CHAPTER 309

INTERNATIONAL BUSINESS COMPANIES

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CHAPTER 309

INTERNATIONAL BUSINESS COMPANIES

An Act to provide for the incorporation, registration and operation of International Business Companies.

[Assent 29th December, 2000]
[Commencement 29th December, 2000]

PART I
PRELIMINARY

Short title.

1. This Act may be cited as the International Business Companies Act.

Interpretation.

2. (1) In this Act —

"agent" includes registered agent;

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

33 of 2013, s. 2.

"authorised capital" in relation to a company means —

(i) where a company is limited solely by shares with par value, or both by shares and by guarantee, the sum of the aggregate par value of all shares which the company is authorised by its Memorandum to issue;

(ii) where a company is limited solely by shares without par value, the amount represented by such shares that the company is authorised by its Memorandum to issue; and

(iii) where a company is limited both by shares with par value and shares without par value, the total of the aggregate par value of and amount represented by such shares that 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;

Ch. 308. "Companies Act" means the Companies Act of The Bahamas;

"continued" means continued in accordance with Part VIII;

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

14 of 2004, s. 2. "member" includes a person or institution who holds shares in a company;

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

14 of 2004, s. 2. "Minister" means the Minister responsible for companies;

"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;

33 of 2013, s. 2. "SACA" means the Segregated Accounts Companies Act;

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"securities" includes shares and debt obligations of every kind, and options, warrants and rights to acquire shares or debt obligations;

33 of 2013, s.2. "segregated accounts company" and "SAC" means an International Business Company which is

registered as a segregated accounts company in accordance with section 6 of the SACA;

"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. Ch. 308.

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

19 of 2001, s. 2(a)(i).

(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

19 of 2001, s. 2(a)(ii).

(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 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

19 of 2001, s. 2(b).

(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.

PART II
CONSTITUTION OF COMPANIES

Incorporation.

36 of 2014, s.2.

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

(2) The Memorandum may be submitted to the Registrar manually or electronically.

Persons who can incorporate International Business Companies.

19 of 2001, s. 3.
39 of 2008, s. 2.
Ch. 316.
Ch. 369.

4. (1) Subject to section 21(b) of the Financial and Corporate Service Providers Act, no person other than a bank or trust company licensed under the Banks and Trust Companies Regulation Act shall incorporate an International Business Company unless such person is licensed and approved under the Financial and Corporate Service Providers Act.

14 of 2004, s. 5.

14 of 2004, s. 3.

(2) Nothing in this Act shall prohibit an International Business Company from carrying on the business of external insurance provided such company is registered as an external insurer under the External Insurance Act.

Ch. 348.

No criminal objects or purposes.

5. A company shall not be incorporated under this Act —

(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.

Contravention of section 5. *S.I. 128/2001.* Ch. 93.

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 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 165(4) 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.

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Personal liability.

7. No member, director, officer, agent or liquidator of a company 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 limiting liability of members.

8. The liability of the members of a company 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 guarantee.

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;

19 of 2001, s. 4.

(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 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 and no transfer of real or personal property by or to a company 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.
S.I. 128/2001.
14 of 2004, s. 4.

12. (1) The word "Limited", "Limited Liability Company", "Corporation", "Incorporated", "Gesellschaft mit beschrankter Haftung", "Societe Anonyme" or "Sociedad Anonima" or its respective abbreviation "Ltd.", "LLC", "Corp.", "Inc.", "GmbH", or "S. A." shall be at the end of the name of every company 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.

33 of 2013, s. 3.

(2) The word "unlimited" shall be at the end of the name of every company with unlimited 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.

33 of 2013, s. 3.

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

33 of 2013, s. 3.

(4) 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;

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1 of 2003.

(b) contains, without express prior permission of the Registrar which permission may be withheld without assigning a reason, the words "Assurance", "Bank", "Building Society", "Chamber of Commerce", "Chartered", "Cooperative", "Imperial", "Insurance", "Municipal", "Royal", "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.

36 of 2014, s.3.

(5) A company name may consist of –

(a) words;

(b) a combination of words and numbers; or

(c) a dual name which shall include English and foreign names in which case the English name need not be a translation of the foreign name.

36 of 2014, s.3.

(6) For the purposes of subsection (5) where any person applies in the approved form for the reservation of a name of a company with a dual name, he shall provide the translation of the accents, characters, other distinctive marks, scripts and symbols used in the foreign name.

33 of 2013, s.3.
36 of 2014, s.3.

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

33 of 2013, s. 3.
36 of 2014, s.3.

(8) 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

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(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, Ch. 308.

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*.

(9) 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. *33 of 2013, s. 3.* *36 of 2014, s.3.*

(10) 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. *33 of 2013, s. 3.* *36 of 2014, s.3.*

(11) 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. *33 of 2013, s. 3.* *36 of 2014, s.3.*

(12) Subject to subsection (3), the Registrar may, upon a request made by any person and payment of the prescribed fee, reserve for 28 days a name for future adoption by a company under this Act. *33 of 2013, s. 3.* *36 of 2014, s.3.*

(13) Subject to subsection (3), if at any time while the name is so reserved, an application is made to the Registrar for an extension of that period and the Registrar is satisfied as to the *bona fides* of the application, he may grant an extension for a further period of 14 days and thereafter may grant two additional extensions which shall each be for a period of 14 days. *36 of 2014, s.3.*

36 of 2014, s.3.

(14) A person may elect to forego reserving a name for a company, in which case such company shall receive a numeric designation that shall be generated electronically.

36 of 2014, s.3.

(15) A company under subsection (14) shall be known by the numeric designation which shall be followed by the words "Bahamas Limited" (e.g. "001 Bahamas Limited").

36 of 2014, s.3.

(16) For the purpose of this section—

(a) "dual name" means an English name and a foreign name used together;

(b) "foreign name" means any name in a language other than English utilizing any accents, characters, letters, distinctive marks, scripts, symbols and which does not have to be a translation or transliteration of the name in English.

Name of IBC operating as a segregated accounts company.

33 of 2013, s.4.

