IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

C.A. No. 11-56430

ROTHWELL, LTD.,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

# PLAINTIFF-APPELLANT ROTHWELL, LTD.'S EXCERPTS OF RECORD VOLUME 4

Appeal from the Judgment of the United States District Court
for the Central District of California
D.C. No. 10-cv-00479-RGK-FFM
(Honorable R. Gary Klausner)

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Appeals against decisions of Permanent Secretary, Finance

16. (1) Subject to subsection (2), an appeal lies to the Supreme Court from a decision of the Permanent Secretary, Finance –

*(a)* refusing the grant of a licence to an applicant who, on the commencement of this Ordinance, carried on the business of company management or company agent;

*(b)* revoking a licence under section 13.

(2) A decision of the Permanent Secretary, Finance refusing the grant of a licence in respect of an applicant who has not commenced business on the date of commencement of this Ordinance is final and is not subject to any appeal.

(3) An appeal under this section shall not, unless otherwise ordered by the Court, operate as a stay of the decision in respect of which the appeal is made.

(4) Schedule 3 has effect with respect to appeals made under this section.

*Schedule 3*

Approval of transfer of interests, etc. in licensee

17. (1) Where any interest in the licensee is to be transferred from one person to another, or where a new or additional officer or agent of the licensee is to be appointed, the licensee shall notify the Permanent Secretary, Finance in writing of such proposed transfer or appointment.

(2) Notwithstanding any other Ordinance or rule of law to the contrary, and except for the transmission of an interest by operation of law -

*(a)* no transfer of any interest in a licensee; and

*(b)* no appointment of any new or additional officer or agent of the licensee,

shall have effect unless such transfer or appointment shall have first been approved by the Permanent Secretary, Finance.

SUPERINTENDENT OF COMPANY MANAGEMENT

Superintendent of Company Management; his functions

18. (1) The Governor may by instrument in writing appoint a Superintendent of Company Management whose office shall be a public office.

(2) The appointment of the Superintendent of Company Management shall be published in the Gazette.

(3) The functions of the Superintendent shall be -

*(a)* to maintain a general review of the business of company management and company agents in the Islands;

*(b)* to ensure that the provisions of this Ordinance are complied with;

*(c)* to examine and make recommendations to the Permanent Secretary, Finance with respect to every application for a licence; and

*(d)* when he thinks fit or when so required by the Permanent Secretary, Finance, to examine in such manner as he considers necessary the affairs or business of any licensee for the purpose of satisfying himself that the licensee is complying with the terms and conditions of its licence and with the provisions of this Ordinance and report to the Permanent Secretary, Finance the results of such examination.

(4) The Superintendent, with the written approval of the Permanent Secretary, Finance, may authorise in writing any person to assist him, whether generally or in relation to a particular matter, in the performance of his functions under this Ordinance.

Duty of licensee to furnish documents, etc.

19. (1) A licensee shall, if so required by the Superintendent for the purpose of his functions under this Ordinance –

*(a)* furnish the Superintendent with a certificate of compliance signed by a director or partner of or the sole proprietor where he is, the licensee certifying that to the best of his knowledge and belief the licensee is complying with the provisions of this

Ordinance and with the terms and conditions of its licence;

*(b)* produce for examination such books, books of accounts, records and other documents which the licensee is required to keep pursuant to this Ordinance;

*(c)* provide a sworn declaration of solvency to the effect that the licensee is able to meet its liabilities as and when they fall due, a balance sheet signed by a director or partner of or the sole proprietor where he is, the licensee and such further information as the Superintendent may require;

*(d)* provide such other information or explanation as the Superintendent may reasonably require.

(2) Nothing in this section shall require a licensee to produce any documents relating to the affairs of a client of the licensee or documents which are subject to legal privilege.

Powers of search

20. If a judge is satisfied on information on oath given by the Superintendent that-

*(a)* a licensee has failed to comply with a requirement of the Superintendent made under section 19 to produce such documents or evidence; or

*(b)* there are reasonable grounds for suspecting that an offence against this Ordinance has been or is being committed and that evidence of the commission of the offence is to be found at any premises or in any vehicle, vessel or aircraft specified in the information,

he may grant a search warrant authorising the Superintendent, together with any other person named in the warrant, to enter and search such premises, vehicle, vessel or aircraft and to seize any documents and evidence found therein for the purpose of the inquiry.

Confidentiality

21. Except for the purpose of performing his functions under this Ordinance or when lawfully required to do so by a court of competent jurisdiction or under the provisions of any other law, neither the Superintendent nor any person acting under his authority nor a person performing duties under this Ordinance shall disclose any information relating to any application made

under this Ordinance, or to the affairs of a licensee or of a company managed by a licensee, which he has acquired in the performance of his duties or the exercise of his functions under this Ordinance.

Request for assistance by overseas regulatory authority

22. (1) For the purpose of assisting an overseas regulatory authority which has requested information in connection with inquiries being carried out by it, the Superintendent acting in his discretion may disclose to it such information which he has acquired in connection with the performance of his duties or in the exercise of his functions under this Ordinance as he considers appropriate.

(2) An "overseas regulatory authority" means an authority which in a country or territory outside the Islands exercises any functions corresponding to the functions of the Superintendent under this Ordinance, the functions of Superintendent of Banking under the Banking Ordinance, the functions of Superintendent of Trustees under the Trustees (Licensing) Ordinance, the functions of Superintendent of Insurance under the Insurance Ordinance or the functions of the Superintendent of Mutual Funds under the Mutual Funds Ordinance.

(3) The Superintendent shall not disclose any such information to the authority unless he is satisfied -

*(a)* that the information requested by the authority is for the purposes of its regulatory functions;

*(b)* that the request is not for information that is related directly or indirectly to the imposition, calculation and collection of taxes or the enforcement of exchange control regulations; and

*(c)* that the authority is subject to adequate legal restrictions on further disclosures.

(4) The Governor acting in his discretion may from time to time issue guidelines to the Superintendent concerning the discharge of his functions under this section; and the Superintendent shall have regard to any such guidelines in the discharge of his functions under this section.

(5) Before making any guidelines under subsection (4), the Governor shall consult Executive Council.

Immunity

23. No liability attaches to the Permanent Secretary, Finance, the Superintendent, or any person acting under authority of the Permanent Secretary, Finance or the Superintendent for an act done in good faith in the discharge or purported discharge of his functions under this Ordinance.

SUPPLEMENTAL

Offences

24. (1) A person that with intent to deceive for any purpose of this Ordinance makes any representation that it knows to be false or does not believe to be true, commits an offence and is liable on summary conviction to a fine of $20,000 or imprisonment for twelve months or both.

