall be subscribed to by two persons in the presence of another person who shall sign his name as a witness.

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

Articles.

14. (1) The Articles shall be subscribed to by two persons in the presence of another who shall sign his name as a witness and such Articles shall be filed with the Registrar on the same date as the filing of the memorandum.

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

**Regist-
ration.**

15. (1) The Memorandum and the Articles shall be registered by the Registrar in a register to be maintained by him and to be known as the Register of International Business Companies.

(2) Upon the registration of the Memorandum, the Registrar shall issue a certificate of incorporation under his hand and seal certifying that the company is incorporated.

(3) An application for the registration of a company under this Act shall be in such form as may be prescribed and shall be accompanied by such documents as the Registrar may determine.

(4) The Registrar may prohibit the registration of a company where the minimum share capital is less than an amount stated by order of the Minister.

(5) The Registrar shall refuse to register a company if he is of the opinion that the memorandum shows that its minimum share capital will be less than the amount required by the Minister by order under subsection (4).

(6) Any person aggrieved by a decision of the Registrar under subsection (5) may appeal to the Minister whose decision shall be final.

(7) The Registrar shall not register the memorandum or the articles delivered to him unless he is satisfied that all requirements of this Act in respect of registration have been complied with and -

(a) a counsel and attorney engaged in the formation of the company; or

(b) the registered agent named in the memorandum of the company to be the registered agent,

certifies in writing that the requirements of this Act in respect of registration have been complied with and the written certification delivered to the Registrar is sufficient evidence of compliance.

19 of 2001.

(Subsection (8) is repealed)

**Certificate
of incor-
poration.**

16. Where the Registrar issues a certificate of incorporation of a company, the company is, from the date shown on the certificate of incorporation, a body corporate under the name contained in the Memorandum with the full capacity of an individual who is sui juris, subject to any limitations imposed by the Memorandum and to the provisions of this Act.

**Certificate
to be
evidence of
compliance.**

17. A certificate of incorporation of a company incorporated under this Act issued by the Registrar shall be prima facie evidence of compliance with all requirements of this Act in respect of incorporation.

**Amendment
of Memo-
randum or
Articles.**

18. (1) Subject to any limitation in its Memorandum or Articles, a company incorporated under this Act may amend its Memorandum or Articles by a resolution of members or, where permitted by its Memorandum or Articles or by this Act, by a resolution of directors.

(2) A company that amends its Memorandum or Articles shall submit to the Registrar within fourteen days after any amendment a copy of the resolution of members or directors amending the Memorandum or Articles, as the case may be, authenticated, in accordance with subsection (1) of section 72, as a true copy of the resolution amending the Memorandum or Articles and the Registrar shall retain and register such copy of the resolution.

(3) An amendment to the Memorandum or Articles shall not have effect until it is registered by the Registrar.

**Copies of
Memorandum
and Art-**

19. A copy of the Memorandum and a copy of the Articles shall be given to any member who requests a copy on payment by the member of such amount as the directors may

**icles to
members.**

determine to be reasonably necessary to defray the costs of preparing and furnishing them.

**PART III
CAPITAL AND DIVIDENDS**

**Considera-
tion for
shares.**

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

**Amount of
considera-
tion.**

21. (1) Subject to any limitations in the Memorandum or Articles, shares in a company incorporated under this Act may be issued for such amount as may be determined from time to time by the directors, and, in the absence of fraud, the decision of the directors as to the value of the consideration received by the company in respect of the issue is conclusive, unless a question of law is involved.

(2) Subject to any limitations in the Memorandum or Articles, treasury shares and unissued shares may be disposed of by a company incorporated under this Act on such terms and conditions as the directors may determine.

**Fractional
shares.**

22. Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act may issue fractions of a share and unless and to the extent otherwise provided in the Memorandum or Articles, a fractional share has the corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights

and other attributes of a share of the same class or series of shares.

**Capital and
surplus
accounts.**

23. (1) Where a company incorporated under this Act issues a share with par value, the consideration in respect of the share constitutes capital to the extent of the par value and the excess constitutes surplus.

(2) Subject to any limitations in the Memorandum or Articles, where a company incorporated under this Act issues a share without par value, the consideration in respect of the share constitutes capital to the extent designated by the directors and the excess constitutes surplus, except that the directors shall designate as capital an amount of the consideration that shall be at least equal to the amount that the share is entitled to as a preference, if any, in the assets of the company upon liquidation of the company.

(3) Upon the disposition by a company incorporated under this Act of a treasury share, the consideration in respect of the share shall be added to surplus.

**Dividend
of shares.**

24. (1) A share issued as a dividend by a company incorporated under this Act shall be treated for all purposes as having been issued for money equal to the surplus that has been transferred to capital upon the issue of the share.

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

(3) In the case of a dividend of authorised but unissued shares without par value, the amount designated by the directors shall be transferred from surplus to capital at the time of the distribution, except that the directors shall

designate as capital an amount that is at least equal to the amount that the shares are entitled to as preference, if any, in the assets of the company upon liquidation of the company.

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

**Increase
or reduc-
tion of
capital.**

25. (1) Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act may, by a resolution of directors, amend its Memorandum to increase or reduce its authorised capital and in connection therewith, the company may -

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

(2) Where a company reduces its authorised capital under subsection (1), then, for the purposes of computing capital of the company, any capital that immediately before the reduction was represented by shares but immediately following the reduction is no longer represented by shares shall be deemed to be surplus transferred from capital to surplus.

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(Subsection (3) is repealed).

**Division
and com-
bination.**

26. (1) A company incorporated under this Act may amend its Memorandum -

- (a) to divide the shares, including issued shares, of a class or series into a

larger number of shares of the same class or series; or

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

(2) Where shares are divided or combined under subsection (1), the aggregate par value of the new shares shall be equal to the aggregate par value of the original shares.

Nature of share.

27. Shares of a company incorporated under this Act are personal property and are not of the nature of real property.

Share certificates.

28. (1) A company incorporated under this Act shall state in its Articles whether or not certificates in respect of its shares shall be issued.

(2) Where a company incorporated under this Act issues certificates in respect of its shares, the certificates -

- (a) shall be signed by two directors or two officers of the company, or by one director and one officer; or

- (b) shall be under the common seal of the company evidenced by the signature of a director or officer of the company,

and the Articles may provide for the signatures or common seal to be stamped thereon.

(3) A certificate issued in accordance with subsection (2) specifying a share held by a member of the company shall be prima facie evidence of the title of the

member to the share specified therein.

**Share
Register.
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29. (1) A company incorporated under this Act shall cause to be kept at its registered office one or more registers to be known as Share Registers containing -

- (a) the names and addresses of the persons who hold registered shares in the company;
- (b) the number of each class and series of registered shares held by each person;
- (c) the date on which the name of each person was entered in the Share Register; and
- (d) the date on which any person ceased to be a member.

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

(3) The Share Register shall be prima facie evidence of any matters directed or authorised by this Act to be contained therein.

(4) In the case of a company limited by guarantee the term "Share Register" shall mean "Register of Members" in which shall be entered the names and addresses of the members of such a company, the date of such entry and the date when any person ceases to be a member.

**Rectifi-
cation of
Share
Register.**

30. (1) If -

- (a) information that is required to be entered in the Share Register under section 29 is omitted therefrom or inaccurately entered therein; or

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

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

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

(b) between members or alleged members and the company,

and generally the court may in the proceedings determine any question that may be necessary or expedient to be determined for the rectification of the Share Register.

**Transfer
of regis-
tered
shares.**

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

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

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

(4) Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act shall, on the application of the transferor or transferee of a registered share in the company, enter in its Share Register the name of the transferee of the share.

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

**Acquisition
of shares.
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32. (1) Subject to any limitations in its Memorandum or Articles, a company may purchase, redeem or otherwise acquire and hold its own shares.

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

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

(b) the realizable value of the assets of the company will not be less than the sum of its total liabilities, other than

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deferred taxes, as shown in the books of account;

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

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

(a) pursuant to a right of a member to have his shares redeemed or to have his shares exchanged for money or other property of the company;

(b) in exchange for newly issued shares in the company;

(c) by virtue of the provisions of section 80; and

(d) pursuant to an order of the court.

(4) Subject to any limitations in the Memorandum or Articles, shares that a company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares unless the shares are purchased, redeemed or otherwise acquired out of capital pursuant to section 34, in which case they shall be cancelled; and upon the cancellation of a share, the amount included as capital of the company with respect to that share shall be deducted from the capital of the company.

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Treasury shares disabled in respect of voting and dividends.

33. Where shares in a company incorporated under this Act -

(a) are held by the company as treasury shares; or

(b) are held by another company of which the first company holds, directly or

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indirectly, shares having more than 50 per cent of the votes in the election of directors of that other company, the shareholders of the first company are not entitled to vote or to have dividends paid thereon and shall not be treated as outstanding for any purpose under this Act except for the purpose of determining the capital of the first company.

**Increase
or reduc-
tion of
capital.**

34. (1) Subject to any limitations in the Memorandum or Articles and subject to subsections (3) and (4), the capital of a company incorporated under this Act may by resolution of directors, be -

(a) increased by transferring an amount out of the surplus of the company to capital;
or

(b) reduced by -

(i) returning to members any amount received by the company upon the issue of any of its shares, the amount being surplus to the company,

(ii) cancelling any capital that is lost or not represented by assets having a realizable value, or

(iii) transferring capital to surplus for the purpose of purchasing, redeeming or otherwise acquiring shares that the directors have resolved to purchase, redeem or otherwise

acquire.

(2) Where a company reduces its capital under subsection (1), the company may -

- (a) return to members any amount received by the company upon the issue of its shares;
- (b) purchase, redeem or otherwise acquire its shares out of capital; or
- (c) cancel any capital that is lost or not represented by assets having a realizable value.