12A. A company incorporated under this Act which files a request for registration as a segregated accounts company under section 6 of the SACA shall amend its name to include at the end the words "Segregated Accounts Company" or the abbreviations "SAC" or "Sac".

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;

33 of 2013, s. 5.

(f) in the case of a company limited by shares —

(i) where the company is limited solely by shares with par value, or both by shares and by guarantee, a statement of the authorised capital of the company setting forth the aggregate par value of the shares that the company is authorised to issue;

(ii) where the company is limited solely by shares without par value, the amount represented by such shares that the company is authorised to issue; and

(iii) where the company is limited both by shares with par value and shares without par value, the total of the aggregate par value of and amount represented by such shares, respectively;

(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 contributories amongst themselves, such amounts as may be required, not exceeding an amount to be specified therein; *S.I. 128/2001.*

(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.

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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.

Registration.
19 of 2001, s.5.
14 of 2004.

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 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, or in electronic form, that the requirements of this Act in respect of registration have been complied with and the written or electronic certification delivered to the Registrar is sufficient evidence of compliance. *36 of 2014, s.4*

Certificate of incorporation.

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 issued by the Registrar shall be *prima facie* evidence of compliance with all requirements of this Act in respect of incorporation.

Amendment of Memorandum or Articles.

18. (1) Subject to any limitation in its Memorandum or Articles, a company 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.

14 of 2004.

(2) A company that amends its Memorandum or Articles shall submit to the Registrar within twenty-eight 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 73, 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 Articles to members.

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

PART III
CAPITAL AND DIVIDENDS

Consideration for shares.

20. Subject to any limitations in the Memorandum or Articles, each share in a company 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 consideration.

21. (1) Subject to any limitations in the Memorandum or Articles, shares in a company 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 on such terms and conditions as the directors may determine.

Fractional shares.

22. Subject to any limitations in its Memorandum or Articles, a company may issue fractions of a share and unless and to the extent otherwise provided in the Memorandum or Articles, a fractional share has the corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a share of the same class or series of shares.

Capital and surplus accounts.

23. (1) Where a company 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 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 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 reduction of capital.
19 of 2001, s.6.

25. (1) Subject to any limitations in its Memorandum or Articles, a company 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.

Division and combination.

26. (1) A company 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 are personal property and are not of the nature of real property.

Share certificates.

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

(2) Where a company 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. *19 of 2001, s. 7.*

29. (1) A company 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 storage 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.

Rectification 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 registered 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 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 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.

19 of 2001, s. 8(a).

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

19 of 2001, s. 8(b).

(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, 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 81; and

(d) pursuant to an order of the court.

19 of 2001, s. 8(c).

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.

Treasury shares disabled in respect of voting and dividends.

19 of 2001, s. 9.

33. Where shares in a company —

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

(b) are held by another company of which the first company holds, directly or indirectly, shares having more than 50 per cent of the votes in the election of directors of another 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 reduction 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.

Appreciation 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.

Mortgages and charges of shares.

36A. (1) A mortgage of shares or a charge of shares of a company incorporated under this Act must be in writing signed by, or with the authority of, the registered holder of the share to which the mortgage or charge relates.

14 of 2004.

(2) A mortgage of shares or a charge of shares of a company incorporated under this Act need not be in any specific form but it must clearly indicate —

(a) the intention to create a mortgage or charge; and

(b) the amount secured by the mortgage or charge or how that amount is to be calculated.

(3) A mortgage of shares or a charge of shares of a company incorporated under this Act may be governed by the law of a jurisdiction other than The Bahamas, but if a law other than the law of The Bahamas is specified as the governing law —

(a) the mortgage or charge must be in compliance with the requirements of its governing law in order for the mortgage or charge to be valid and binding on the company; and

(b) the remedies available to a mortgagee or chargee shall be governed by the governing law and the instrument creating the mortgage or charge save that the rights between the mortgagor or mortgagee as a member of the company and the company shall continue to be governed by the memorandum and the articles of the company and this Act.

(4) If no law is specified to govern a mortgage of shares or a charge of shares of a company incorporated under this Act, the instrument creating the mortgage or charge shall be governed by the laws of The Bahamas and, in the case of a default by the mortgagor or chargor on the terms of the mortgage, the mortgagee or chargee is entitled to the following remedies —

(a) subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, the right to sell the shares; and

(b) the right to appoint a receiver who, subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, may —

(i) vote the shares;

(ii) receive dividends and other payments in respect of the shares, and

(iii) exercise other rights and powers of the mortgagor or chargor in respect of the shares,

until such time as the mortgage or charge is discharged.

(5) Subsection (4) also applies to a mortgage of shares or a charge of shares of a company incorporated under this Act where the law of The Bahamas is specified as the governing law.

(6) Subject to any provisions to the contrary in the instrument of mortgage of shares or a charge of shares of a company incorporated under this Act, all amounts that accrue from the enforcement of the mortgage or charge shall be applied in the following manner —

(a) firstly, in meeting the costs incurred in enforcing the mortgage or charge;

(b) secondly, in discharging the sums secured by the mortgage or charge; and

(c) thirdly, in paying any balance due to the mortgagor or chargor.

(7) The remedies referred to in subsection (4) are not exercisable until —

(a) a default has occurred and has continued for a period of not less than 30 days, or such shorter period as may be specified in the instrument creating the mortgage or charge; and

(b) the default has not been rectified within fourteen days from service of the notice specifying the default and requiring rectification thereof.

(8) In the case of a mortgage of shares or a charge of shares there may be entered in the share register of the company —

(a) a statement that the shares are mortgaged or charged;

(b) the name of the mortgagee or chargee; and

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

Optional registration of registers.

14 of 2004.

36B (1). A company incorporated under this Act may elect to submit for registration by the Registrar its register of mortgages and charges.

(2) A company that has elected to submit for registration a copy of its register of mortgages and charges shall, until it otherwise notifies the Registrar pursuant to subsection (3), submit for registration any changes in the register of mortgages and charges by substituting for registration a copy of the register containing the changes.

(3) A company that submits for registration a copy of its register with the Registrar may elect to cease registration of changes in the register by so informing the Registrar in writing.