(2) A person that carries on the business of company management or the business of company agent in or from within the Islands –

*(a)* when not in possession of a valid licence issued under this Ordinance;

*(b)* in contravention of the provisions of this Ordinance or any term or condition of the licence;

commits an offence, and is liable on summary conviction to a fine of $20,000.

(3) Except as otherwise provided by this Ordinance, a person that, not being the holder of a licence under this Ordinance or exempt from the requirement to hold a licence, in any matter holds itself out as or pretends to be or makes use of any words or description implying that it –

*(a)* is, licensed under this Ordinance to carry on the business of company management or company agent; or

*(b)* is, entitled, either alone or with others, to carry on such business

commits an offence, and is liable on summary conviction to a fine of $20,000.

(4) Where a company commits an offence under this Ordinance, every director and every officer concerned with the management of the company is liable with the company to be convicted of that offence unless he satisfies the court that the offence was committed without his knowledge or consent or that

he took all reasonable steps to prevent the commission of the offence.

Regulations

25. (1) The Governor in Council –

*(a)* may make regulations prescribing anything which under this Ordinance is required to or may conveniently be prescribed; and

*(b)* may, by Order published in the Gazette, amend Schedules 1 and 3 to this Ordinance.

(2) The Governor in Council after consulting with representatives of the financial services industry, may from time to time amend any provisions of the Code of Conduct set out in Schedule 2, and may repeal and replace the same.

Transitional

26. Notwithstanding section 4 a person who, immediately before the date of the coming into operation of this Ordinance, was carrying on the business of company agent or company manager and who would, but for this section, be required by virtue of section 4 to be licensed under this Ordinance on and after that date, shall be entitled to act as a company agent or company manager without a licence –

*(a)* for the period of 90 days beginning with that date; or

*(b)* if before the expiration of that period he applies for a licence, until the licence is issued or finally refused or the application is withdrawn.

SCHEDULE 1

*(Section 5)*

APPLICATION FOR LICENCE UNDER
THE COMPANY MANAGEMENT (LICENSING) ORDINANCE

PART I: PRELIMINARY

1. Name and address of principal or registered office of company, partnership or individual proposed to be licensed .

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*(Applicant to complete Part II or III as appropriate and to send the application to the Permanent Secretary, Finance accompanied by the appropriate fee (which is not refundable)).*

2. Name and address of subsidiary companies, associates or individuals, to be included in the licence.

PART II: APPLICANTS THAT ARE COMPANIES

3. Address/es where applicant and (if applicable) its parent company carry on the business of company management or company agent.

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4. State whether applicant was incorporated or registered under the Companies Ordinance 1981 or incorporated and registered outside the Islands, giving in either case the date of incorporation or registration, and the registration number.

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*(Attach (i) copy of the memorandum and articles of association, charter or statutes of the applicant or other instrument constituting the applicant, certified under the seal of the Registrar of Companies or the public seal of the country where the applicant was incorporated and if the instrument is not written in the English language, a certified translation thereof and (ii) proof of incorporation and registration in or outside the Islands).*

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5. Names and addresses of directors, managers or other persons who control the company.

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*(Attach proof by way of certificates, references, CVs or otherwise that each person herein named is sufficiently experienced and knowledgeable in the business of company management or company agent and is a fit and proper person(by virtue of integrity, solvency and competence) to conduct the business).*

6. Names, addresses, nationalities and proportions of shares held by individuals –

(a) who are registered shareholders holding ten per-cent or more of the issued share capital of the applicant:

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(*Attach annexes if necessary*)

(b) who are beneficial owners of ten per-cent or more of the issued share capital of the applicant but are not registered as shareholders

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(*Attach annexes if necessary*)

7. State names, addresses, registered or head offices, countries or places of incorporation and proportion of shares held by companies –

(a) that are registered shareholders holding ten per-cent or more of the issued share capital of the applicant

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(*Attach annexes if necessary*)

(b) that are beneficial owners of ten per-cent or more of the issued share capital of the applicant but are not registered as shareholders

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(*Attach annexes if necessary*).

8. State below the nature of the security to be provided for the discharge of the applicant's liabilities in the form of a financial guarantee by the company having a controlling interest in the applicant or other company (state the names/e of the guarantor/s and the corresponding amount/s guaranteed)

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NOTE: . In the case of all applications, a financial business plan must be annexed describing the nature of the business which is to be undertaken and the administrative procedures, which are to be adopted.

Dated this day of 19 .

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(Applicant)

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**PART III: APPLICANTS OTHER THAN COMPANIES**

9. Name and address of applicant or, if applicant is a partnership, of each partner concerned

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*(Attach (i) three references, one of a financial character elther from a bank or trust company, in respect of the person or persons here named, and (ii) any other proof by way of certificates, CVs or otherwise that the person or persons concerned are sufficiently experienced and*

*knowledgeable in the business of company management or company agent and fit and proper to conduct the business, and (iii) a certified copy of the partnership agreement in the case of partnership).*

10. Does the applicant intend to employ a person as a manager or senior officer with responsibility for the management of the companies in respect of which the applicant proposes to act as company manager or provide it with company services? Yes/No. (*If "Yes", give that person's name and address, attaching the appropriate references and proof required by paragraph 2 and proof of the person's status as a Belonger or of his right of residence in the Islands).*

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11. Date for drawing up the annual accounts of the applicant (*Attach a statement of assets and liabilities, duly certified, at the end of the month immediately preceding this application*)

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SCHEDULE 2

*(Sections 8 and 25)*

## CODE OF CONDUCT

All licensees are required to comply with the provisions of paragraphs 1, 2, 4(2) and 6(a), (b), (c), (e) and (f) of this Code of Conduct. The remainder of this Code applies to company managers only. Breaches of this Code may lead the Permanent Secretary, Finance to take enforcement action. A series of breaches, which may be minor in themselves, may indicate that a licensee is not a fit and proper person to hold a licence.

### PROPER MANAGEMENT OF YOUR BUSINESS

1. A licensee should ensure that at all times –

(a) it has a resident manager of its business in the Islands;

(b) it maintains sufficient capital to enable it to meet its liabilities as they fall due.

### KNOW YOUR CUSTOMER

2. (1) A licensee should use its best endeavours, including taking up references to identify –

(a) the beneficial owners of all voting or dividend earning shares of the companies for which it acts (where those shares comprise more than five per-cent of the issued capital) or persons who exercise control over such shares;

(b) in the case of bearer shares, the person or persons in accordance with whose instructions the licensee is accustomed to act;

(c) shadow directors;

(d) persons to whom the directors have granted a power of attorney;

and shall ensure that the information is kept up to date.

(2) For the purposes of this paragraph, "shadow director" in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act but so that a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity.