(3) No reduction of capital shall be effected that reduces the capital of the company to an amount that is less than the sum of -

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

(4) No reduction of capital shall be effected under subsection (1) unless the directors determine that

immediately after the reduction -

- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
- (b) the realizable value of the assets of the company will not be less than its total liabilities, other than deferred taxes, as shown in the books of account, and its remaining issued and outstanding share capital;

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

Dividends.

35. (1) Subject to any limitations in its Memorandum or Articles a company incorporated under this Act may, by a resolution of directors, declare and pay dividends in money, shares or other property.

(2) Dividends shall only be declared and paid if the directors determine that immediately after the payment of the dividend -

- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
- (b) the realizable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its issued and outstanding share capital;

and, in the absence of fraud, the decision of the directors as to the realizable value of the assets of the company is

conclusive unless a question of law is involved.

**Appre-
ciation
of assets.**

36. Subject to any limitations in its Memorandum or Articles a company incorporated under this Act may, by a resolution of directors, include in the computation of surplus for any purpose under this Act the net unrealised appreciation of assets of the company, and in the absence of fraud, the decision as to the value of the assets is conclusive, unless a question of law is involved.

**PART IV
REGISTERED OFFICE AND REGISTERED AGENT**

**Registered
office.**

37. (1) A company incorporated under this Act shall at all times have a registered office in The Bahamas.

(2) The address of the registered office shall be submitted to the Registrar with the Memorandum for registration upon the date of the application for incorporation.

(3) The directors of the company may change the address of the registered office of the company, which change shall be notified to the Registrar within seven days after such change has been made.

**Registered
agent.**

38. (1) A company incorporated under this Act shall at all times have a registered agent in The Bahamas.

(2) No person shall act as registered agent unless he is licensed to carry on the business of corporate financial service management pursuant to section 3 of the Financial and Corporate Service Providers Act, 2000:

Provided that this subsection shall not apply to a company licensed under the Banks and Trust Companies

Regulation Act, 2000.

(3) The Minister may by order vary or add to the requirements of subsection (2).

(4) Any person who was acting as a registered agent before the coming into force of this section may continue to so act but only if such person within 90 days from the commencement of this section obtains a licence pursuant to the Financial and Corporate Service Providers Act, 2000.

(5) The name and address of the registered agent shall be submitted to the Registrar for registration at the date of incorporation of the company.

(6) The company shall notify the Registrar of any change in the name or address of the registered agent.

**Register of
registered
agents.**

39. (1) The Registrar shall maintain a register of licensed registered agents and the register referred to in section 13 of the Financial and Corporate Service Providers Act, 2000 shall be the register for the purposes of this section.

(2) The Registrar shall, during the month of February in each year, publish in the Gazette a list of registered agents on 31st January in that year.

(3) Any change in the details kept by the Registrar in the register of registered agents pursuant to subsection (1) shall be notified immediately by the registered agent to the Registrar, and upon payment of such fee as may be prescribed by the Minister, the Registrar shall record the change in the register of registered agents.

PART V

DIRECTORS, OFFICERS, AGENTS AND LIQUIDATORS

**Management
by direc-
tors.**

40. Subject to any limitations in its Memorandum or Articles or in any unanimous shareholder agreement, the business and affairs of a company incorporated under this Act shall be managed by a board of directors that consists of two or more persons who may be individuals or companies.

**Unanimous
shareholder
agreement.**

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

(2) A shareholder who is a party to any unanimous shareholder agreement has all the rights, powers and duties and incurs all the liabilities of a director of the company to which the agreement relates, to the extent that the agreement restricts the discretion or powers of the directors to manage the business and affairs of the company; and the directors are hereby relieved of their duties and liabilities to the same extent.

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

(4) Where any unanimous shareholder agreement is executed or terminated, written notice of that fact, together

with the date of the execution or termination thereof, shall be filed with the Registrar within 15 days after the execution or termination and no such agreement shall be legally effective until notice of its execution shall have been filed as aforesaid.

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

**Election,
term and
removal of
directors.**

42. (1) The first directors of a company incorporated under this Act shall be elected by the subscribers to the Memorandum; and thereafter, the directors shall be elected by the members for such term as the members may determine and where permitted by the Memorandum or Articles of a company incorporated under this Act, the directors may also elect directors for such term as the directors may determine.

(2) Each director holds office until his successor takes office or until his earlier death, resignation or removal or in the case of a company upon the making of an order for the winding up or dissolution of the company or upon the removal of a defunct company by the Registrar otherwise than pursuant to a winding-up order.

(3) Subject to any limitations in the Memorandum or Articles or in any unanimous shareholder agreement -

(a) a director shall cease to hold the office of director if a majority request his resignation in writing;

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

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notice.

(4) Subject to any limitations in the Memorandum or Articles or in any unanimous shareholder agreement, a vacancy in the board of directors may be filled by a resolution of members or of a majority of the remaining directors.

**Number of
directors.
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43. The number of directors shall be fixed by the Articles and subject to any limitations in the Memorandum or Articles, the Articles may be amended to change the number of directors.

**Register of
directors
and officers.**

44. (1) A company incorporated under this Act shall keep a register to be known as a register of directors and officers containing -

- (a) the names and addresses of the persons who are directors and officers of the company;
- (b) the date on which each person whose name is entered in the register was appointed as a director or officer of the company; and
- (c) the date on which each person as a director or officer ceased to be a director or officer of the company.

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

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(3) The register of directors and officers, commencing from the date of the registration of the company, shall be kept at the registered office of the company referred

to in section 37.

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(4) A copy of the register of directors and officers shall be filed with the Registrar and shall be open to inspection by members of the public during official hours.

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

Powers of directors.

45. The directors shall have all the powers of the company that are not reserved to the members under this Act or in the Memorandum or Articles or in any unanimous shareholder agreement.

Emoluments of directors.

46. Subject to any limitations in the Memorandum or Articles or in any unanimous shareholder agreement, the directors may, by a resolution of directors fix the emoluments of directors in respect of services to be rendered in any capacity to the company.

Committee of directors.

47. (1) The directors may, by a resolution of directors designate one or more Committees, each consisting of one or more directors.

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(2) Subject to any limitations in the Memorandum or Articles or in any unanimous shareholder agreement, each Committee has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the resolution of directors establishing the Committee, except that no Committee has any power or authority with respect to the matters requiring a resolution of directors under section 42 or 53.

Meeting of

48. (1) Subject to any limitations in the Memorandum

directors.

or Articles or in an unanimous shareholder agreement, the directors of a company incorporated under this Act may meet at such times and in such manner and places within or outside The Bahamas as the directors may determine to be necessary or desirable.

(2) A director shall be deemed to be present at a meeting of directors if -

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

(b) all directors participating in the meeting are able to hear each other and recognise each other's voice and for this purpose participation constitutes prima facie proof of recognition.

Notice of meetings of directors.

49. (1) Subject to a requirement in the Memorandum or Articles or in any unanimous shareholder agreement to give longer notice, a director shall be given not less than 2 days notice of meetings of directors.

(2) Notwithstanding subsection (1) but subject to any limitations in the Memorandum or Articles or in any unanimous shareholder agreement, a meeting of directors held in contravention of that subsection, is valid if all the directors, or such majority thereof as may be specified in the Memorandum or Articles or in any unanimous shareholder agreement, entitled to vote at the meeting, have waived the notice of the meeting; and for this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on his part.

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

**Quorum of
directors.**

50. The quorum for a meeting of directors is that fixed by the Memorandum or Articles.

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Consents of
directors.
19 of 2001.**

51. Subject to any limitations in the Memorandum or Articles or in any unanimous shareholder agreement, an action that may be taken by the directors or a Committee of directors at a meeting may also be taken by a resolution of directors or a Committee of directors consented to in writing or by telex, telefax, telegram, cable or other written electronic communication, without the need for any notice.

**Alternates
for
directors.**

52. (1) Subject to any limitations in the Memorandum or Articles or in any unanimous shareholder agreement, a director may by a written instrument appoint an alternate who need not be a director and the name of such alternate shall be disclosed and notified to the Registrar.

(2) An alternate for a director appointed under subsection (1) shall be entitled to attend meetings in the absence of the director who appointed him and to vote or consent in the place of the director.

**Meeting of
single dir-
ector or
single
shareholder.
19 of 2001.**

52A. Where there is a single director or single shareholder of a company incorporated under this Act, any requirement in this Act or in the Articles for a meeting of directors or shareholders for any purpose shall be satisfied where such single director or single shareholder passes a resolution in lieu of such meeting.

**Officers
and agents.**

53. (1) The directors may, by a resolution of directors appoint any person, including a person who is a

director, to be an officer or agent of the company.

(2) Subject to any limitations in the Memorandum or Articles or in any unanimous shareholder agreement, each officer or agent has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the Articles or in any unanimous shareholder agreement, or in the resolution of directors appointing the officer or agent, except that no officer or agent has any power or authority with respect to the matters requiring a resolution of directors under section 46 and this section.

(3) The directors may remove an officer or agent appointed under subsection (1) and may revoke or vary a power conferred on him under subsection (2).

**Standard
of care.**

54. Every director, officer, agent and liquidator of a company incorporated under this Act, in performing his functions, shall act honestly and in good faith with a view to the best interest of the company and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

**Reliance
on records
and reports.**

55. Every director, officer, agent and liquidator of a company incorporated under this Act, in performing his functions, is entitled to rely upon the Share Register kept under section 29, the books of accounts and records and the minutes and copies of consents to resolutions kept under section 66 and any report made to the company by any other director, officer, agent or liquidator or by any person selected by the company to make the report.