(4) If a company elects to submit for registration its register pursuant to subsection (1), then, until such time as the company informs the Registrar pursuant to subsection (3) that it elects to cease to register changes in its register, the company is bound by the contents of the copy of its register submitted to the Registrar.

Optional registration of mortgages and charges.

14 of 2004.

36C. A company incorporated under this Act may submit to the Registrar for registration —

(a) any document or copy of a document creating a mortgage, charge or other encumbrance over some or all its assets;

(b) any document or copy of a document amending any document referred to in paragraph (a); and

(c) any document releasing or discharging a mortgage, charge or other encumbrance over any or all its assets,

and the Registrar must retain and register the document or, as the case may be, the copy thereof.

PART IV
REGISTERED OFFICE AND REGISTERED AGENT

Registered office.

37. (1) A company 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 fourteen days after such change has been made. *14 of 2004.*

38. (1) A company shall at all times have a registered agent in The Bahamas. Registered agent.

(2) No person shall act as registered agent unless he is licensed to carry on the business of financial and corporate services pursuant to section 3 of the Financial and Corporate Service Providers Act: Ch. 369.

Provided that this subsection shall not apply to a company licensed under the Banks and Trust Companies Regulation Act. Ch. 316.

(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. Ch. 369.

(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.

39. (1) The Registrar shall maintain a register of licensed registered agents and the register referred to in section 9 of the Financial and Corporate Service Providers Act shall be the register for the purposes of this section. Register of registered agents. Ch. 369.

(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.

Registered agent desiring to cease to act.

14 of 2004.

39A.(1) Where the registered agent of a company desires to cease to act as registered agent and the registered agent is unable to reach an agreement with the company for which he is registered agent concerning his replacement, the following provisions shall apply —

(a) the registered agent shall give not less than 90 days written notice to any director or officer of the company of which he is the registered agent at the director's or officer's last known address, or if the registered agent is not aware of the identity of any director or officer then the person from whom the registered agent last received instructions concerning the company, specifying the wish of the registered agent to resign as registered agent;

(b) the registered agent shall, in writing, inform the Registrar that he has served the notice referred to in paragraph (a);

(c) if, at the time of the expiry of the notice, the company has not notified the Registrar or the registered agent of any change in the name or address of its registered agent, the registered agent shall inform the Registrar in writing that the company has not changed its registered agent whereupon the Registrar shall publish a notice in the *Gazette* that the name of the company will be struck off the Register, unless the company, within thirty days from the date of the publication of the notice in the *Gazette*, notifies the Registrar of the change in the name or address of its registered agent; and

(d) if a company fails within thirty days from the date of the publication of the notice referred to in paragraph (c) to notify the Registrar of the change in the name or address of its registered agent, the Registrar shall strike the name of the company off the Register and shall publish in the *Gazette* a notice that the name of the company has been struck off the Register.

(2) A company that has been struck off the Register under this section or section 39B remains liable for all claims, debts, liabilities and obligations of the company, and the striking-off shall not affect the liability of any of its members, directors, officers or agents.

Registered agent ceasing to act.

14 of 2004.

39B.(1) If the Registrar has reasonable cause to suspect that a registered agent has died or has otherwise ceased to act or to qualify to act as a registered agent pursuant to section 39A and the company has not notified the Registrar of any change in the name or address of its registered agent the Registrar shall serve on the company at its registered office, a notice directing the company to replace the registered agent.

(2) If the company fails within thirty days from the date of the notice to notify the Registrar of any change in the name or address of its registered agent, the Registrar shall strike the name of the company off the Register and shall publish in the Gazette a notice that the name of the company has been struck off the Register.

PART V
DIRECTORS, OFFICERS, AGENTS AND LIQUIDATORS

Management by director.

14 of 2004.

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 at least one director who may be an individual or a company.

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 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 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 —

19 of 2001, s. 10.

(a) a director shall cease to hold the office of director if a majority requests 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 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.

19 of 2001, s.11.

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 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.

(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. *19 of 2001, s. 12(a).*

(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. *19 of 2001, s. 12(b).*

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

(6) The register of a company shall be filed with the Registrar within twelve months after the appointment of the directors and officers of that company. *14 of 2004.*

(7) Where the register has not been filed within the time specified in subsection (6) the company may be struck off the Register. *14 of 2004.*

(8) A notice of a change in the directors and officers of an International Business Company shall be filed with the Registrar within twelve months after such change occurs. *14 of 2004.*

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. Powers 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. Emoluments of directors.

Committee of directors.

19 of 2001.

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

(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 54.

Meeting of directors.

48. (1) Subject to any limitations in the Memorandum 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 two 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.
19 of 2001, s. 14.

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

Consents of directors.
19 of 2001, s. 15.

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 director or single shareholder.
19 of 2001, s. 16.

53. Where there is a single director or a single shareholder of a company, 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.

54. (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.

55. Every director, officer, agent and liquidator of a company, 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.

56. Every director, officer, agent and liquidator of a company, 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 67 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 interests.

19 of 2001, s. 17.

57. (1) Subject to any limitations in the Memorandum or Articles or in any unanimous shareholder agreement, if the requirements of subsection (2) are satisfied, no agreement or transaction between —

(a) a company; and

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

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

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

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

Indemnification.

58. (1) Subject to subsection (2) and any limitations in its Memorandum or Articles or in any unanimous shareholder agreement, a company may indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal 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.

59. A company 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 58.

PART VI
PROTECTION OF MEMBERS AND CREDITORS

Meetings of members.
19 of 2001, s. 18(a) and (b).

60. (1) Subject to any limitations in the Memorandum or Articles or in any unanimous shareholder agreement, the directors of a company 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 two or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of members and may speak as a 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 two or more are present in person or by proxy, they shall vote as one.

Notice of meetings of members.

61. (1) Subject to any 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.

62. 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.

63. (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.

64. 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.

65. Any notice, information or written statement required under this Act to be given to members by a company 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.

66. (1) Any summons, notice, order, document, process, information or written statement to be served on a company 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 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.
58 of 2011, s. 2.