RECORDS OF CLIENTS

3. A licensee should keep at its offices the following records in respect of each of its client companies in respect of which it acts as a company manager –

(a) names and addresses of directors and other officers and agents of the company;

(b) name and address of beneficial owner; and where the business is done through a professional intermediary, name and contact address of the professional intermediary;

(c) name and address of the principal requesting formation or registration of the company;

(d) powers of attorney and other instruments relating to the control of the company.

MONITOR THE ACTIVITIES OF YOUR COMPANIES

4. (1) A licensee should use its best endeavours and set up any system necessary, to enable it to monitor the activities of the companies it manages, to ensure that the companies are not being used for purposes which would be illegal if carried out in the Islands.

(2) A licensee should use its best endeavours to ensure that the companies in respect of which it acts as a company manager or in respect of which it acts as a company agent, are not used for the purposes of holding assets arising from or facilitating the commission of criminal activity, or for any acts which would infringe the law of the Islands.

(3) A licensee should maintain board meeting minute books and general meeting minute books or keep copies of board meeting and general meeting, minutes in its offices;

(4) A licensee should set up any system necessary to ensure that the licensee is made aware of the transactions effected through bank, brokerage and other accounts of the companies in respect of which it acts as a company manager.

POWERS OF ATTORNEY

5. A licensee should ensure that powers of attorney are -

(i) granted for specific purposes;

(ii) limited in time;

(iii) not capable of being further delegated by the grantee; and

(iv) granted only where the licensee regards the donee to be particularly trustworthy by virtue of long-standing relationship or similar connections.

CUSTOMER AGREEMENT

6. A customer agreement should be entered into between a licensee and each of the companies managed by it or for which it provides company services. The agreement should specify –

(a) the nature of the services to be provided;

(b) the fees to be charged and how such fees may be collected;

(c) how instructions can be given;

(d) any bank account arrangement made or administered by the licensee;

(e) provisions for terminating the agreement and the implications for the client company of such termination;

(f) a requirement for the client to notify the licensee of any changes in its business activities.

AVOIDANCE OF CONFLICT OF INTEREST

7. A licensee should ensure that it avoids a conflict of interest between it and its client companies and between one client company and another. A licensee should in respect of each company for which it provides services –

(a) maintain separate accounts in its books;

(b) segregate the funds and other property of each company;

(c) maintain one or more separate bank accounts into which it shall deposit all moneys held by it on behalf of each company.

SCHEDULE 3

*(Section 16)*

PROCEDURE ON APPEAL

1. The appellant, within twenty-one days after the day on which the Permanent Secretary, Finance has given the decision which is the subject of the appeal, shall serve a notice in writing, signed by the appellant or his attorney, on the Attorney General of his intention to appeal and of the general grounds of his appeal.

2. The Attorney General shall, within twenty-one days of receiving the notice of appeal, obtain a copy of the decision of the Permanent Secretary, Finance and transmit to the Registrar of the Supreme Court without delay a copy thereof, together with all papers relating to the appeal.

3. The Registrar shall set down the appeal for hearing on such day as is convenient, and shall cause notice of the hearing to be published in such manner as the court may direct.

4. The court may adjourn the hearing of any appeal and may, upon the hearing thereof, confirm, reverse, vary or modify the decision of the Permanent Secretary, Finance or remit the matter with the opinion of the court thereon to the Permanent Secretary, Finance.

# COMPANY MANAGEMENT (LICENSING) ORDINANCE 1999 COMMENCEMENT NOTICE 2000

*(Legal Notice 22 of 2000)*

**MADE** by the Governor under section 1 of the Company Management (Licensing) Ordinance 1999. *1 of 1999*

1. This notice may be cited as the Company Management (Licensing) Ordinance 1999 Commencement Notice 2000. Citation

2. The Company Management (Licensing) Ordinance 1999 shall come into operation on 9th September, 2000. Commencement

# COMPANY MANAGEMENT (LICENSING) CODE OF CONDUCT (AMENDMENT) 2000

## Arrangement of paragraphs

Paragraph

1. Citation
2. Amendment to code of conduct

# COMPANY MANAGEMENT (LICENSING) CODE OF CONDUCT (AMENDMENT) 2000

*(Legal Notice 25 of 2000)*

*1 of 1999*

**MADE** by the Governor under section 25(2) of the Company Management (Licensing) Ordinance 1999.

Citation

1. This amendment may be cited as the Company Management (Licensing) Code of Conduct (Amendment) 2000.

Amendment to code of conduct

2. In paragraph 7 of Schedule 2 to the Company Management (Licensing) Ordinance 1999 before the words "A licensee" there shall be inserted "(1)" and at the end there shall be added the following subparagraph –

"(2) A licensee may not comply with the provisions of subparagraph (1)(c) where the moneys held by it on behalf of a client company –

*(a)* are not more than $5,000;

*(b)* are more than $5,000 but not more than $15,000 and –

(i) the books of account of the licensee are subject to an annual audit;

(ii) the number of transactions carried out on behalf of a client company in a year is less than twelve; and

(iii) the annual average amount involved in each transaction carried out on behalf of a client company is less than $15,000; or

*(c)* are more than $15,000 and –

(i) the books of account of the licensee are subject to an annual audit; and

(ii) the licensee has obtained the approval of the Permanent Secretary, Finance to its exercise of the power not to comply with subparagraph 1(c).".

## EXPLANATORY NOTE

*(This note is not part of the amendment)*

This amendment to the code of conduct in Schedule 2 to the Company Management (Licensing) Ordinance 1999 is to allow company managers not to have to maintain one or more separate bank accounts into which they must deposit all moneys held by them on behalf of each company and that they may use a pooled client account where –

(i) the moneys held on behalf of a client company are less than the minimum amount required to open a corporate bank account in the Turks and Caicos Islands; or

(ii) the licensee is the subject of an annual external audit, the amounts concerned are modest and transactions are infrequent; or

(iii) the licensee is approved by the Permanent Secretary, Finance to hold larger sums in a pooled client account and is the subject of an annual external audit.

# COMPANY MANAGEMENT (LICENSING) (FEES) REGULATIONS 2000

## Arrangement of Regulations

Regulation

1. Citation
2. Application fees
3. Annual fee

# COMPANY MANAGEMENT (LICENSING) (FEES) REGULATIONS 2000

*(Legal Notice 26 of 2000)*

*1 of 1999*

**MADE** by the Governor under sections 7 and 25 of the Company Management (Licensing) Ordinance 1999.

Citation

1. These Regulations may be cited as the Company Management (Licensing) (Fees) Regulations 2000.

Application fees

2. The fee in respect of an application for a licence to carry on the business of company management or company agent shall be the sum of –

*(a)* $500 or $200 respectively; and

*(b)* an amount having the same ratio to $2,000 as the period commencing on the date of issue of a licence and ending on 31st March in the year following that date of issue, has to a year.