Conflict of

56. (1) Subject to any limitations in the Memorandum

interests.

or articles or in any unanimous shareholder agreement, if the requirements of subsection (2) are satisfied, no agreement or transaction between -

(a) a company incorporated under this Act;
and

(b) one or more of its directors or liquidators, or any person in which any director or liquidator has a financial interest or to whom any director or liquidator is related, including as a director or liquidator of that other person,

is void or voidable for this reason only or by reason only that the director or liquidator is present at the meeting of directors or liquidators, or at the meeting of the Committee of directors or liquidators, that approves the agreement or transaction or that the vote or consent of the director or liquidator is counted for that purpose.

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

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

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

(3) Subject to any limitations in the Memorandum or Articles or in any unanimous shareholder agreement, a

director or liquidator who has an interest in any particular business to be considered at a meeting of directors, liquidators or members may be counted for purposes of determining whether the meeting is duly constituted in accordance with section 50 or otherwise.

**Indemni-
fication.**

57. (1) Subject to subsection (2) and any limitations in its Memorandum or Articles or in any unanimous shareholder agreement, a company incorporated under this Act may indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal or administrative proceedings any person who -

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

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

(2) Subsection (1) only applies to a person referred to in that subsection if the person acted honestly and in good faith with a view to the best interests of the company.

Insurance.

58. A company incorporated under this Act may

purchase and maintain insurance in relation to any person who is or was a director, a registered agent, an officer or a liquidator of the company, or who at the request of the company is or was serving as a director, a registered agent, an officer or a liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under subsection (1) of section 57.

PART VI
PROTECTION OF MEMBERS AND CREDITORS

**Meetings
of members.
19 of 2001.**

59. (1) Subject to any limitations in the Memorandum or Articles or in any unanimous shareholder agreement, the directors of a company incorporated under this Act may convene meetings of the members of the company at such times and in such manner and places within or outside The Bahamas as the directors consider necessary or desirable.

(2) Subject to a provision in the Memorandum or Articles or in any unanimous shareholder agreement for a lesser percentage, upon the written request of members holding more than 50 per cent of the votes of the outstanding voting shares in the company, the directors shall convene a meeting of members.

(3) Subject to any limitations in the Memorandum or Articles, a member shall be deemed to be present at a meeting of members if -

(a) he participates by telephone or other

electronic means; and

- (b) all members participating in the meeting are able to hear each other and recognise each other's voice and for this purpose participation constitutes prima facie proof of recognition.

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

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

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

Notice of meetings of members.

60. (1) Subject to a requirement in the Memorandum or Articles or in any unanimous shareholder agreement to give longer notice, the directors shall give not less than 7 days notice of meetings of members to those persons whose names on the date of the notice appear as members in the Share Register referred to in section 29 and are entitled to vote at the meeting.

(2) Notwithstanding subsection (1) but subject to any limitations in the Memorandum or Articles or in any unanimous shareholder agreement, a meeting of members held in contravention of the requirement to give notice is valid if

members holding 90 per cent majority, or such lesser majority as may be specified in the Memorandum or Articles or in any unanimous shareholder agreement, of -

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

(b) the votes of each class or series of shares where members are entitled to vote thereon as a class or series together with an absolute majority of the remaining votes,

have waived notice of the meeting; and for this purpose the presence of a member at the meeting shall be deemed to constitute waiver on his part.

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

Quorum for meeting of members.

61. The quorum for a meeting of members for purposes of a resolution of members is that fixed by the Memorandum or Articles; but where no quorum is so fixed, a meeting of members is properly constituted for all purposes if at the commencement of the meeting there are present in person or by proxy shareholders representing more than one-half of the shares of each class or series thereof.

Voting by members.

62. (1) Except as otherwise provided in the Memorandum or Articles, all shares vote as one class and each whole share has one vote.

(2) The directors of a company incorporated under

this Act may fix the date notice is given of a meeting as the record date for determining those shares that are entitled to vote at the meeting.

**Consents
of members.**

63. Subject to any limitations in the Memorandum or Articles, an action that may be taken by members at a meeting of members may also be taken by a resolution of all members consented to in writing or by telex, telegram, telefax, cable or other written electronic communication, without the need for any notice.

**Service of
notice on
members.**

64. Any notice, information or written statement required under this Act to be given to members by a company incorporated under this Act shall be served, in the case of members holding registered shares -

- (a) in the manner prescribed in the Memorandum or Articles, as the case may be; or
- (b) in the absence of a provision in the Memorandum or Articles, by personal service or by mail addressed to each member at the address shown in the Share Register.

**Service of
process,
etc. on
company.**

65. (1) Any summons, notice, order, document, process, information or written statement to be served on a company incorporated under this Act may be served by leaving it, or by sending it by registered mail addressed to the company at its registered office or by leaving it with, or by sending it by registered mail to the registered agent of the company.

(2) Service of any summons, notice, order, document, process, information or written statement to be

served on a company incorporated under this Act may be proved by showing that the summons, notice, order, document, process, information or written statement -

- (a) was mailed in such time as to admit to its being delivered in the normal course of delivery, within the period prescribed for service; and
- (b) was correctly addressed and the postage was prepaid.

**Books,
records and
common seal.**

66. (1) A company incorporated under this Act shall keep such financial statements, accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company.

(2) A company incorporated under this Act shall keep at its registered office -

- (a) a copy of the Memorandum and Articles and all amendments thereto;
- (b) a register of all its directors and officers,

and such other records as the Minister may by order prescribe.

(3) A company incorporated under this Act shall have a common seal and an imprint thereof shall be kept at the registered office of the company.

**Inspection
of books
and records.**

67. (1) A member of a company incorporated under this Act may, in person or by attorney and in furtherance of a proper purpose, request in writing specifying the purposes, to inspect during normal business hours the Share Register of the company and the books, records, minutes and consents kept by the company and to make copies of extracts therefrom.

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

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

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

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

**Contracts
generally.**

68. (1) Contracts may be entered into on behalf of a company incorporated under this Act as follows -

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

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

same manner, be varied or discharged; and

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

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

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

Pre-incorporation contracts.

69. (1) A person who enters into a written contract in the name of or on behalf of a company incorporated under this Act before the company comes into existence, shall be personally bound by the contract and is entitled to the benefits of the contract, except where -

- (a) the contract specifically provides otherwise; or
- (b) subject to any provisions of the contract to the contrary, the company adopts the contract, under subsection (2).

(2) Within a period of 90 days after a company incorporated under this Act comes into existence, the company may, by any action or conduct signifying its intention to be

bound thereby, adopt a written contract entered into in its name or on its behalf before it came into existence.

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

- (a) the company shall be bound by, and entitled to the benefits of, the contract as if the company had been in existence at the date of the contract and had been a party to it; and
- (b) subject to any provisions of the contract to the contrary, the person who acted in the name of or on behalf of the company ceases to be bound by or entitled to the benefits of the contract.

Notes and bills of exchange.

70. A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed by a company incorporated under this Act if it is made, accepted or endorsed in the name of the company -

- (a) by or on behalf or on account of the company; or
- (b) by a person acting under the express or implied authority of the company;

and if so endorsed, the person signing the endorsement shall not be liable thereon.

Power of Attorney.

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

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

(3) A power of attorney under this section applies both within and outside The Bahamas.

**Authenti-
cation or
attestation.**

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

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

**Company
without
a member.**

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

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

**Interpre-
tation for**

74. In this Part -
"consolidated company" means the new company

**purposes
of Part
VII.**

that results from the consolidation of 2 or more constituent companies;

"consolidation" means the fusion of 2 or more constituent companies into a new company;

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

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

"parent company" means a company that owns more than 50 per cent of the outstanding voting shares of each class and series of shares in another company:

Provided that for the purposes of section 82 it means a company that owns more than 90 per cent of such shares as aforesaid;

"subsidiary company" means a company more than 50 per cent of whose outstanding voting shares are owned by another company:

Provided that for the purposes of section 82 it means a company more than 90 per cent of whose shares as aforesaid are owned by another company;

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

**Merger and
consoli-**

75. (1) Two or more companies incorporated under this Act may merge or consolidate in accordance with subsections

ation.

(3) to (5).

(2) One or more companies incorporated under this Act may merge or consolidate with one or more companies incorporated under the Companies Act in accordance with subsections (3) to (5) if the surviving company or the consolidated company will satisfy the requirements prescribed for an International Business Company by section 4.

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

- (a) the name of each constituent company and the name of the surviving company or the consolidated company;
- (b) in respect of each constituent company -
 - (i) the designation and number of outstanding shares of each class and series of shares specifying each such class and series entitled to vote on the merger or consolidation, and
 - (ii) a specification of each such class and series, if any, entitled to vote as a class or series;
- (c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting shares in each constituent company into shares, debt obligations or other securities in the surviving company, or money or other property, or a combination thereof;

- (d) in respect of a merger, a statement of any amendment to the Memorandum or Articles of the surviving company to be brought about by the merger; and
- (e) in respect of a consolidation, everything required to be included in the Memorandum and Articles for a company incorporated under this Act except statements as to facts not available at the time the plan of consolidation is approved by the directors.

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

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

- (a) the plan of merger or consolidation shall be authorised by a resolution of members and the outstanding shares of a class or series of shares are entitled to vote on the merger or consolidation as a class or series if the Memorandum or Articles so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the Memorandum or Articles, would entitle the class or series to vote on the proposed amendment at a class or series;
- (b) if a meeting of members is to be held,

notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each member, whether or not entitled to vote on the merger or consolidation;

(c) if it is proposed to obtain the written consent of members, a copy of the plan of merger or consolidation shall be given to each member, whether or not entitled to consent to the plan of merger or consolidation;

(d) after approval of the plan of merger or consolidation by the directors and members of each constituent company, articles of merger or consolidation shall be executed by each company and shall contain -

(i) the plan of merger or consolidation and, in the case of consolidation, any statement required to be included in the Memorandum and Articles for a company incorporated under this Act,

(ii) the date on which the Memorandum and Articles of each constituent company were registered by the Registrar,

(iii) the manner in which the merger or consolidation was authorised with respect to each constituent company;

- (e) the articles of merger or consolidation shall be submitted to the Registrar who shall retain and register them in the Register;
- (f) upon the registration of the articles of merger or consolidation, the Registrar shall issue a certificate under his hand and seal certifying that the articles of merger or consolidation have been registered.