67. (1) A company shall cause reliable accounting records to be kept in relation to —

(a) all sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transactions;

(b) the assets and liabilities of the company.

(2) For the purposes of subsection (1), accounting records shall —

(a) correctly explain all transactions;

(b) enable the financial position of the company to be determined with reasonable accuracy at any time;

(c) allow financial statements to be prepared; and

(d) include the underlying documentation, including invoices, contracts and receipts, necessary to facilitate (a), (b) and (c).

(3) Accounting records maintained pursuant to this section shall be kept for a minimum period of five years from the date of the transaction to which such records relate.

(4) A person who contravenes any provision of this section commits an offence and shall be liable on summary conviction to a fine of ten thousand dollars.

58 of 2011, s. 2.

(5) A company 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.

(6) A company shall have a common seal and an imprint thereof shall be kept at the registered office of the company. *58 of 2011, s. 2.*

Inspection of books and records.

68. (1) A member of a company 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.

69. (1) Contracts may be entered into on behalf of a company as follows —

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

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

by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged; and

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

(2) A contract entered into in accordance with this section is valid and is binding on the 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.

70. (1) A person who enters into a written contract in the name of or on behalf of a company 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 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.

71. A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed by a company if it is made, accepted or endorsed in the name of the company —

(a) by or on behalf or on account of the company; or

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

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

Power of Attorney.

72. (1) A company may, by an instrument in writing, whether or not under its common seal, authorise a person, either generally or in respect of any specified matter, 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.

Authentication or attestation.

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

(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.

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

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

Interpretation for purposes of Part VII.

75. In this Part —

"consolidated company" means the new company that results from the consolidation of two or more constituent companies;

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

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

"merger" means the merging of two 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:

S.I. 128/2001.

Provided that for the purposes of section 77 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:

S.I. 128/2001.

Provided that for the purposes of section 77 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 consolidation.

76. (1) Two or more companies incorporated under this Act may merge or consolidate in accordance with subsections (3) to (5).

(2) One or more companies incorporated under this Act may merge or consolidate with one or more companies

Ch. 308.

incorporated under the Companies Act in accordance with subsections (3) to (5) if the surviving company or the consoli-

dated company will satisfy the requirements prescribed for an International Business Company by section 4. *S.I. 128/2001.*

(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 *S.I. 128/2001.*

Articles so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the Memorandum or Articles, would entitle the class or series to vote on the proposed amendment as a class or series;

(b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each member, whether or not entitled to vote on the merger or consolidation;

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

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

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

(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. Ch. 308.

77. (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.

(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 consolidation.

78. (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 incurporated 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.

79. (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 76 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 76 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.

80. Any sale, transfer, lease, exchange or other disposition of more than 50 per cent, by value of the assets of a company, if not made in the usual manner or regular course of the business carried on by the company, shall be 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 authorised 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.

81. (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 76, may give a written instruction to a company 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.

Arrangements.

82. (1) In this section "arrangement" means —

(a) a reorganisation or reconstruction of a company;

(b) a separation of two or more businesses carried on by a company;

(c) any combination of any of the 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;

19 of 2001, s. 19.

(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 83;

(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.

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

(a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;

(b) a consolidation, if the company is a constituent company;

(c) any sale, transfer, lease, exchange or other disposition of more than 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;

(d) a redemption of his shares by the company pursuant to section 81; 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 authorised 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 objec-

tion 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 this section 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 this section.

(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 two designated appraisers together shall designate a third appraiser;

(c) the three appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members 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 reissue.

(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. Ch. 308.

84. (1) A company incorporated under the Companies Act or incorporated under the laws of a jurisdiction outside The Bahamas may 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. Ch. 308.

SACs may amend articles of continuation to change name. *33 of 2013, s.6.* Ch. 369C.

84A. A company continued under section 84 which files with the Registrar a request for registration as a segregated accounts company under section 6 of the SACA may at any time amend its articles of continuation to change the name under which the company is being continued to make it identical to the proposed name of the company contained in the request for registration filed in accordance with section 4 of the SACA.

Conversion of a company to an investment condominium. Ch. 369. Third Schedule. *36 of 2014, s.5.*

84B. (1) A company incorporated or continued under this Act may be coverted to an investment condominium established and registered under the Investment Condominium Act in the manner provided under section 16 and prescribed in the provisions of the Third Schedule thereof.

(2) A company that has been converted to an investment condominium shall be struck off the Register as of the date specified in the certificate of conversion prescribed in the Third Schedule to the Investment Condominium Act.

Third Schedule. Ch. 369G.

Provisional registration.

85. (1) A company incorporated under the laws of a jurisdiction outside The Bahamas may apply to the Registrar for provisional registration to continue as a company incorporated under this Act by complying with section 84(1)(a) and (b) and by submitting to the Registrar the following documents —

S.I. 128/2001.

(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 of continuation.

86. A certificate of continuation issued by the Registrar under section 84(1)(d) or under section 85(3) shall be *prima facie* evidence of compliance with all requirements of this Act in respect of continuation.

Effect of continuation.

87. (1) From the time of the issue by the Registrar of a certificate of continuation under section 84(1)(d) or under section 85(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;

Ch. 308.

(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 84(1)(d) or under section 85(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 84(1)(d) or under section 85(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 84(1)(d) or under section 85(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.

Continuation under foreign law.

88. (1) Subject to any limitations in its Memorandum or Articles a company incorporated under this Act may, by a resolution of directors or by a resolution of members, continue as 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.

Continuation under the Companies Act Ch. 308. *14 of 2004, s.12.*

88A. (1) A company incorporated under this Act or continued under this Act may, if it will satisfy the requirements for a company incorporated under the Companies Act continue as a company under that Act.

(2) The provisions of sections 84 and 87 of this Act shall apply *mutatis mutandis* to a company continued under the Companies Act as referred to under subsection (1). Ch. 308.

(3) Where a company incorporated under this Act has been issued a certificate of continuation to continue as a company incorporated under the Companies Act, section 187 of this Act shall not apply. Ch. 308.