Annual fee

3. The fee to be paid by a licensee not later than 31 March in each year following the year in which it was issued with a license shall be $2,000.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Company Management (Licensing) (Fees) Regulations 2000 provide for application fees and annual fees for company managers and company agents.

The application fee for company managers is $500 and for company agents is $200 plus an amount based on the annual fee and in proportion to the period between the date of issue and 31st March in the next year (regulation 2).

The annual fee in both cases is $2,000 (regulation 3).

TURKS AND CAICOS ISLANDS

# CHAPTER 130

# BUSINESS LICENSING ORDINANCE
## and Subsidiary Legislation

**Revised Edition**
showing the law as at 15 May 1998

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance 1997.

This edition contains a consolidation of the following laws—


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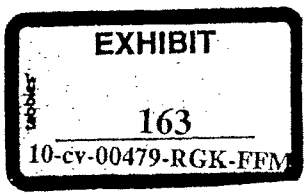

# CHAPTER 130

# BUSINESS LICENSING ORDINANCE

## ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation

*Business Licences*

3. Business licence
4. Licensing of separate businesses
5. Application for licence
6. Grant of licence
7. Licence not transferable

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8. Changes in particulars to be notified
9. Cessation of business to be notified

*Suspension and Revocation of Business Licences*

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11. Permanent Secretary, Finance may revoke a licence
12. Licensee to show cause why licence should not be revoked

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13. Appeal to Governor against decision of Permanent Secretary, Finance
14. Appeal to Governor suspends Permanent Secretary, Finance's decision
15. Powers of Governor on appeal
16. Governor's decision final

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17. Display of licence
18. Surrender of licence

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19. Confidentiality
20. Making false statements, furnishing false information
21. Offences by corporations
22. Evidence by certificate
23. Outstanding fees recoverable in civil proceedings
24. Exemption from licence and fees
25. Power to make regulations

# CHAPTER 130

## BUSINESS LICENSING ORDINANCE

*(Ordinances 16 of 1992 and 5 of 1994, Legal Notice 24 of 1993)*

*[1 January 1993]* Commencement

AN ORDINANCE TO PROVIDE FOR THE LICENSING OF ALL BUSINESSES IN THE TURKS AND CAICOS ISLANDS; TO ESTABLISH A PROCEDURE TO FACILITATE THROUGH THE ISSUE OF BUSINESS LICENSES THE ORDERLY DEVELOPMENT OF BUSINESS INVESTMENT IN THE ISLANDS; AND FOR CONNECTED PURPOSES.

**1.** This Ordinance may be cited as the Business Licensing Ordinance. Short title

**2.** (1) In this Ordinance, unless the context otherwise requires— Interpretation

"Belonger" has the meaning assigned to it in the Immigration Ordinance; Cap. 51

"business" means any form of trade, commerce, manufacture, craftsmanship, profession, vocation or other activity carried on for the purpose of gain, but does not include an office or employment;

"Governor" means Governor in Council;

"Islands" means the Turks and Caicos Islands;

"licence" means a business licence;

"Minister" means the Chief Minister or such Minister to whom the Governor may assign the administration of this Ordinance.

*(Amended by Ord. 5 of 1994)*

(2) The expression, "person carrying on business", means—

*(a)* in the case of a single person or corporate body, such person or corporate body;

*(b)* in the case of a business carried on by a partnership, all partners;

*(c)* in the case of a business carried on by any other body of persons, the principal officers of such body.

(3) The expression, "Belonger business", means—

*(a)* in the case of a single person, a business owned by a Belonger;

*(b)* in the case of a business carried on by a partnership, a business where the partner or partners entitled to receive the majority of the profits of the partnership are Belongers;

*(c)* in the case of a business carried on by a body corporate, a business where the person or persons who have beneficial ownership of the majority of the shares or stock entitled to vote at general meetings of the body corporate are Belongers.

*Business Licences*

Business licence

3. (1) Subject to this Ordinance, no person shall carry on any business in or from within the Islands unless he holds a current licence issued under this Ordinance authorizing him to carry on that business.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction—

*(a)* to a fine of $10,000 or to imprisonment for two years or to both; and

*(b)* to a fine of $50 for each day during which the offence continues.

Licensing of separate businesses

4. Where the business to be licensed consists of separate and distinct undertakings which are not reasonably incidental in nature or degree to the main activity of the relevant business, whether on the same premises or not, a licence shall be obtained for each undertaking.

Application for licence

5. (1) An application for a licence shall be made to the Permanent Secretary, Finance in the prescribed manner.

(2) An applicant shall provide the Permanent Secretary, Finance with such particulars as may be prescribed and as the Permanent Secretary, Finance may require in any particular case.

(3) The Permanent Secretary, Finance may require an applicant to attend personally before him for examination.

(4) The Permanent Secretary, Finance may refuse an application for a licence if an applicant fails to provide him with the prescribed particulars or the particulars required, or if the

applicant fails to attend before the Permanent Secretary, Finance when requested so to do.

*(Amended by Ord. 5 of 1994)*

Grant of licence

**6.** (1) If, on an application for a licence, the Permanent Secretary, Finance is satisfied that the applicant meets the prescribed requirements, the Permanent Secretary, Finance shall issue the applicant with a licence.

(2) A licence shall be in such form as may be prescribed.

(3) A licence shall be made subject to such conditions as may be prescribed, and such special conditions as the Permanent Secretary, Finance may, in any particular case, impose.

(4) The Permanent Secretary, Finance may at any time, on the application of the licensee, vary any special condition to which the licence is subject.

(5) Unless revoked under section 11, a licence shall be valid for an indefinite period.

*(Amended by Ord. 5 of 1994)*

Licence not transferable

**7.** A licence shall not be transferable.

*Information to be provided*

Changes in particulars to be notified

**8.** (1) Where there occurs any change in the particulars respecting the applicant or the business, set out in the form of application for a licence, any person carrying on any business shall within 30 days of such change notify the Permanent Secretary, Finance in writing of the changes in the particulars.

(2) A body corporate shall additionally and within the time specified in subsection (1), notify the Permanent Secretary, Finance of the following changes—

*(a)* any change in the persons who have a controlling interest in the body corporate;

*(b)* any change in the persons in accordance with whose directions or instructions the directors of that body corporate are accustomed to act;

*(c)* any change in the persons who are directors of the body corporate.

(3) A person who fails to comply with subsections (1) or (2) commits an offence and is liable on summary conviction to a fine of $5,000.

*(Amended by Ord. 5 of 1994)*

Cessation of business to be notified

9. (1) Where a business ceases to be carried on, a person who was carrying on such business shall, within 30 days of the cessation, notify the Permanent Secretary, Finance. *(Amended by Ord. 5 of 1994)*

(2) A person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of $5,000.