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

Merger with subsidiary.

76. (1) A parent company incorporated under this Act may merge with one or more subsidiary companies incorporated under this Act or under the Companies Act without the authorisation of the members of any company in accordance with subsections (2) to (6), if the surviving company is a company incorporated under this Act and will satisfy the requirements prescribed for an International Business Company by section 5.

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

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

each subsidiary company owned
by the parent company; and

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

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

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

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

- (a) the plan of merger;
- (b) the date on which the Memorandum and Articles of each constituent company were registered by the Registrar;
- (c) if the parent company does not own all the shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or an outline thereof was made available to the members of each

subsidiary company.

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

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

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

**Effect of
merger or
consoli-
dation.**

77. (1) A merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation.

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

(a) the surviving company or the consolidated company insofar as is consistent with its Memorandum and Articles, as amended or established by the articles of merger or consolidation, has all rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;

(b) in the case of a merger, the Memorandum and Articles of the surviving company are automatically amended to the extent, if any, that changes in its memorandum and Articles are contained in the articles of

merger;

- (c) in the case of a consolidation, the statements contained in the articles of consolidation that are required or authorized to be contained in the Memorandum and Articles of a company incorporated under this Act, are the Memorandum, and Articles of the consolidation company;
 - (d) property of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and
 - (e) the surviving company or the consolidated company shall be liable for all claims, debts, liabilities and obligations of each of the constituent companies.
- (3) Where a merger or consolidation occurs -
- (a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any member, director, officer or agent thereof, is released or impaired by the merger or consolidation; and
 - (b) no proceedings, whether civil or criminal pending at the time of a merger or consolidation by or against a constituent company, or against any member, director, officer or agent thereof, are abated or discontinued by the merger or

consolidation, but -

- (i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, officer or agent, as the case may be, or
- (ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.

- (4) The Registrar shall strike off the Register -
 - (a) a constituent company that is not the surviving company in a merger;
 - (b) a constituent company that participates in a consolidation.

Merger or consolidation with foreign company.

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

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

- (a) a company incorporated under this Act shall comply with the provisions of this

Act with respect to the merger or consolidation, as the case may be, of companies incorporated under this Act and a company incorporated under the laws of a jurisdiction outside The Bahamas shall comply with the laws of that jurisdiction; and

(b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside The Bahamas, it shall submit to the Registrar -

(i) an agreement that a service of process may be effected on it in The Bahamas in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company incorporated under this Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company incorporated under this Act against a surviving company or the consolidated company,

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

(iii) an agreement that it will

promptly pay to the dissenting members of a constituent company incorporated under this Act the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting members, and

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

(3) The effect under this section of a merger or consolidation shall be the same as in the case of a merger or consolidation under section 75 if the surviving company or the consolidated company is incorporated under this Act, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside The Bahamas, the effect of the merger or consolidation shall be the same as in the case of a merger or consolidation under section 75 except insofar as the laws of the other jurisdiction otherwise provide.

(4) If the surviving company or the consolidated company is incorporated under this Act, the merger or consolidation is effective on the date the articles of merger

or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation; but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside The Bahamas, the merger or consolidation is effective as provided by the laws of that other jurisdiction.

**Disposition
of assets.**

79. Any sale, transfer, lease, exchange or other disposition of more than 50 per cent, by value of the assets of a company incorporated under this Act, if not made in the usual manner or regular course of the business carried on by the company, shall be as follows -

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

other disposition.

**Redemption
of minority
shares.**

80. (1) Subject to any limitations in the Memorandum or Articles -

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

(b) members holding 90 per cent of the votes of the outstanding shares of each class and series of shares entitled to vote as a class or series,

on a merger or consolidation under section 75, may give a written instruction to a company incorporated under this Act directing the company to redeem the shares held by the remaining members.

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

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

**Arrange-
ments.**

81. (1) In this section "arrangement" means -

(a) a reorganisation or reconstruction of a company incorporated under this Act;

(b) a separation of two or more businesses carried on by a company incorporated under this Act;

(c) any combination of any of the things specified in paragraphs (a) and (b).

(2) The directors of the company may, by a resolution of directors, approve a plan of arrangement that contains the details of the proposed arrangement.

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

(4) The court may, upon an application made to it under subsection (3), make an interim or final order that is not subject to an appeal unless a question of law is involved and in which case notice of appeal shall be given within the period of 20 days immediately following the date of the order, and in making the order the court may -

(a) determine what notice, if any of the proposed arrangement is to be given to any person;

(b) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;

(c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under section 82;

(d) conduct a hearing and permit any interested persons to appear; and

(e) approve or reject the plan of arrangement as proposed or with such amendments as it may direct.

(5) Where the court makes an order approving a

plan of arrangement, the directors of the company, if they are still desirous of executing the plan shall confirm the plan of arrangement as approved by the court whether or not the court has directed any amendments to be made thereto.

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

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

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

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

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

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

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

(11) An arrangement is effective on the date the articles of arrangement are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of arrangement.

Rights of dissenters.

82. (1) A member of a company incorporated under this Act shall be entitled to payment of the fair value of his shares upon dissenting from -

- (a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;
- (b) a consolidation, if the company is a constituent company;
- (c) any sale, transfer, lease, exchange or other disposition of more than 50 per cent of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including -
 - (i) a disposition pursuant to an order of the court, having jurisdiction in the matter,
 - (ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition, or

- (iii) a transfer pursuant to the power described in section 10(2);
- (d) a redemption of his shares by the company pursuant to section 80; and
- (e) an arrangement, if permitted by the court.

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

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

(4) Within 20 days immediately following the date on which the vote of members authorising the action is taken, or the date on which written consent of members without a meeting is obtained, the company shall give written notice of the authorisation or consent to each member who gave written objection or from whom written objection was not required, except those members who voted for, or consented to in writing, the proposed action.

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

- (a) his name and address;
- (b) the number and classes or series of shares in respect of which he dissents; and
- (c) a demand for payment of the fair value of his shares;

and a member who elects to dissent from a merger under section 86 shall give to the company a written notice of his decision to elect to dissent within 20 days immediately following the date on which the copy of the plan of merger or an outline thereof is given to him in accordance with section 86.

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

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

(8) Within 7 days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within 7 days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company, shall make a written offer to each dissenting member to purchase his shares at a specified price that the company determines to be their fair value; and if, within 30 days immediately following the date on which the offer is made the company making the offer and the dissenting member agree upon the price to be paid for his shares, the company shall pay to the member the amount in money upon the surrender of the certificates representing his shares.

(9) If the company and a dissenting member fail

within the period of 30 days referred to in subsection (8) to agree on the price to be paid for the shares owned by the member, within 20 days immediately following the date on which the period of 30 days expires, the following shall apply -

- (a) the company and the dissenting member shall each designate an appraiser;
- (b) the 2 designated appraisers together shall designate a third appraiser;
- (c) the 3 appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorising the action was taken or the date on which written consent of members without a meeting was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and
- (d) the company shall pay to the member the amount in money upon the surrender by him of the certificates representing his shares.

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

(11) The enforcement by a member of his entitlement under this section excludes the enforcement by the member of a right to which he might otherwise be entitled by virtue of

his holding shares, except that this section does not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.

PART VIII
CONTINUATION

Continuation.

83. (1) A company incorporated under the Companies Act or incorporated under the laws of a jurisdiction outside The Bahamas may, if it will satisfy the requirements prescribed for an International Business Company by section 4, continue as a company incorporated under this Act as follows -

(a) articles of continuation, written in the English language or if written in a language other than the English language, accompanied by a certified translation into the English language, shall be approved -

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

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

(b) the articles of continuation shall contain -

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

- (ii) the jurisdiction under which it is incorporated,
 - (iii) the date on which it was incorporated,
 - (iv) the information required to be included in a Memorandum under section 13(1), and
 - (v) the amendments to its Memorandum and Articles, or their equivalent, that are to be effective upon the registration of the articles of continuation;
- (c) the articles of continuation, accompanied by a copy of the Memorandum and Articles of the company, or their equivalent, written in the English language or if written in a language other than the English language, accompanied by a certified translation into the English language and in the case of a foreign company, evidence satisfactory to the Registrar that the company is in good standing, shall be submitted to the Registrar who shall retain and register them in the register; and
- (d) upon the registration of the articles of continuation, the Registrar shall issue a certificate of continuation under his hand and seal certifying that the company is incorporated under this Act.
- (2) A company incorporated under the laws of a

jurisdiction outside The Bahamas shall be entitled to continue as a company incorporated under this Act notwithstanding any provision to the contrary in the laws of the jurisdiction under which it is incorporated.

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

**Provi-
sional
regis-
tration.**

84. (1) A company incorporated under the laws of a jurisdiction outside The Bahamas may, if it will satisfy the requirements prescribed for an International Business Company by section 4, apply to the Registrar for provisional registration to continue as a company incorporated under this Act by complying with section 77(1)(a) and (b) and by submitting to the Registrar the following documents -

- (a) the articles of continuation, accompanied by a copy of the Memorandum and Articles of the company, or their equivalent written in the English language or if written in a language other than the English language accompanied by a certified translation into the English language, and evidence satisfactory to the Registrar that the Company is in good standing; and
- (b) a written authorisation designating one or more persons who may give notice to the Registrar, by telefax, telex, telegram, cable or other electronic means or by registered mail that the articles of continuation should become effective.