PART IX
WINDING-UP, DISSOLUTION AND STRIKING-OFF

Winding up and dissolution. *59 of 2011, s. 2.* Ch. 308.

89. A company incorporated under this Act may be wound up under any of the circumstances, insofar as they are applicable to a company incorporated under this Act, in which a company incorporated under the Companies Act, may be wound up and subject to the provisions of this Part

the provisions of the Companies Act relating to winding up and dissolution shall apply *mutatis mutandis* to the winding up and dissolution of the company.

Interest on debts. *59 of 2011, s. 2.*

90. (1) Subject to subsection (5), in a winding up interest is payable in accordance with this section on any debt proved in the winding-up, including so much of any such debt as represents interest on the remainder of the debt.

(2) Any surplus remaining after the payment of the debts proved in a winding-up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the period during which they have been outstanding since the company went into liquidation.

(3) All interest under this section ranks equally, whether or not the debts on which it is payable ranked equally.

(4) The rate of interest payable under this section in respect of any debt is the greater of —

(a) the rate applicable to a judgment debt prescribed from time to time pursuant to section 2 of the Civil Procedure (Award of Interest) Act; and Ch. 80.

(b) the rate applicable to that debt apart from the winding-up.

(5) No interest shall be payable if the liquidation is concluded in less than six months or the accrued amount is less than five hundred dollars.

91. *Repealed.* *59 of 2011, s. 2.*

92. *Repealed.* *59 of 2011, s. 2.*

93. *Repealed.* *59 of 2011, s. 2.*

94. *Repealed.* *59 of 2011, s. 2.*

95. *Repealed.* *59 of 2011, s. 2.*

96. *Repealed.* *59 of 2011, s. 2.*

97. *Repealed.* *59 of 2011, s. 2.*

98. *Repealed.* *59 of 2011, s. 2.*

99. *Repealed.* *59 of 2011, s. 2.*

100. *Repealed.* *59 of 2011, s. 2.*

101. *Repealed.* *59 of 2011, s. 2.*

102. *Repealed.* *59 of 2011, s. 2.*

59 of 2011, s. 2. **103.** *Repealed.*

59 of 2011, s. 2. **104.** *Repealed.*

59 of 2011, s. 2. *Official Liquidators*

59 of 2011, s. 2. **105.** *Repealed.*

59 of 2011, s. 2. **106.** *Repealed.*

59 of 2011, s. 2. **107.** *Repealed.*

59 of 2011, s. 2. **108.** *Repealed.*

59 of 2011, s. 2. **109.** *Repealed.*

59 of 2011, s. 2. **110.** *Repealed.*

59 of 2011, s. 2. **111.** *Repealed.*

59 of 2011, s. 2. *Ordinary Powers of Court*

59 of 2011, s. 2. **112.** *Repealed.*

59 of 2011, s. 2. **113.** *Repealed.*

59 of 2011, s. 2. **114.** *Repealed.*

59 of 2011, s. 2. **115.** *Repealed.*

59 of 2011, s. 2. **116.** *Repealed.*

59 of 2011, s. 2. **117.** *Repealed.*

59 of 2011, s. 2. **118.** *Repealed*

59 of 2011, s. 2. **119.** *Repealed.*

59 of 2011, s. 2. **120.** *Repealed.*

59 of 2011, s. 2. **121.** *Repealed.*

59 of 2011, s. 2. **122.** *Repealed.*

59 of 2011, s. 2. **123.** *Repealed.*

59 of 2011, s. 2. **124.** *Repealed.*

59 of 2011, s. 2. **125.** *Repealed.*

59 of 2011, s. 2. *Extraordinary Powers of Court*

59 of 2011, s. 2. **126.** *Repealed.*

59 of 2011, s. 2. **127.** *Repealed.*

59 of 2011, s. 2. **128.** *Repealed.*

59 of 2011, s. 2. **129.** *Repealed.*

59 of 2011, s. 2. **130.** *Repealed.*

Winding-up by resolution of directors.

131. A company 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 dissolution.

132. (1) A company 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 that has previously issued shares may voluntarily commence to wind up and dissolve by a resolution of members or by a resolution of directors.

Appointment of liquidator.

133. (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 dissolution.

134. Upon the commencement of a winding-up and dissolution required under section 131 or permitted under section 132 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 140.

Duties of liquidator.

135. (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 138.

S.I. 128/2001.

(2) A transfer, including a prior transfer, described in section 11(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 liquidator.

136. (1) In order to perform the duties imposed on him under section 135, a liquidator has all the 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;

19 of 2001, s. 22.

(h) to carry on the business of the company, if the liquidator has received authorisation to do so in the plan of dissolution or by a resolution of directors permitted under section 134, as the li-

quidator 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.

137. *Repealed.* *59 of 2011, s. 2.*

Procedure on winding-up and dissolution.

138. (1) The directors of a company required under section 131 or proposing under section 132 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 ac-

count 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 132(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 Regis-

trar 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 notice 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 hand and seal certifying that the company has been dissolved — *S.I. 128/2001.*

(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.

139. 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 dissolution.

140. (1) In the case of a winding-up and dissolution permitted under section 132, a company may prior to submitting to the Registrar a notice specified in section 138(6), rescind the articles of dissolution by —

(a) a resolution of directors in the case of a winding-up and dissolution under section 132(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 132(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 dissolution of company unable to pay its claims, etc.
19 of 2001, s. 23.

141. Where —

(a) the directors or, as the case may be, the members of a company that is required under section 131 or permitted under section 132 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

59 of 2011, s. 2. **142.** *Repealed.*

59 of 2011, s. 2. **143.** *Repealed.*

59 of 2011, s. 2. **144.** *Repealed.*

59 of 2011, s. 2. **145.** *Repealed.*

59 of 2011, s. 2. **146.** *Repealed.*

59 of 2011, s. 2. **147.** *Repealed.*

Supplemental Provisions

59 of 2011, s. 2. **148.** *Repealed.*

59 of 2011, s. 2. **149.** *Repealed.*

59 of 2011, s. 2. **150.** *Repealed.*

151. *Repealed.* *59 of 2011, s. 2.*

152. *Repealed.* *59 of 2011, s. 2.*

153. *Repealed.* *59 of 2011, s. 2.*

154. *Repealed.* *59 of 2011, s.2.*

155. *Repealed.* *59 of 2011, s. 2.*

156. *Repealed.* *59 of 2011, s. 2.*

157. *Repealed.* *59 of 2011, s. 2.*

158. *Repealed.* *59 of 2011, s. 2.*

159. *Repealed.* *59 of 2011, s. 2.*

160. *Repealed.* *59 of 2011, s. 2.*

161. *Repealed.* *59 of 2011, s. 2.*

162. *Repealed.* *59 of 2011, s. 2.*

163. *Repealed.* *59 of 2011, s. 2.*

Receivers and managers. Ch. 308.