*Suspension and Revocation of Business Licences*

Permanent Secretary, Finance may suspend a business licence

10. (1) The Permanent Secretary, Finance may suspend a licence on the grounds that—

*(a)* the licensee has failed to comply with a condition of his licence;

*(b)* the licensee has failed to pay any fee payable in respect of his licence.

(2) Before suspending a licence under this section the Permanent Secretary, Finance shall serve a notice in writing on the licensee setting out its intention to suspend his licence and giving him a reasonable opportunity to either comply with the conditions of his licence or to pay any fee payable in respect thereof, as the case may be.

(3) Subject to section 11, a licence suspended by the Permanent Secretary, Finance under subsection (1) shall continue to be suspended until such time as the licensee complies with the conditions of his licence or pays the fees payable in respect thereof, as the case may be, when it shall be restored to him.

(4) A person whose licence has been suspended and who carries on any business in or from within the Islands during the period of suspension commits an offence and is liable on summary conviction to a fine of $2,000 or to imprisonment for nine months or to both.

*(Amended by Ord. 5 of 1994)*

Permanent Secretary, Finance may revoke a licence

11. The Permanent Secretary, Finance may revoke a licence if he is satisfied that the holder of a licence—

*(a)* has made any false or misleading statement or has furnished any false or misleading information in connection with his application for a licence;

*(b)* has been convicted of an offence against this Ordinance;

*(c)* has had his licence suspended under section 10 for more than six months; or

*(d)* being the sole holder of the licence has been, under the Immigration Ordinance, recommended for deportation, or declared a prohibited immigrant, or placed on the Stop List. *Cap. 51*

*(Amended by Ord. 5 of 1994)*

Licensee to show cause why licence should not be revoked

**12.** (1) Before revoking a licence under section 11, the Permanent Secretary, Finance shall give the licensee notice in writing of its intention to revoke his licence and the reasons for it.

(2) A notice given under subsection (1) shall state that within 30 days of service the licensee may make representations in writing to the Permanent Secretary, Finance concerning the matter; and the Permanent Secretary, Finance shall not determine the matter without considering any representations received within that period of 30 days.

*(Amended by Ord. 5 of 1994)*

*Appeals*

Appeal to Governor against decision of Permanent Secretary, Finance

**13.** A person aggrieved by a decision of the Permanent Secretary, Finance—

*(a)* refusing to grant a licence;

*(b)* imposing any special conditions on a licence;

*(c)* refusing to renew a licence;

*(d)* suspending a licence; or

*(e)* revoking a licence;

may appeal in writing to the Governor within a period of 30 days following notification to him of the decision appealed against.

*(Amended by Ord. 5 of 1994)*

Appeal to Governor suspends Permanent Secretary, Finance's decision

**14.** An appeal to the Governor under section 13*(d)* or *(e)* shall have the effect of suspending the execution of the decision of the Permanent Secretary, Finance until the Governor gives his decision on the appeal. *(Amended by Ord. 5 of 1994)*

Powers of Governor on appeal

**15.** (1) In considering an appeal under section 13, the Governor may request the appellant to furnish him with such documents and information as he deems necessary, and may dismiss the appeal summarily if the appellant fails to comply with his request.

(2) The Governor may confirm the decision appealed against or may—

*(a)* direct the Permanent Secretary, Finance to grant a licence on such terms and conditions as he may determine;

*(b)* direct the Permanent Secretary, Finance to cancel a condition it has imposed on a licence and substitute such other condition as he may determine;

*(c)* direct the Permanent Secretary, Finance to restore a licence it has suspended or revoked, or restore it on such terms and conditions as he may determine;

and the Permanent Secretary, Finance shall comply with any such direction.

*(Amended by Ord. 5 of 1994)*

Governor's decision final

**16.** The decision of the Governor on an appeal under section 13 shall be final and shall not be reviewed or enquired into by any court.

*Display and Surrender of Licence*

Display of licence

**17.** (1) The holder of a licence shall display the licence in a conspicuous place on any premises occupied by him for the purpose of carrying on business and shall produce such licence for inspection when requested to do so by the Permanent Secretary, Finance or a person authorised by him in that behalf, or a police officer not below the rank of Sergeant. *(Amended by Ord. 5 of 1994)*

(2) A person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of $1,000.

Surrender of licence

**18.** (1) Where a licence has ceased to be valid or has been suspended under section 10 or revoked under section 11, the Permanent Secretary, Finance shall, by notice in writing, require the licensee to surrender the licence to him within a period of 30 days from receipt of the notice.

(2) Where a licence is suspended, the Permanent Secretary, Finance shall retain the licence until it is either restored to the licensee or is revoked.

(3) Where a licence is revoked, the Permanent Secretary, Finance shall upon receipt of the licence cancel it by writing on its face the word "Cancelled".

(4) A person who fails to comply with a requirement made under subsection (1) to surrender a licence commits an offence and is liable on summary conviction to a fine of $1,000.
*(Amended by Ord. 5 of 1994)*

*Miscellaneous and Supplemental*

Confidentiality

**19.** (1) Every person having official duties under this Ordinance or being employed in the administration of this Ordinance, shall preserve and aid in preserving confidentiality with regard to all matters relating to the affairs of any person that may come to his knowledge in the performance of his duties under this Ordinance, and shall not communicate any such matter to any person other than the person to whom such matter relates or his executor or the authorized representative of such person or such executor, nor suffer or permit any person to have access to any records in the possession, custody or control of the Permanent Secretary, Finance.

(2) Except as may be necessary for the purpose of carrying into effect this Ordinance, no person concerned in the administration of this Ordinance shall be required to divulge or communicate to any court any matter or thing coming to his notice in the performance of his duties under this Ordinance, or to produce in any court any document pertaining to such matter or thing other than a document required to be kept by the Permanent Secretary, Finance under this Ordinance.

(3) A person required under subsection (1) to deal with any matter mentioned therein as confidential who at any time communicates or attempts to communicate information relating to such matter to any person otherwise than for carrying out or giving effect to this Ordinance, commits an offence and is liable on summary conviction to a fine of $5,000 or two years imprisonment or to both.
*(Amended by Ord. 5 of 1994)*

Making false statements, furnishing false information

**20.** A person who, in connection with any application for a licence, knowingly makes any false or misleading statement or knowingly furnishes false or misleading information, commits an offence and is liable on summary conviction to a fine of $2,000 or to 12 months imprisonment or to both.