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

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

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

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

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

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

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

Certificate

85. A certificate of continuation issued by the

of continuation.

Registrar under section 83(1)(d) or under section 84(3) shall be prima facie evidence of compliance with all requirements of this Act in respect of continuation.

Effect of continuation.

86. (1) From the time of the issue by the Registrar of a certificate of continuation under section 83(1)(d) or under section 84(3) -

(a) the company to which the certificate relates -

(i) continues to be a body corporate incorporated under this Act, under the name designated in the articles of continuation,

(ii) is capable of exercising all powers of a company incorporated under this Act, and

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

(b) the Memorandum and Articles of the company, or their equivalent, as amended by the articles of continuation, are the Memorandum and Articles of the company;

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

- (d) the company continues to be liable for all of its claims, debts, liabilities, and obligations.
- (2) Where a company is continued under this Act -
- (a) no conviction, judgment, ruling, order, claim, debt, liability, or obligation due or to become due and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as company under this Act; and
 - (b) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation under section 83(1)(d) or under section 84(3) by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.
- (3) All shares in the company that were outstanding prior to the issue by the Registrar of a certificate of continuation under section 83(1)(d) or under section 84(3) in respect of the company shall be deemed to have been issued in conformity with this Act, but a share that at the time of the issue of the certificate of continuation

was not fully paid remains unpaid, and until the share is paid up, the member holding the share remains liable for the amount unpaid on the share.

(4) If at the time of the issue by the Registrar of a certificate of continuation under section 83(1)(d) or under section 84(3) in respect of the company any provisions of the Memorandum and Articles of the company do not in any respect accord with this Act -

- (a) the provisions of the Memorandum and Articles continue to govern the company until the provisions are amended to accord with this Act or for a period of 2 years immediately following the date of the issue of the certificate of continuation, whichever is the sooner;
- (b) any provisions of the Memorandum and Articles of the company that are in any respect in conflict with this Act cease to govern the company when the provisions are amended to accord with this Act or after expiration of a period of 2 years after the date of issue of the certificate of continuation whichever is the sooner; and
- (c) the company shall make such amendments to its Memorandum and Articles as may be necessary to accord with this Act within a period that is not later than 2 years immediately following the date of the issue of the certificate of continuation.

Contin-

87. (1) Subject to any limitations in its Memorandum

**uation
under
foreign
law.**

or Articles a company incorporated under this Act may, by a resolution of directors or by a resolution of members, continue a company incorporated under the laws of a jurisdiction outside The Bahamas in the manner provided under those laws.

(2) A company incorporated under this Act that continues as a company incorporated under the laws of a jurisdiction outside The Bahamas, does not cease to be a company incorporated under this Act unless the laws of the jurisdiction outside The Bahamas permit the continuation and the company has complied with those laws.

(3) Where a company incorporated under this Act continues under the laws of a jurisdiction outside The Bahamas-

- (a) the company continues to be liable for all of its claims, debts, liabilities and obligations that existed prior to its continuation as a company under the laws of the jurisdiction outside The Bahamas;
- (b) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside The Bahamas; and
- (c) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, are abated or

discontinued by its continuation as a company under the laws of the jurisdiction outside The Bahamas, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director officer or agent thereof, as the case may be.

(4) Where a company incorporated under this Act continues under the laws of a jurisdiction outside The Bahamas, the company shall submit to the Registrar a legal opinion by a person duly qualified in that jurisdiction that -

(a) the laws of the jurisdiction outside The Bahamas permit the continuation; and

(b) the company has complied with those laws;

and upon receiving such legal opinion the Registrar shall -

(i) strike the company off the Register; and

(ii) issue a certificate under his hand and seal certifying that the company has ceased to be a company incorporated under this Act.

PART IX
WINDING-UP, DISSOLUTION
AND STRIKING-OFF

Definition of contributory.

88. For the purposes of this Part "contributory" mean as every person liable to contribute to the assets of a company under this Act in the event of that company being

wound up and includes any person alleged to be a contributor in proceedings for determining the persons who are to be deemed contributories and in all proceedings prior to the final determination of such persons.

Nature of liability of contributory.

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

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

Contributories in case of death.

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

Contributories in case of bankruptcy.

91. Where any contributory becomes bankrupt, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such bankrupt for all the purposes of the winding up, and shall be deemed to be contributories, accordingly, and may be called upon to admit to proof against the estate of such

bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any monies due from such bankrupt in respect of his liability to contribute to the assets of the company being wound up.

**Circumstances
giving rise
to winding
up by court.**

92. A company under this Act may be wound up by the court in the following circumstances -

- (a) when the company has passed a resolution requiring the company to be wound up by the court;
- (B) when the company does not commence its business within a year from its incorporation, or suspends its business for a period of one year;
- (c) where at any time there is no member of the company;
- (d) when the company is unable to pay its debts;
- (e) if the court is of the opinion that it is just and equitable that the company should be wound up.

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

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

- (a) a creditor, by assignment or otherwise, to whom the company is indebted, in a sum exceeding one thousand dollars then due, has served on the company, at its registered office, a demand under his hand requiring the company to pay the sum due, and the company has for three weeks

thereafter neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor;

- (e) execution of other process issued on a judgement, decree, or order obtained in any court in favour of any creditor in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part;
- (f) it is proved to the satisfaction of the court that the company is unable to pay its debts; or
- (g) it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, having regard to its contingent and prospective creditors.

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

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

**Power of
court.**

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

**Commence-
ment of
winding up.**

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

**Court may
grant
injunction.**

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

**Course to
be pursued
by court.**

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 deems just.

**Actions
and suits
to be
stayed.**

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

**Copy of
order to be
forwarded
to Registrar.**

100. When an order has been made for winding up a company under this Act, a copy of such order shall be forwarded by the company to the Registrar who shall make a minute thereof in the register of companies.

**Power of
court to
stay
proceedings.**

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

**Effect of
order on
share
capital of
company
limited by
guarantee.**

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 of the nature of a specialty due to the company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the court.

**Court may
have regard
to wishes
of creditors
or con-
tributors.**

103. (1) Subject to subsection (2), the court may, as to all matters relating to the winding up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held, and conducted in such manner as the court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of such meeting, and to report the result of such meeting to the court.

(2) Without affecting subsection (1), in the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the

regulation of the company.

Official Liquidators

**Appointment
of official
liquidator.**

104. For the purpose of conducting the proceedings in winding up a company, and assisting the court therein, there may be appointed a person to be called an official liquidator; and the court having jurisdiction may appoint such person, either provisionally or otherwise, as it thinks fit, to the office of official liquidator; but in either case, if more person than one are appointed to the office of official liquidator, the court may declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons, and the court may also determine whether any and what security is to be given by any official liquidator on his appointment.

**Remuneration,
of official
liquid-
ator.**

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

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

**Style and
duties of
official
liquidator.**

106. The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed, and not by his individual name; and he shall take into his custody, or

under his control, all the property, effect, and things in action to which the company is or appears to be entitled, and shall perform such duties in reference to the winding up of the company as may be imposed by the court.

**Powers of
official
liquidator.**

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

as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors;

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

such letters or recover such monies, be deemed to be due to the official liquidator himself; and

- (h) do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

**Discretion
of official
liquidator.**

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

**Vesting of
property in
liquidator.**

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

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

**Assistance
for
liquidator.**

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

Ordinary Powers of Court

**Collection
and
application
of assets.**

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

**Provisions
as to
repre-
sentative
contri-
butories.
19 of 2001.**

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

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

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

Power of

114. (1) Subject to subsections (2) and (3), the court

**court to
order
payment of
debts by
contri-
butory.**

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

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

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

**Power of
court to
make calls.**

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

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

Power of court to order payment into bank.

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

Regulation of account with court.

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

Representative contributory not paying monies ordered.

118. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the personal and real estates of such deceased contributory, or either of such estates, and of compelling payment of the monies due.

Order conclusive evidence.

119. Any order made by the court pursuant to this Act upon any contributory shall, subject to the provisions for appealing against such order, be conclusive evidence that the monies, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters

stated in such order are to be taken to be truly stated as against all person, and in all proceedings, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be prima facie evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

**Court may
exclude
creditors
not proving
in certain
time.**

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

**Court to
adjust rights
of contri-
butories.**

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

**Court to
order costs.**

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

**Dissolution
of company.**

123. When the affairs of the company have been completely wound up, the court may make an order that the company shall be dissolved accordingly.

**Registrar
to make
minute of**

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

dissolution. company.

Extraordinary Powers of Court

**Power of
court to
summon
persons.**

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

**Examination
of parties
by court.**

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

subscribe the same.

**Power of
arrest.**

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 a probable cause for believing that any contributory to such company is about to leave The Bahamas or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, monies, securities for monies, goods, and chattels to be seized, and him and them to be safely kept until such time as the court may order.

**Powers of
court
cumulative.**

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

**Power to
enforce
orders.**

129. All orders made by the court under this Act may be enforced in the same manner in which orders of such court made in any suit pending therein may be enforced.

**Winding-up
by resolu-
tion of
directors.**

130. A company incorporated under this Act shall commence to wind up and dissolve by a resolution of directors upon the expiration of such time as may be prescribed in its Memorandum or Articles for its existence.

**Voluntary
winding-up
and dis-
solution.**

131. (1) A company incorporated under this Act that has never issued shares may voluntarily commence to wind up and dissolve by a resolution of directors.

(2) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act that has previously issued shares may voluntarily commence to wind up and dissolve by a resolution of members or by a resolution of directors.

**Appoint-
ment of
liquidator.**

132. (1) A resolution of members or directors to voluntarily wind up and dissolve a company shall also appoint a liquidator for the purpose of winding up the affairs of the company and distributing its property.