164. 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. *14 of 2004, s. 13.*

165. (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 under section 14(1), 38(1) and 44 the Registrar shall serve on the company an order for compliance as prescribed in Part A of the Second Schedule.

Part A, Second Schedule.

(2) If the Registrar does not receive a reply within ninety days immediately following the date of the service of the order referred to in subsection (1), the Registrar shall strike the name of the company off the Register, 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*.

(3) Where a company has otherwise complied with the requirements of the Act the Registrar shall upon request by the company issue a declaration of compliance as prescribed in Part B of the Second Schedule.

Part B, Second Schedule.

5 of 2010, s. 2

(3A) If a company fails to pay the increased licence fees referred to in section 176(3), the Registrar shall within thirty days immediately following the date specified in that section, publish in the *Gazette* and serve on the company a notice stating —

(a) the amount of the licence fees payable by virtue of section 176(3); and

(b) that the name of the company will be struck off the register if the company fails to pay the increased licence fees on or before the 31st day of December next ensuing.

5 of 2010, s. 2.

(3B) If a company fails to pay the increased licence fees stated in the notice referred to in subsection (3A) by the 31st day of December, the Registrar shall strike the name of the company off the register from the 1st day of January next ensuing.

(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.

Restoration to Register.

S.I. 128/2001.

14 of 2004.

5 of 2010, s. 3.

166. (1) If the name of a company has been struck off the Register under section 165(2), 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.

(2) If upon an application under subsection (1) the Registrar is satisfied that it would be fair and reasonable for the name of the company to be restored to the Register, 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.

(3) If the name of the company has been struck off the Register under section 165(3B), 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 —

S.I. 128/2001.

14 of 2004.

First Schedule.

(a) the restoration fee specified in the First Schedule;

(b) the licence fee stated in the notice referred to in section 165(3A); and

(c) the licence fee in the amount stated in the notice referred to in paragraph (b) for each year or part thereof during which the name of the company remained struck off the Register,

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) If the period of five years under subsection (1) or (3) has expired, 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.

(5) Where the company, or a creditor, member or liquidator thereof applies to the Court pursuant to subsection (4), to have the name of the company restored to the Register, the Court shall order the name of the company to be restored to the Register —

(a) where the company has been struck off the Register under section 165(2), if it is satisfied that it would be fair and reasonable for the name of the company to be restored to the Register; or

(b) where the company has been struck off the Register under section 165(3B), upon the payment of the fees required under subsection (3), 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.

(6) For the purpose of this Part, the appointment of an official liquidator under section 168 operates as an order to restore the name of the company to the Register.

Effect of striking-off.

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

S.I. 128/2001.

Appointment of official liquidator.

168. 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.

S.I. 128/2001.

5 of 2010, s. 4.

169. (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 creditors of the company who have not submitted claims within the time allowed by him; or

(b) for any failure to locate any assets of the company.

PART X
LIMITED DURATION COMPANY

Interpretation for purposes of Part X.

170. In this Part —

"limited duration company" means an International Business Company registered in accordance with this Part.

International Business Company may apply to be registered as a limited duration company.

171. (1) An International Business Company may at any time apply to the Registrar to be registered as a limited duration company.

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

(a) to incorporate a company under section 3;
(b) to continue the incorporation of a company under section 84.

(3) An application under this section shall in addition to any other fee that may be payable be accompanied by an application fee of two hundred dollars.

Registration of limited duration company.

172. (1) The Registrar shall register as a limited duration company a company that has made application under section 171 if —

(a) the company has at least two subscribers 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 84(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.

173. (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 of a limited duration company.

174. (1) A limited duration company shall be taken to 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 133(2) shall apply.

(3) Sections 131 and 132 shall have no application to a limited duration company.

Cancellation of registration.

175. (1) A company shall cease to be a limited duration company if —

(a) the Registrar issues a certificate or dissolution under section 138(6)(b);

(b) the Registrar issues a certificate of incorporation in accordance with section 12(7) which records a change of name for the company that does not include the words "Limited Duration Company" or the abbreviation "LDC"; or

S.I. 128/2001.

(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 vir-

tue 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. *S.I. 128/2001.*

(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 XA *33 of 2013, s. 7.*

SEGREGATED ACCOUNTS COMPANY

Time of application for registration as a SAC. *33 of 2013, s. 7.*

175A. (1) An International Business Company may file with the Registrar a request to be registered as a segregated accounts company at the same time as application is made —

(a) to incorporate the company under section 3;

(b) to continue the incorporation of the company under section 84; or

(c) to amend its Memorandum of Association or articles of continuation to change the name of the company under section 18(2) or section 84A, respectively.

(2) The name of a company shall, where a request for registration as a segregated accounts company is filed with the Registrar at the same time as application is made to incorporate under section 3 or continue under section 84, include at the end the words "Segregated Accounts Company" or the abbreviations "SAC" or "Sac".

(3) A company already incorporated under this Act which files a request for registration as a segregated accounts company shall submit to the Registrar together with its request a copy of the amendment changing the name of such company, in accordance with section 18(2) or section 84A respectively, to a name that includes at the end the words "Segregated Accounts Company" or the abbreviations "SAC" or "Sac".