Offences by corporations

**21.** Where a body corporate is guilty of an offence against this Ordinance, every director, manager and other person concerned in the management of the body corporate is guilty of the like offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence

to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

Evidence by certificate

**22.** In any proceedings for an offence under this Ordinance, a certificate signed by the Permanent Secretary, Finance and stating that—

*(a)* on any date a person was or was not the holder of a licence granted under this Ordinance;

*(b)* the date of issue and expiration of such a licence; and

*(c)* the conditions to which such a licence is subject;

shall be evidence of the facts stated, and a certificate stating any of the matters mentioned and purporting to be signed by the Permanent Secretary, Finance shall be presumed to be so signed unless the contrary is proved.

*(Amended by Ord. 5 of 1994)*

Outstanding fees recoverable in civil proceedings

**23.** Without prejudice to any other action, the Attorney General may, on behalf of the Crown, institute civil proceedings in the Magistrate's Court against any person for the recovery of any fees and penalty fees payable under this Ordinance as a debt due to the Crown.

Exemption from licence and fees

**24.** The Governor may by order published in the *Gazette*—

*(a)* exempt any class or classes of business activity from the requirement to hold a licence under this Ordinance;

*(b)* exempt any class or classes of business activity from the payment of licence fees under this Ordinance;

*(c)* remit in part or in whole the licence fees payable by any person or class of persons under this Ordinance.

Power to make regulations

**25.** The Governor may make regulations for carrying out and giving effect to this Ordinance, and without prejudice to the generality of the foregoing, may make regulations—

*(a)* prescribing anything which is necessary or convenient to give effect to this Ordinance;

*(b)* protecting businesses owned by Belongers from competition by businesses owned by non-Belongers;

(c) prescribing the fees to be paid in respect of any matter or thing done under this Ordinance and penalties for late payment of fees;

(d) prescribing offences against the regulations and the penalties respecting the offences.

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BUSINESS LICENSING ORDER – SECTION 24

*(Legal Notice 54 of 1992)*

*[1 January 1993]* Commencement

1. This Order may be cited as the Business Licensing Order. Short title

2. The following classes of businesses are exempted from the requirement to hold a licence under the Business Licensing Ordinance— Exemption

*(a)* a person carrying on banking business, provided such person is licensed under the Banking Ordinance;

*(b)* a person carrying on insurance business, provided such person is licensed under the Insurance Ordinance;

*(c)* a person carrying on trust business, provided such person is licensed under section 10 of the Trustees (Licensing) Ordinance;

*(d)* a company registered under the provisions of the Companies Ordinance as an exempted company, provided that it carries on no business within the Islands except with other exempted companies.

# BUSINESS LICENSING REGULATIONS

## ARRANGEMENT OF REGULATIONS

REGULATIONS
1. Short title
2. Interpretation
3. Applications for licences
4. Reserved business activities
5. Applications for licences in reserved business activities
6. Form of licence
7. Fees

SCHEDULE 1: FORMS:
Form 1: Application for a Business Licence
Form 2: Business Licence
SCHEDULE 2: FEES
SCHEDULE 3: RESERVED BUSINESS ACTIVITIES

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## BUSINESS LICENSING REGULATIONS – SECTION 25

*(Legal Notices 55/1992 and 20/1994)*

*[1 January 1993]* Commencement

**1.** These Regulations may be cited as the Business Licensing Regulations. Short title

**2.** In these Regulations, unless the context otherwise requires— Interpretation

"Immigration Board" means the Turks and Caicos Islands Immigration Board established under the Immigration Ordinance; *Cap. 51*

"Work Permit" means a Work Permit issued under the Immigration Ordinance.

**3.** (1) An application for a licence may be made by or on behalf of an applicant to the Permanent Secretary, Finance in Form 1 of Schedule 1. Applications for licences

(2) The application form shall be accompanied with—

*(a)* the appropriate fee specified in Schedule 2;

*(b)* the appropriate licence, permit, or authority, where the nature of the business which the applicant proposes to carry on is such that a business of that kind may lawfully be carried on only by persons holding such licences, permits or authorities; and

*(c)* (i) where the application is by or on behalf of a Belonger business, evidence showing to the satisfaction of the Permanent Secretary, Finance that the business is a Belonger business; or

(ii) where the application is by or on behalf of a non-Belonger business, a Work Permit issued under the Immigration Ordinance; or a letter of intent from the Immigration Board stating that subject to his obtaining a Business Licence, a Work Permit will be issued to the applicant authorizing him to engage in the gainful occupation specified in the application for a licence.

*Cap. 51*

**Reserved business activities**

4. The business activities listed in Schedule 3 are reserved for Belonger businesses and, except as provided in regulation 5, a non-Belonger business shall not be licensed to carry on or to engage in any business activity listed in the said Schedule.

**Applications for licences in reserved business activities**

5. Notwithstanding regulation 4, where an application is made by or on behalf of a non-Belonger business for a licence permitting the applicant to carry on a business in an activity listed in Schedule 3, a licence may be granted if the Permanent Secretary, Finance, having regard to—

*(a)* the nature of the business activity;

*(b)* the proposed size of the business;

*(c)* the proposed number of persons to be employed, and source of recruitment;

*(d)* the applicant's intentions regarding the transfer of skills to Belonger employees; and

*(e)* the proposed geographical location of the business;

is satisfied that such a business will be beneficial to the overall development of the Islands.

**Form of licence**

6. A licence shall be in Form 2 of Schedule 1.

**Fees**

7. Schedule 2 shall have effect with respect to fees.

## SCHEDULE 1

*(Regulation 5)*

FORM 1

### APPLICATION FOR A BUSINESS LICENCE

| | TURKS AND CAICOS ISLANDS<br>APPLICATION FOR A BUSINESS LICENCE Page 1 of 4 | |
|---|---|---|
| Note | Please refer to the notes on page 4 | |
| 1 | Applicant name | |
| 2 | Business name | |
| 3 | Trade name | |
| 4 | Business activity | |
| 5 | Licence fee category | |
| 6 | Licence trading date | Fee enclosed |
| | Type of ownership | Single owner/Partnership/body corporate |
| 7 | Trading locations | |
| | Correspondence address<br>Name | |
| | P O Box | |
| | Address | |
| | Island | |
| | Phone | |
| | Fax | |

| | APPLICATION FOR A BUSINESS LICENCE | | | Page 2 of 4 |
|---|---|---|---|---|
| Note | Please refer to the notes on page 4 | | | |
| | Is the majority and controlling interest held by a belonger | | | Yes/No |
| 8 | Ownership details<br>Name | Belonger yes/no | NI No | Work Permit |
| | 1 | | | |
| | 2 | | | |
| | 3 | | | |
| | 4 | | | |
| | Body corporate: Company registered name and number | | Regn. date | |
| | Business National Insurance Number | | Regn. date | |
| | Criminal records<br>Name | Date | Details | |
| | | | | |
| 9 | Reserved category justification | | | |

| APPLICATION FOR A BUSINESS LICENCE | | | Page 3 of 4 |
|---|---|---|---|
| Note | please refer to note on page 4 | | |
| 10 | Other businesses Owner/partner/director | Business name | Business Licence Number |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