(2) If there is no liquidator acting in the case of a voluntary winding-up, the court may, on the application of a contributory, appoint a liquidator and the court may, on due cause shown, remove any liquidator and appoint another liquidator to act in the matter of a voluntary winding-up.

**Powers of
directors
in a
winding-up
and dis-
solution.**

133. Upon the commencement of a winding-up and dissolution required under section 130 or permitted under section 131 the directors may -

- (a) authorise a liquidator, by a resolution of directors, to carry on the business of the company only if the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company; and
- (b) determine to rescind the articles of

dissolution only as permitted under section 139.

Duties of liquidator.

134. (1) A liquidator shall, upon his appointment in accordance with this Part and upon the commencement of a winding-up and dissolution, proceed -

- (a) to identify all assets of the company;
- (b) to identify all creditors of and claimants against the company;
- (c) to pay or provide for payment of, or to discharge, all claims, debts, liabilities and obligations of the company;
- (d) to distribute any surplus assets of the company to the members in accordance with the Memorandum and Articles;
- (e) to prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and
- (f) to send a copy of the statement of account to members if so required by the plan of dissolution required by section 137.

(2) A transfer, including a prior transfer, described in section 10(2) of all or substantially all of the assets of a company incorporated under this Act for the benefit of the creditors and members of the company, is sufficient to satisfy the requirements of subsection (1)(c) and (d).

Powers of

135. (1) In order to perform the duties imposed on him

liquidator. under section 134, a liquidator has all powers of the company that are not reserved to the members under this Act or in the Memorandum or Articles, including , but not limited to, the power -

- (a) to take custody of the assets of the company, and, in connection therewith, to register any property of the company in the name of the liquidator or that of his nominee;
- (b) to sell any assets of the company at public auction or by private sale without any notice;
- (c) to collect the debts and assets due or belonging to the company;
- (d) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;
- (e) to negotiate, compromise, and settle any claim, debt, liability or obligation of the company;
- (f) to prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;
- (g) to retain counsel and attorneys, accountants and other advisers and appoint agents;
- (h) to carry on the business of the company, if the liquidator has received

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authorisation to do so in the plan of dissolution or by a resolution of directors permitted under section 133, as the liquidator may determine to be necessary or to be in the best interest of the creditors or members of the company;

- (i) to execute any contract, agreement or other instrument in the name of the company or in the name of the liquidator; and
- (j) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

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

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

136. Where a company is being wound up voluntarily the liquidators or any contributory of the company may apply to the court to determine any question arising in the matter of such winding up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court, and the court if satisfied that the determination of such question, or the required exercise of power will be just and beneficial, may

accede, wholly, or partially, to such application, on such terms and subject to such conditions as the court thinks fit, or it may make such other order, interlocutor, or decree on such application as the court thinks just.

**Procedure
on winding-
up and dis-
solution.**

137. (1) The directors of a company required under section 130 or proposing under section 131 to wind-up and dissolve the company shall approve a plan of dissolution containing -

- (a) a statement of the reason for the winding-up and dissolving;
- (b) a statement that the company is, and will continue to be, able to discharge or pay or provide for the payment of all claims, debts, liabilities and obligations in full;
- (c) a statement that the winding-up will commence on the date when articles of dissolution are submitted to the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution;
- (d) a statement of the estimated time required to wind-up and dissolve the company;
- (e) a statement as to whether the liquidator is authorised to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interest of the creditors or members of the company;
- (f) a statement of the name and address of

each person to be appointed a liquidator and the remuneration proposed to be paid to each liquidator; and

- (g) a statement as to whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.

(2) If a winding-up and dissolution is being effected in a case where section 131(2) is applicable -

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

(3) After approval of the plan of dissolution by the directors, and if required, by the members in

accordance with subsection (2), articles of dissolution shall be executed by the company and shall contain -

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

(4) Articles of dissolution shall be submitted to the Registrar who shall retain and register them in the Register and within 30 days immediately following the date on which the articles of dissolution are submitted to the Registrar, the company shall cause to be published, in the Gazette, in a publication of general circulation in The Bahamas and in a publication of general circulation in the country or place where the company has its principal office, a notice stating -

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

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

(6) A liquidator shall, upon completion of a winding-up and dissolution, submit to the Registrar a statement that the winding-up and dissolution has been completed and upon receiving the notice, the Registrar shall -

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

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

(a) the certificate shall be prima facie evidence of compliance with all requirements of this Act in respect of dissolution; and

(b) the dissolution of the company is effective from the date of the issue of the certificate.

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

**Effect of
voluntary
winding up.**

138. Whenever a company is wound up voluntarily all transfers of shares except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company taking place, after the commencement of such winding up are void.

**Rescission
of winding-
up and dis-
solution.**

139. (1) In the case of a winding-up and dissolution permitted under section 131, a company may prior to submitting to the Registrar a notice specified in section 137(6), rescind the articles of dissolution by -

(a) a resolution of directors in the case of a winding-up and dissolution under section 131(1); or

(b) a resolution of members or a resolution of directors, as the case may be, in the case of winding-up and dissolution under section 131(2).

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

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

**Winding-up
and dis-
solution of
company
unable to
pay its
claims, etc.
19 of 2001.**

140.

Where-

(a) the directors or, as the case may be, the members of a company that is required under section 130 or permitted under section 131 to wind-up and dissolve, at the time of the passing of the resolution to wind-up and dissolve the company, have reason to believe that the company will not be able to pay or provide for the payment of or discharge of all claims, debts, liabilities and obligations of the company in full; or

(b) the liquidator after his appointment has reason so to believe,

then, the directors, the members or the liquidator, as the

case may be, shall immediately give notice of the fact to the Registrar.

Winding up subject to the Supervision of the Court

Power of court on application to direct winding up subject to supervision.

141. 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 such conditions as the court thinks just.

Petition for winding up subject to supervision.

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

Court may have regard to wishes of creditors.

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

(2) The court may, in the case of creditors, have

regard to the value of the debts due to each creditor and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

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

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

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

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

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

(2) For the purposes of the construction of the

provisions whereby the court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression official liquidators shall be deemed to include the liquidators conducting the winding up, subject to the supervision of the court.

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

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

Supplemental Provisions

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

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

**Books of the
company to
be evidence.**

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

Disposal of

149. Where any company has been wound up under

**books,
accounts and
documents
of the
company.**

this Act and is about to be dissolved, the books, accounts and documents of the company and of the liquidators may be disposed of as follows -

- (a) where the company has been wound up by or subject to the supervision of the court, in such way as the court directs; and
- (b) where the company has been wound up voluntarily, in such way as the company by resolution directs, but after the lapse of five years from the date of such dissolution, no responsibility shall rest on the company, or the liquidators, or anyone to whom the custody of such books, accounts and documents have been committed, by reasons that the same, or any of them, cannot be made available to any party claiming to be interested therein.

**Inspection
of books.**

150. Where an order has been made for winding up a company by the court, or subject to the supervision of the court, the court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories, in conformity with the order of the court.

**Power of
assignee
to sue.**

151. Any person to whom any thing in action belonging to the company is assigned, in pursuance of this Act, may bring or defend any action or suit relating to such

thing in action in his own name.

**Debts to
be proved.**

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

**Rules to
be observed.**

153. In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all person who in any case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they are entitled to by virtue of this section.

**Preferential
payments.**

154. (1) Notwithstanding anything contained in this Act, in a winding up there shall be paid in priority to all other debts -

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

- (b) all wages or salary of any clerk or servant in respect of services rendered to the company during four months before the relevant date;
 - (c) all wages of any workman or labourer in respect of services rendered to the company during two months before the relevant date;
 - (d) unless the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company or unless the company has at the commencement of the winding up under a contract with insurers with rights capable of being transferred to and vested in the workmen, all amounts due in respect of personal injury to workmen accrued before the relevant date.
- (2) The debts referred to in subsection (1) -
- (a) rank equally among themselves and shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
 - (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property

comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts referred to in subsection (1) shall be discharged so far as the assets are sufficient to meet them.

(4) Where any payment on account of wages or salary has been made to any clerk, servant, workman, or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the 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, by in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(6) In any case in which it appears that there are numerous claims for wages by workmen and others employed by the company, it shall be sufficient if one proof for all such claims is made by some person on behalf of all such creditors; and such proof shall have annexed thereto, as forming part thereof, a schedule specifying the names of the workmen and others, and the amounts severally due to them.

(7) Any proof made in compliance with subsection (6) has the same effect as if separate proofs had been made

by each workman and others.

(8) In this section the expression "relevant date" means -

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

**Liquidation
scheme may
be approved.**

155. (1) The liquidators may, with the approval of the court, where the company is being wound up by the court or subject to the supervision of the court, and by resolution of the company where the company is being wound up voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or person claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable.

(2) Where a company is being wound up in circumstances contemplated by subsection (1) the liquidators may, with the approval of the court, compromise -

- (a) all calls and liabilities to calls, debts, and liabilities capable of resulting in debts;
- (b) all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company

and any contributory or alleged contributory, or other debtor or person apprehending liability to the company; and

- (c) all questions in any way relating to or affecting the assets of the company or the winding up of the company, upon the receipt of such sums, payable at such times, and upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts or liabilities.

Acceptance of shares, etc., as consideration for sale of property of company.

156. (1) Subject to subsection (2), where any company is proposed to be or is in the course of being wound up voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first company may, with the approval of a resolution of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement -

- (a) receive in compensation or part compensation for such transfer or sale shares, policies or other like interest in such other company, for the purpose of distribution amongst members of the company being wound up; or
- (b) enter into any other arrangement whereby

the members of the company being wound up may, in lieu of receiving cash, receive shares, policies, or other like interest, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company,

and any sale made or arrangement entered into by the liquidators pursuant to this section shall be binding on the members of the company being wound up.