Identical names in certificates. *33 of 2013, s. 7.*

175B. The name of a segregated accounts company incorporated under this Act as it appears in a certificate of incorporation, certificate of continuation or certificate of good standing, as the case may be, shall be identical to the name of such company as it appears in the —

(a) register of segregated accounts companies kept by the Registrar in accordance with section 6 of the SACA; and

(b) certificate of registration issued by the Registrar to a segregated accounts company.

Certification by Registrar.

33 of 2013, s. 7.

175C. The Registrar shall, in every certificate of incorporation, certificate of continuation or certificate of good standing issued under this Act in respect of a segregated accounts company, certify —

(a) that the company is registered as a segregated accounts company; and

(b) the date of its registration as a segregated accounts company.

Dissolution and de-registration.

33 of 2013, s. 7.

175D. The Registrar shall not issue in respect of a segregated accounts company —

(a) a certificate of dissolution under section 138(6)(b); or

(b) a certificate of incorporation, certificate of continuation or certificate of good standing which records or reflects a change of name for the company that does not include at the end the words "Segregated Accounts Company" or the abbreviations "SAC" or "Sac",

unless the Registrar has first removed such company from the register of segregated accounts companies in accordance with the SACA and the provisions of such Act no longer apply to the company.

PART XI
FEES AND PENALTIES

Fees.

19 of 2001, s. 25(a) and (b).

176. (1) There shall be paid to the Registrar in respect of the several matters mentioned in the Schedule the several fees specified therein and such other fees as the Minister may, by order, prescribe.

First Schedule.

5 of 2010, s. 5.

(2) If a company fails to pay the fee specified in the third or fourth item of the First Schedule by the 31st day of March in each year, the fee increases by ten per cent of that amount; and

14 of 2004, s. 15.

(3) If a company fails to pay the amount due as an increased fee under subsection (2) by 31st October, then, the fee increases by fifty per cent of the fee specified in the First Schedule.

First Schedule.

(4) *Repealed.* 5 of 2010, s. 5.

(5) The Minister may by order amend the First 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. *14 of 2004, s. 15.* First Schedule. Ch. 2.

(6) 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. *19 of 2001,s. 25(c). 14 of 2004, s. 15.*

176A. (1) In addition to the fees payable under section 166(3), the company on restoration to the Register shall be liable to a penalty of one hundred dollars for each year or part thereof that the name of the company remained struck off the Register. Penalty.

(2) For the removal of doubt, the penalty imposed under subsection (1) shall only be payable by a company which has been struck off the Register after the commencement of this Act.

177. Any penalty incurred under this Act shall be paid to the Registrar. Penalties payable to Registrar.

178. (1) When an offence is committed under this Act by a company, whether it is incorporated or registered under this Act, and a director or officer of the company knowingly authorised, 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. Criminal liability and proceedings.

(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.

179. 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. Name offence.

180. 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. Failure to keep Share Register.

False reports and false statements.

181. (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,

36 of 2014,s.6

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

182. 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 penalties, etc.

183. 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.

184. 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 Consolidated Fund.

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

Fees payable to Registrar.

186. (1) The Registrar may refuse to take action required of him under this Act for which a fee is prescribed until all fees have been paid.

Ch. 308.

(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 from certain taxes etc.
14 of 2004, s.16.
18 of 2008, s. 10.
Ch. 370.

187. (1) Notwithstanding any law other than section 28D(e) or 43 of the Stamp Act to the contrary a company incorporated or continued under this Act or a member or shareholder thereof shall not be subject to —

(a) any business licence fee, income tax, corporation tax, capital gains tax or any other tax on income or distributions accruing to or derived from such company or in connection with any transaction to which that company or shareholder, as the case may be, is a party;

(b) any estate, inheritance, succession or gift tax, rate, duty, levy or other charge payable in The Bahamas with respect to any shares, debt obligations or other securities of that company or shareholder.

(2) Subsection (1) shall not apply to a person who is a resident of The Bahamas within the meaning of the Exchange Control Regulations Act or to a company incorporated or continued under this Act if a resident of The Bahamas within the meaning of the Exchange Control Regulations Act and the regulations made thereunder is the beneficial or legal owner of any of the common or preferred shares issued or to be issued by such company or acquires a legal or beneficial interest in any debt or other securities issued or to be issued by such company or is otherwise directly or indirectly entitled to receive any dividends or distributions from such a company.

Ch. 360.

18 of 2008, s. 10.
Ch. 370.

(3) Notwithstanding any provision of the Stamp Act other than section 28D (e) or 43 thereof —

(a) all transactions in respect of the shares, debt obligations or the securities of a company incorporated under this Act; and

(b) all other transactions relating to the business of a company incorporated under this Act,

are exempt from the payment of stamp duty.

(4) Subsection (3) shall not apply to a resident of The Bahamas, within the meaning of the Exchange Control Regulations Act.

Ch. 360.

(5) Stamp duty shall be payable by a company incorporated or continued under this Act in relation to real

property situated 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.

(6) Where a company incorporated under this Act or continued under this Act desires to carry on business with persons resident in The Bahamas within the meaning of the Exchange Control Regulations Act that company must first obtain permission from the Central Bank with respect to its planned operations.

Ch. 360

(7) 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 other debt or other securities issued or to be issued by a company or continued under this Act including options or other contracts which are intended to confer rights to ownership or income derived from such a company, and any of whose members or shareholders are non-resident within the meaning of the Exchange Control Regulations Act, obtain permission from the Central Bank with respect to such acquisition.

Ch. 360.

(8) The exemptions granted by this section shall remain in force for a period of twenty years from the date of incorporation of a company under this Act or from the date of continuation under this Act as the case may be.

(9) 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.

Ch. 360.

Extension of exemptions.

33 of 2013, s. 8.

187A. (1) The exemptions granted under section 187 in respect of a company incorporated or continued under this Act —

(a) where on the date this Act comes into force such exemptions have not yet expired, shall upon expiration be granted for a further period of twenty years; and

(b) where on or prior to the coming into force of this Act such exemptions have expired, shall be granted for a further period of twenty years commencing from the date of expiration of such exemptions.

(2) Taxes, fees, rates, duties, levies or other charges paid by a company whose section 187 exemptions have

expired on or prior to this Act coming into force shall be refunded.