**Certification and declaration**

The information contained in this application is declared to be complete and true to the best of my knowledge and belief. It is understood that if the application, and any attached or associated documents, contain false or misleading statements, or are not properly authentic, then I, and any partners, directors, or other parties to this application are liable to be prosecuted under the relevant sections of the Business Licensing Ordinance, and any licence issued under this application, and any other licences held by myself, and any partners, directors, or other parties to this application are liable to be suspended and revoked.

| | |
|---|---|
| Signed by the applicant | |
| Date | |

| | APPLICATION FOR A BUSINESS LICENCE<br>Notes to the Application Form<br>Page 4 of 4 |
|---|---|
| 1 | Enter the name of the person signing the declaration.<br>*please enter as Last name, First name, Initial* |
| 2 | Enter the individual or company name of the licence holder.<br>*This is the name which will appear on the licence.* |
| 3 | Enter the name under which the business will trade, or by which it will be commonly known. |
| 4 | Enter the business activity to be covered by the licence.<br>*This is the authorised activity which will appear on the licence.* |
| 5 | Enter the fee category which is expected to apply to the licence. |
| 6 | Enter the date from which the business is to start to trade.<br>If already operating enter the date when trade started. |
| 7 | Enter ALL trading locations, giving enough information to enable the locations to be readily identified. |
| 8 | Enter the name of the owner, or the names of each partner or director, and the appropriate other information. |
| 9 | Complete this section if the business is on the reserved occupation list and the controlling interest is not held by a belonger. |
| 10 | Enter details of ALL businesses in which the single owner applicant or ANY of the partners or directors has an interest.<br>*Applications will not normally be considered if any of these businesses are in arrears with their fees.*<br>*Attach extra sheets as necessary* |

FORM 2

**Turks and Caicos Islands**

**BUSINESS LICENSING ORDINANCE**

**BUSINESS LICENCE**
*(Regulation 5)*

THIS LICENCE IS ISSUED TO

_____

(NAME OF LICENSEE)

IN RESPECT OF

_____

(NAME OF BUSINESS)

CLASS OF BUSINESS

_____

and is valid from the day of 19/20 .

The conditions imposed upon the grant of this licence are as follows—

1. Payment of the appropriate annual fee on 1 April in each year.
2.
3.
4.

Dated the day of 19/20 .

_____

*Permanent Secretary, Finance*

## SCHEDULE 2

*(Regulation 7)*

FEES

Interpretation

1. In this Schedule—

"goods" includes bread, pastry, cakes, biscuits and confectionery;

"professionally qualified", in relation to a business activity, means qualified by examination or admission by a professional institute or university overseas to practice the profession to which that activity relates in the country in which the institute or university is situated;

"selling area" in relation to retail sales business means the total area of the premises (on one or more floors) in which the business is carried on excluding—

*(a)* living accommodation;

*(b)* storage areas;

*(c)* stairways and passageways;

*(d)* car parking places; or

*(e)* any area of land outside a building which is used for access to the business or is not utilized for the purposes of the business:

Provided that where the business concerned is carried on from more than one place in the Islands the selling area shall be the aggregate selling areas of all such places.

Licence fees and annual renewal fees

2. (1) There shall be payable for a licence granted under the Ordinance in respect of the business described in column I of Table A, the licence fee prescribed therefore in column II, and thereafter such fee shall be payable in each year on 1 April following the grant of the licence.

(2) The fee payable on the grant of a licence shall be a proportion of the fee for the period from such grant to the 1 April next following, counting part of a month as one month for the purpose of calculating the fee.

(3) If the fee has not been paid at all or is not paid in full within one month of the due date (1 April in each year) the fee, or as the case may be, that part of the fee remaining unpaid, shall be increased by 10 per cent for each month or part thereof during which the fee remains unpaid.

(4) Where a person is required to hold more than one licence he shall be liable to pay in respect of the licence for which the highest licence and annual renewal fee is payable, the whole fee, or where that person is required to hold two or more licences each requiring the same highest fee, the whole fee on one of those licences, and for each additional licence one half of the licence or annual renewal fees prescribed in Table A.

TABLE A

| COLUMN I<br>Type of business<br>Activity | COLUMN II<br>Licence fee and annual renewal fee |
|---|---|
| **Accountancy** (including auditor, actuary, bookkeeper and statistician) | |
| *(a)* Professionally qualified: | $ 4,000 |
| *(b)* Other: | $ 500 |
| **Agency** (including airline, freight forwarding, shipping, travel, sales, advertising and any other professional agency whatsoever): | $ 500 |
| **Agriculture** (including farming and animal husbandry and the farming of fish or other marine products): | Nil |
| **Apartment** or condominium sales, rental or management, where the business concerned comprises— | |
| *(a)* up to four units: | Nil |
| *(b)* up to nine units: | $ 500 |
| *(c)* more than nine units: | $ 3,000 |
| **Architecture** (including architectural consultancy)— | |
| *(a)* Professionally qualified: | $ 4,000 |
| *(b)* Other: | $ 500 |
| **Auctioneering** (being the sale or offering for sale for gain or reward of any kind, by any person other than a public officer or police officer acting in the course of his duty as such, or any real or personal property or right to property belonging to another person, whether by public auction or private treaty: | $ 1,000 |
| **Bakery** operation: | $ 300 |
| **Boatyard** operation: | $ 2,000 |
| **Brokerage** (being the negotiating of agreements or contracts between brokers or their principals or between brokers and principals for commission or other reward, including the business of being a commission agent, a del credere agent or a factor): | $ 3,000 |
| **Building** material manufacture (including the manufacture of blocks or other building materials or components for supply to another person): | $ 500 |

| | |
|---|---|
| **Bulk** fuel installation (being the business of storing petroleum products, propane gas or other fuel products for distribution to other persons): | $ 3,000 |
| **Company** formation and the provision of corporate management services: | $ 2,000 |
| **Computer** sales or the provision of computer services: | $ 1,000 |
| **Contracting** (including the business of building or civil engineering contracting), where the business concerned is determined by the Permanent Secretary, Finance, after consulting the Public Works Department of the Government, to be— | |
| *(a)* Petty contractor (dealing with jobbing orders to a value of $2,500 or less): | $ 150 |
| *(b)* Small contractor: | $ 400 |
| *(c)* Medium contractor: | $ 3,000 |
| *(d)* Large contractor: | $ 6,000 |
| **Dancehall** or discotheque operation (including when part of an hotel): | $ 1,000 |
| **Dental Practice** | $ 750 |
| **Engineering** or engineering consultancy: | $ 4,000 |
| **Heavy** equipment, sales and rental: | $ 1,000 |
| **Landscaping** (including the operation of plant nurseries): | $ 500 |
| **Marina** operation: | $ 2,000 |
| **Medical** practice: | $ 2,000 |
| **Miscellaneous** business (being any business not specifically mentioned elsewhere in this Table): | $ 150 |
| **Motor** vehicle sales or rental or both: | $ 1,000 |
| **Operation** of golf courses | $ 6,000 |
| **Operation** of vessels for hire or reward— | |
| *(a)* Vessels 30 feet and over: | $ 1,000 |
| *(b)* Other: | $ 300 |