(2) If any member of a company being wound up who has not voted in favour of the resolution passed by the company of which he is a member at the meeting held for passing the resolution expresses his dissent from any such resolution in writing addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such resolution was passed, such dissentient member may require the liquidators to do one of the following -

- (a) abstain from carrying such resolution into effect; or
- (b) purchase the interest held by such dissentient member at a price to be determined.

(3) For the purpose of subsection (2)(b) the purchase money shall be paid before the company is dissolved, and shall be raised by the liquidators in such manner as may be determined by resolution of members.

(4) No resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company, or for appointing liquidators, but

if an order be made within a year for winding up the company by or subject to the supervision of the court, such resolution shall not be of any validity unless it is approved by the court.

**Mode of
determining
price.**

157. The price to be paid or the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of the Arbitration Act shall be incorporated within this Act.

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**Certain
attachments
and
executions
to be void.**

158. Where any company is being wound up by the court or subject to the supervision of the court, any attachment, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up is void.

**Fraudulent
preference.**

159. (1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property as would, if made or done by or against any individual trader, be deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference of the creditors of such traders, shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such company, and is invalid accordingly.

(2) For the purposes of this section-

(a) the presentation of a petition for winding up a company in the case of a company being wound up by the court or

subject to the supervision of the court;
(b) a resolution for winding up the company,
in the case of a voluntary winding up,
and shall be deemed to correspond with the act of bankruptcy
in the case of an individual trader, and any conveyance or
assignment made by any company formed under this Act of all
or any part of its estate and effects to trustees for the
benefit of all or any part of its creditors is void.

**Assessment of
damages
against
delinquent
directors
and officers.**

160. Where, in the course of the winding up of any
company under this Act, it appears that any past or present
director, manager, official or other liquidator, or any
officer of such company -

(a) has misapplied or retained in his own
hand or become liable or accountable for
any monies of the company; or

(b) is guilty of any misfeasance or breach
of trust in relation to the company,

the court may, on the application of any liquidator, or of
any creditor or contributory of the company, notwithstanding
that the offence is one for which the offender is criminally
responsible, examine the conduct of such director, manager,
or other officer and may compel him to repay any monies so
misapplied or retained, or for which he has become liable or
accountable, together with interest at such rate as the
court thinks just, or to contribute such sums of money to
the assets of the company by way of compensation in respect
of such misapplication, retainer, misfeasance, or breach of
trust, as the court thinks just.

**Prosecution
of delinquent**

161. Where any order is made for winding up a
company by the court or subject to the supervision of the

directors in winding up by court.

court, and it appears in the course of such winding up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may, on the application of any person interested in such winding up, or of its own motion, direct the official liquidators to refer the matter to the Attorney-General who may institute and conduct a prosecution or prosecutions of such offence.

Prosecution of delinquent directors in voluntarily winding up.

162. Where a company is being wound up voluntarily, and it appears to the liquidators conducting such winding up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidators may, refer the matter to the Attorney-General who may institute and conduct a prosecution or prosecutions of such offence.

Receivers and managers.

163. The provisions of the Companies Act regarding receivers and managers govern mutatis mutandis the appointment, duties, powers and liabilities of receivers and managers of the assets of any company incorporated under this Act.

Striking-off. 19 of 2001.

164. (1) Where the Registrar has reasonable cause to believe that a company incorporated under this Act no longer satisfies the requirements prescribed for an International Business company, the Registrar shall serve on the company a notice that the name of the company may be struck off the Register if the company no longer satisfies those requirements.

(2) If the Registrar does not receive a reply within thirty days immediately following the date of the service of the notice referred to in subsection (1), he shall publish a notice in the Gazette that the name of the company will be struck off the register unless the company or another person satisfies the Registrar that the name of the company should not be struck off.

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

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

(5) Where the Registrar is of the opinion that a company is in default with respect to any prescribed fee for thirty days, he shall send a notice to that company advising it as to the default and stating that unless the default is remedied within thirty days after the date of the notice, the company may be struck off the register.

19 of 2001.

(6) If the default with respect to any prescribed fee is not remedied within the time specified in subsection (5), the Registrar may strike the company off the Register and publish notice of the striking-off in the Gazette.

**Restoration
to Register.**

165. (1) If the name of the company has been struck off the Register under section 164(4) the company, or a

creditor, member or liquidator thereof, may apply to the court to have the name of the company restored to the Register.

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

(a) at the time the name of the company was struck off the Register, the company did satisfy the requirements prescribed for an International Business Company by section 4; and

(b) it would be fair and reasonable for the name of the company to be restored to the Register,

the Court may order the name of the company to be restored to the Register upon payment to the Registrar of all fees and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.

(3) If the name of a company has been struck off the register under section 164(4) the company, or a creditor, member or liquidator thereof, may within five years immediately following the date of the striking off, apply to the Registrar to have the name of the company restored to the register and upon payment to the registrar of all fees due under this Act the Registrar shall restore the name of the company to the register and upon restoration of the name of the company to the register, the name of the company shall be deemed never to have been struck off the register.

(4) For the purpose of this Part, the appointment of an official liquidator under section 167 operates as an order to restore the name of the company to the Register.

Effect of

166. (1) Where the name of a company has been struck-

**striking-
off.**

off the Register, the company and the directors, members, liquidators and receivers thereof, may not legally -

- (a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;
- (b) defend any legal proceedings, make any claim or claim any right for, or in the name of the company; or
- (c) act in any way with respect to the affairs of the company.

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

- (a) make application for restoration of the name of the company to the Register;
- (b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and
- (c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.

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

- (a) that company from incurring liabilities;
- (b) any creditor from making a claim against that company through to judgment or execution; or
- (c) the appointment by the court of an official liquidator for that company

under section 168.

**Appointment
of official
liquidator.**

167. The court may appoint a person to be the official liquidator in respect of a company the name of which has been struck-off the Register.

**Dissolution
of company
struck-off.**

168. (1) If the name of a company has been struck-off the Register under section 165 and remains struck-off continuously for a period of 5 years, the company shall be deemed to have been dissolved, but the Registrar may, if he determines that it is in the best interest of the Crown to do so, apply to the court to have the company put into liquidation and a person shall be appointed as the official liquidator thereof.

(2) The duties of an official liquidator in respect of a company in liquidation pursuant to subsection (1) are limited to -

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

all other claims admitted by
the official liquidator.

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

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

(5) When the official liquidator has completed his duties he shall submit a written report of his conduct of the liquidation proceedings to the Registrar and, upon receipt of the report by the Registrar, all assets of the company, wherever situate, that are not disposed of, vest in the Crown and the company is dissolved.

(6) The official liquidator is entitled to such remuneration out of the assets of the company for his services as the court approves, but if the company is unable to discharge all of its claims, debts, liabilities and obligations, payment of the official liquidator's remuneration shall be a charge on the Consolidated Fund.

(7) No liability attaches to an official liquidator -

- (a) to account to creditor of the company who have not submitted claims within the time allowed by him; or
- (b) for any failure to locate any assets of the company.

PART X
LIMITED DURATION COMPANY

Interpre- 169. In this Part -
tation for "limited duration company" means an
purposes of International Business Company registered in accordance with
Part X. this Part.

Inter- 170. (1) An International Business Company may at any
national time apply to the Registrar to be registered as a limited
Business duration company.
Company (2) An application may also be made at the same
may apply time as an application is made -
to be (a) to incorporate a company under section 3;
registered (b) to continue the incorporation of
as a a company under section 83.
limited (3) An application under this section shall in
duration addition to any other fee that may be payable be accompanied
company. by an application fee of two hundred dollars.

Registra- 171. (1) The Registrar shall register as a limited
tion of duration company a company that has made application under
limited section 170 if -
duration (a) the company has at least two subscribers
company. or two members;
(b) where the company was not already
incorporated as an International Business
Company prior to the application -
(i) the Memorandum of the company
limits the company's duration to
a period of 30 years or less,
and

- (ii) the name of company includes the words "Limited Duration Company" or the abbreviation "LDC"; and
- (c) where the company was already incorporated as an International Business Company prior to the application -

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

- (ii) the Registrar has been supplied, in accordance with section 18(2), with a copy of the amendment changing its name to a name that includes the words "Limited Duration Company" or the abbreviation "LDC".

(2) On registering an International Business Company as a limited duration company the Registrar shall -

- (a) where the company was not already incorporated as an International Business Company prior to the application, certify in the certificate of incorporation issued in accordance with section 15(2) or the certificate of continuation issued in accordance with section 83(1)(d) that the company is registered as a limited

duration company; and

(b) where the company was already incorporated as an International Business Company prior to the application, certify in the certificate of incorporation issued in accordance with section 15(2) that the company is registered as a limited duration company stating the date of such registration.

(3) A resolution passed for the purpose of subsection (1)(c) shall have no effect until the company is registered as a limited duration company.

**Contents of
Articles of
limited
duration
company.**

172. (1) The Articles of a limited duration company may provide that the transfer of any share or other interest of a member of the company shall require the unanimous resolution of all the other members.

(2) The Articles of a limited duration company may provide that the management of the company is vested in the members of the company in their capacity as such either equally or in proportion to their share or other ownership interest in the company or in such other manner as may be specified in the Articles.

(3) Where the Articles of a limited duration company contain the provisions referred to in subsection (2) the Articles may contain such other provisions concerning management as the members see fit including but not limited to power for the members to appoint managing agents removable with or without cause at any time and subject to supervision by the members.