PART XIII
MISCELLANEOUS

Regulations.

188. 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.

189. 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.

Power of Registrar to receive and process electronic communications. Ch. 337A. *36 of 2014, s.7.*

189A. (1) Subject to subsection (2) of section 3 of the Electronic Communications and Transactions Act the Registrar may receive and process electronic communications relating to matters required to be performed in the carrying out of his duties under this Act.

Ch. 337A.

36 of 2014,s.7.

(2) Any reference to electronic communications shall have the same meaning assigned to it under the Electronic Communications and Transactions Act, the provisions of which shall, as far as they are applicable, apply to this Act.

36 of 2014, s.7.

(3) The Registrar may establish systems and facilities to enable the –

(a) filing of documents;

(b) transmission of information;

(c) issuance of certificates and other document,

by electronic means.

36 of 2014,s.7.

(4) Where a person is required to certify a fact or circumstance under this Act, this certification may be done electronically using the systems and facilities established under subsection (3).

36 of 2014,s.7.

(5) A certificate or other document received, processed or issued by the Registrar shall not be denied legal effect, validity, admissibility or enforceability solely on the ground that it is in electronic form.

Certificate of good standing.

190. (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 documents.

191. (1) Except as provided in section 85(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 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.

Declaration by court.

192. (1) A company 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.

193. 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.

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

Repeal.

19 of 2001, s. 27.

195. (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 the 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.

Transitional.

19 of 2001, s. 28(a). 14 of 2004, s. 17.

196. (1) Notwithstanding the provisions of any other law all companies incorporated under any enactment repealed by this Act shall continue in existence until struck off the Register pursuant to section 165:

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.

(2) 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.

(3) 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 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.

FIRST SCHEDULE

36 of 2014, s.8

(Section 176)

FEES TO BE PAID TO THE REGISTRAR

Matter in respect of which fee is payable	Amount of fee
1. Incorporation (up to $50,000)	$400.00
2. Incorporation (over $50,000)	$1,200.00
3. Express incorporation (within 1 hour) in addition to the above incorporation fees.	$450.00
4. Modification of the Memorandum and Articles of Association (Change of Name)	$280.00
5. Modification of the Memorandum (Decrease in capital)	$300.00
6. Modification of the Memorandum (Increase in capital up to $50,000)	$300.00
7. Modification of the Memorandum (Increase to over $50,000)	$980.00
8. Amended and restated Memorandum of Association	$100.00
9. Amended and restated Articles of Association	$200.00
10. Filing of Articles of Dissolution	$200.00
11. International Business Company Continuation from under the International Business Companies Act (From Companies Act to IBC Act)	(up to $50,000) $700.00
12. International Business Company Continuation (From Companies Act to IBC Act)	(over $50,000) $1,000.00
13. Certificate of Good Standing	$50.00
14. Certified copy of memorandum and articles of association (copies provided to Registrar)	$30.00

Ch. 309. Ch. 308. Ch. 309.

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15. Certified copy of Certificate of Incorporation, continuation, arrangement, dissolution, merger, or consolidation.....	$50.00
16. Tax Exemption Certificate.....	$100.00
17. Filing Register of officers and directors	$25.00
18. Merger of Company (up to $50,000).....	$600.00
19. Merger of Company (over $50,000).....	$800.00
20. Restoration (up to 24 months)	$600.00
21. Restoration (more than 24 months)	$1,000.00
22. Name Reservation.....	$25.00
23. Name Reservation (dual names).....	$50.00
24. Extension of Name Reservation	$30.00
25. Government Annual Tax	$350.00
26. Government Annual Tax (over $50,000)	$1,000.00
27. Application to register a Limited Duration company under the Act.....	$200.00
28. Annual fee in respect of a company registered as a Limited Duration Company under the Act	$350.00
29. Supervised inspection of file(s) per company (over the counter)	
First hour	$15.00
Each additional hour or any part thereof	$5.00
30. Continuation from under the International Business Companies Act to another jurisdiction	Ch. 309.
(Capitalized up to $50,000)	$700.00
(Capitalized over $50,000)	$1,000.00

31. Conitnuation to The Bahamas under the International Business Companies Act from another jurisdiction	
(Capitalized up to $50,000)	$500.00
(Capitalized over $50,000)	$700.00
32. Resubmission of provisional registration of documents continued from another jurisdiction	$100.00
33. Provisional registration of a company continued from another jurisdiction.....	$500.00
34. Amended and restated Memorandum and Articles of Association.....	$150.00
35. Copy of or extract of any document on file not listed above.....	$1 per page
36. Certification Fees for	
Documents (Copies provided by Registrar)	
1 to 25 pages	$50.00
26 to 50 pages	$75.00
51 and over	$110.00
37. Registration of a company limited solely by shares without par value or a combination of par value and no par value shares.....	$350.00

SECOND SCHEDULE (section 165)

14 of 2004.

PART A

S.I. 88/2004.

INTERNATIONAL BUSINESS COMPANIES ACT (Ch. 309)

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INTERNATIONAL BUSINESS COMPANIES REGULATIONS

ORDER FOR COMPLIANCE

To:

.....

(Name of Company)

ADDRESS OF REGISTERED OFFICE

.....

.....

ADDRESS OF REGISTERED AGENT:

.....

.....

POSTAL ADDRESS, ETC.

.....

.....

The above-mentioned company has not satisfied the requirements of the following provisions of the International Business Companies Act.

(Include relevant sections)

A company that does not satisfy the requirements of the above-mentioned sections shall be struck off the Register. You have 90 days within which to comply with the requirements of the above-mentioned sections.

PART B

INTERNATIONAL BUSINESS COMPANIES ACT
(Ch. 309)

INTERNATIONAL BUSINESS COMPANIES REGULATIONS
DECLARATION OF COMPLIANCE

To:

.....

(Name of Company)

ADDRESS OF REGISTERED OFFICE

.....

.....

ADDRESS OF REGISTERED AGENT:

.....

.....

POSTAL ADDRESS, ETC

.....

.....

The above-mentioned company has satisfied the requirements of the International Business Companies Act.