Winding-up

173. (1) A limited duration company shall be taken to

**of a
limited
duration
company.**

have commenced 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 resolution that the company be wound up voluntarily; or
- (c) subject to any contrary provision in the Memorandum or Articles of the company, on the expiry of a period of 90 days starting on -
 - (i) the death, insanity, bankruptcy, withdrawal, retirement or resignation of a member of the company,
 - (ii) the redemption, purchase, or cancellation of all the shares of a member of the company, or
 - (iii) the occurrence of any event which under the Memorandum or Articles of the company terminates the membership of a member of the company,

unless there remain at least two members of the company and the company is continued in existence by the written resolution of such members pursuant to amended Articles of the company adopted during the period of 90 days.

(2) Where the winding-up of a limited duration company is taken to have commenced by virtue of subsection (1) the members of the company shall by resolution appoint a liquidator for the purpose of the winding-up and if they fail to do so section 132(2) shall apply.

(3) Sections 130 and 131 shall have no application

to a limited duration company.

**Cancellation
of registra-
tion.**

174. (1) A company shall cease to be a limited duration company if -

- (a) the Registrar issues a certificate or dissolution under section 137(6)(b);
- (b) the Registrar issues a certificate of incorporation in accordance with section 12(5) which records a change of name for the company that does not include the words "Limited Duration Company" or the abbreviation "LDC"; or
- (c) the company passes a resolution in accordance with section 18 to alter its Memorandum to provide for a period of duration of the company that exceeds or is capable of exceeding 30 years,

and in the case of paragraph (b) or (c) the company pays a cancellation fee of two hundred dollars.

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

- (a) the Registrar shall, where the company has ceased to be a limited duration company by virtue of subsection (1)(b) or (c), issue to the company a certificate of incorporation altered to meet the circumstances of the case; and
- (b) in all cases the certificate issued by virtue of section 172(2) shall cease to have effect.

(3) A 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).

**PART XI
FEES AND PENALTIES**

**Fees.
Schedule.**

175. (1) There shall be paid to the Registrar in respect of the several matters mentioned in the Schedule the several fees specified therein.

19 of 2001.

(2) In respect of the payment of fees not more than thirty days grace to be calculated from the 1st January in each year may be allowed by the Registrar for payment of the fee payable in any year under this Act.

(3) The fees mentioned in the Schedule shall not apply until January 1, 2002 and the fees payable under the repealed Act shall remain in force until December 31, 2001.

(4) The Minister may by order amend the Schedule for the purpose of varying the fees specified therein and any such order which vary the fees shall be exempt from the provisions of section 31 of the Interpretation and General Clauses Act but shall be subject to an affirmative resolution of the House of Assembly.

19 of 2001.

(5) In subsection (4) "affirmative resolution of the House of Assembly in relation to subsidiary legislation means that such legislation does not come into operation unless and until affirmed by a resolution of that House.

**Penalties
payable to
Registrar.**

176. Any penalty incurred under this Act shall be paid to the Registrar.

**Criminal
liability**

177. (1) When an offence is committed under this Act by a company, whether it is incorporated or registered under

**and
proceedings.**

this Act, and a director or officer of the company knowingly authorized, permitted or acquiesced in the commission of the offence, the director or officer is also guilty of that offence and shall be liable to the same criminal penalty specified for that offence.

(2) Every offence under this Act and every default, refusal or contravention for which a penalty is provided by this Act, being an offence, default, refusal or contravention for which no other mode of proceedings is provided shall be enforced by summary proceedings.

Name offence.

178. A person who contravenes any requirement of this Act regarding the name of a company is guilty of an offence and shall be liable on summary conviction to a fine of five hundred dollars.

**Failure
to keep
Share
Register.**

179. A person who fails to keep a Share Register for the purposes of section 29 is guilty of an offence and shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years.

**False
reports
and false
statements.**

180. (1) A person who makes or assists in making a report, return, notice or other document for submission to the Registrar that -

- (a) contains any untrue statement of a material fact; or
- (b) omits to state a material fact required in such report, return notice or other document,

is guilty of an offence and shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years.

(2) A person is not guilty of an offence under subsection (1) if the making of the untrue statement or the omission of the material fact was unknown to him and with the exercise of reasonable diligence could not have been known to him.

**Miscellaneous
offence.**

181. A person who without reasonable cause contravenes any section of this Act for which no other penalty is provided is guilty of an offence and shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years.

**Recovery
of penal-
ties, etc.**

182. Any fee or penalty payable under this Act that remains unpaid for 30 days immediately following the date on which demand for payment is made by the Registrar is recoverable at the instance of the Attorney-General in civil proceedings as a debt due to the Crown.

**Company
struck off
liable for
fees, etc.**

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

**Fees, etc.
to be paid
into Con-
solidated
Fund.**

184. All fees and penalties paid under this Act shall be paid by the Registrar into the Consolidated Fund.

**Fees pay-
able to**

185. (1) The Registrar may refuse to take action required of him under this Act for which a fee is prescribed

Registrar. until all fees have been paid.

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

PART XII
EXEMPTIONS

Exemptions.

186. (1) The Exchange Control Regulations Act and the regulations made thereunder shall not in any manner apply to a company incorporated under this Act, the operations of which are or are intended to be exclusively overseas.

(2) Where a company incorporated under this Act desires to carry on business with persons resident in The Bahamas, that company must first obtain Exchange Control approval pursuant to the Exchange Control Regulations with respect to its planned operations.

(3) Any resident of The Bahamas, within the meaning of the Exchange Control Regulations Act and the regulations made thereunder, shall, prior to acquiring ownership in any common or preferred shares or any debt or other securities issued or to be issued by a company incorporated under this Act including options or other contracts which are intended to confer rights to ownership or income derived from such a company, obtain Exchange Control approval with respect to such acquisition.

19 of 2001.

(4) Stamp duty shall only be payable by an International Business Company in relation to real property situate in The Bahamas which it owns, or which is owned by any company in which it holds shares or for which it holds a lease.

PART XIII
MISCELLANEOUS

Regulations. 187. The Minister may make regulations with respect to the duties to be performed by the Registrar under this Act and in so doing may prescribe the place where the office for the registration of International Business Companies is located.

Form of certificate. 188. Any certificate or other document required to be issued by the Registrar under this Act shall be in such form as the Minister may approve.

Certificate of good standing. 189. (1) The Registrar shall, upon request by any person issue a certificate of good standing under his hand and seal certifying that a company incorporated under this Act is of good standing if the Registrar is satisfied that -

- (a) the name of the company is on the Register; and
- (b) the company has paid all fees, licence fees and penalties due and payable.

(2) The certificate of good standing issued under subsection (1) shall contain a statement as to whether -

- (a) the company has submitted to the Registrar articles of merger or consolidation that have not yet become effective;
- (b) the company has submitted to the Registrar articles of arrangement that have not yet become effective;
- (c) the company is in the process of being

wound-up and dissolved; or

- (d) any proceedings to strike the name of the company off the Register have been instituted.

**Inspection
of docu-
ments.**

190. (1) Except as provided in section 84(2) a person may -
- (a) inspect the documents kept by the Registrar pursuant to this Act, and
 - (b) require a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing of a company incorporated under this Act, or a copy or an extract of any document or any part of a document of which he has custody, to be certified by the Registrar and a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing or a certified copy or extract shall be prima facie evidence of the matters contained therein.

(2) A document or a copy or an extract of any document or any part of a document certified by the Registrar under subsection (1) is admissible in evidence in any proceedings as if it were the original document.

**Declara-
tion by
court.**

191. (1) A company incorporated under this Act may without the necessity of joining any other party, apply to the court, by summons supported by an affidavit, for a declaration on any question of interpretation of this Act or of the Memorandum or Articles of the Company.

(2) A person acting on a declaration made by the court as a result of an application under subsection (1) shall be deemed, in so far as regards the discharge of any fiduciary or professional duty, to have properly discharged his duties in the subject matter of the application.

**Judge in
Chambers.**

192. A judge of the Supreme Court may exercise in Chambers any jurisdiction that is vested in the court by this Act and in exercise of that jurisdiction, the judge may award such costs as may be just.

**Minister
may vary
fees.**

193. The Minister may by Order vary any fee prescribed under any provision of this Act.

**Repeal.
19 of 2001.**

194. (1) The International Business Companies Act, 1989 with the exception of Part X is hereby repealed and the said Part X shall be repealed on 1st day of January, 2002.

(2) Notwithstanding subsection (1), any International Business Company which commenced winding-up under the repealed Act shall in respect of such winding-up continue to be governed by the winding-up provisions of that Act.

**Transi-
tional.
19 of 2001.**

195. (1) Subject to section 194(2) and subsection (4) of this section, every International Business company in existence immediately before the commencement of this Act shall continue in existence and shall satisfy the requirements of this Act within 12 months from the commencement of this Act and shall thereafter be continued as an International Business Company incorporated under this Act.

(2) A company that fails to satisfy the requirements of this Act within the time specified in subsection (1) shall be struck off the Register:

19 of 2001.

Provided that it shall not be necessary for a company to amend its Memorandum and Articles in order to satisfy the requirements of this Act.

(3) All benefits accruing to any international business company registered in The Bahamas prior to the commencement of this Act shall not be affected by the coming into force of this Act.

(4) Every company which has issued bearer shares under the repealed Act shall recall such shares within six months from the date of commencement of this Act and the company shall cancel such shares and substitute therefor registered shares issued in accordance with this Act and the regulations made thereunder. Any bearer shares which they have not been recalled and cancelled within the said period of six months shall thereafter be null and void and be without effect for all purposes of law.

SCHEDULE

(Section 175)

Fees to be Paid to the Registrar

Matter in respect of which fee is payable	Amount of fee
1. Upon filing memorandum	\$ 300.00
2. Upon filing articles	\$ 30.00
3. In respect of a company registered under this Act on 1 st January in each year	\$ 350.00

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SCHEDULE