| | |
|---|---|
| **Practice** as an attorney-at-law (by an attorney called to the Bar or admitted as an attorney in the Islands qualified for such call or admission by virtue of having been called to the Bar or admitted as an attorney, a barrister or solicitor in any jurisdiction outside the Islands): | $ 4,000 |
| **Printing** (other than newspapers): | $ 150 |
| **Property** development: | $ 4,000 |
| **Provision** of financial services (other than such services specified elsewhere in this Table): | $ 2,000 |
| **Provision** of hotel accommodation, where the hotel concerned has— | |
| *(a)* at least 5 but not more than 19 bedrooms: | $ 500 |
| *(b)* at least 20 but not more than 99 bedrooms: | $ 2,000 |
| *(c)* 100 bedrooms or more: | $10,000 |
| **Provision** of sanitation services: | $ 500 |
| **Provision** of security services: | $ 500 |
| **Provision** of tourism related services (other than such services specified elsewhere in this Table): | $ 500 |
| **Provision** of tourist accommodation (other than hotel accommodation): | $ 150 |
| **Provision** of transportation services— | |
| *(a)* land transport (including taxis, buses and haulage services): | $ 150 (per vehicle) |
| *(b)* sea transport (including any ferry service and the business of the carriage of persons by sea either within the Islands or from or to any place outside the Islands): | $ 150 (per vessel) |
| *(c)* air transport: | $ 500 (per aircraft) |
| **Publishing:** | $ 500 |
| **Radio** or television broadcasting: | $ 1,000 |
| **Real** estate agency (being the business of dealing in real estate or tenancies thereof as agent for another person): | $ 2,500 |

| | |
|---|---|
| **Restaurant** or cafe operation (including any business not being an hotel or guest house) which sells or offers for sale food or drink for human consumption on or off the premises— | |
| *(a)* Designated restaurants/cafes (under s.26 of the Hotel and Restaurant (Taxation) Ordinance ): | $ 350 |
| *(b)* Other: | $ 150 |
| **Retail** and/or wholesale sales— | |
| *(a)* one or more locations with a combined area of less than 500 sq ft: | $ 150 |
| *(b)* one or more locations with a combined area of more than 500 sq feet but less than 1,000 sq ft: | $ 500 |
| *(c)* one or more locations with a combined area of more than 1,000 sq feet but less than 2,000 sq ft: | $ 1,000 |
| *(d)* one or more locations with a combined area of more than 2,000 sq ft: | $ 1,500 |
| **Surveying**— | |
| *(a)* Surveyor: | $ 4,000 |
| *(b)* Survey technician | $ 500 |
| **Service** station or garage operation (including any business engaged in the fuelling of motor vehicles with petroleum or diesel or in repairing motor vehicles): | $ 750 |
| **Trucking**, where the business concerned is determined by the Permanent Secretary, Finance to be— | |
| *(a)* Small | Nil |
| *(b)* Medium | $ 500 |
| *(c)* Large | $ 1,000 |
| **Water** sale and distribution— | |
| *(a)* By pipe | $ 4,000 |
| *(b)* Other | $ 500 |
| **Wholesale** importer: | $ 2,000 |

## SCHEDULE 3

*(Regulation 4)*

### RESERVED BUSINESS ACTIVITIES

The following business activities are reserved for Belonger businesses—

1. ACCOUNTANCY, if not professionally qualified.
2. AGENCY, but only if travel agents, freight forwarding agents, shipping agents or sales agents.
3. *Repealed by L.N. 20/1994*
4. APARTMENT or condominium sales, rental or management.
5. ARCHITECTURE, if not professionally qualified.
6. AUCTIONEERING.
7. BAKERY operation.
8. BARS, that do not form part of a hotel or restaurant.
9. CONTRACTING, where the business is determined by the Permanent Secretary, Finance to be a petty contractor, small contractor or medium contractor.
10. DANCEHALL or discotheque operation (including when part of an hotel).
11. MOTOR vehicle sales or rental or both.
12. OPERATION of vessels for hire or reward if less than 30 feet.
13. PRINTING.
14. PROVISION of sanitation services.
15. PROVISION of security services.
16. PROVISION of transportation services on land including taxis, tour bus operators, buses and haulage services.
17. REAL estate agency (being the business of dealing in real estate or tenancies thereof as agent for another person).
18. RETAIL stores.
19. SERVICE STATIONS and garage operations, including any business engaged in the fuelling of motor vehicles with petroleum or diesel or in repairing vehicles.
20. TRUCKING.

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# BUSINESS LICENSING (AMENDMENT) ORDER 2000

## Arrangement of Articles

Article

1. Citation
2. Amendment of Business Licensing Order

# BUSINESS LICENSING (AMENDMENT) ORDER 2000

*(Legal Notice 23 of 2000)*

*Cap 130*

**MADE** by the Governor under section 24 of the Business Licensing Ordinance.

Citation

1. This Order may be cited as the Business Licensing (Amendment) Order 2000.

Amendment of Business Licensing Order

2.. At the end of article 2 of the Business Licensing Order there shall be added the following paragraph -

"(e) a person carrying on the business of company management or of company agent provided that such person is licensed under the Company Management (Licensing) Ordinance 1999.".

*1 of 1999*

## EXPLANATORY NOTE

*(This note is not part of the Order.)*

The Business Licensing (Amendment) Order 2000 amends the Business Licensing Order so that persons carrying on licensed company management business or licensed company agent business do not need to hold a business licence.

# BUSINESS LICENSING (AMENDMENT) REGULATIONS 2000

## Arrangement of Regulations

Regulation

1. Citation
2. Amendment of Business Licensing Regulations

# BUSINESS LICENSING (AMENDMENT) REGULATIONS 2000

*(Legal Notice 24 of 2000)*

*Cap 130*

MADE by the Governor under section 25 of the Business Licensing Ordinance.

Citation

**1.** These Regulations may be cited as the Business Licensing (Amendment) Regulations 2000.

Amendment of Business Licensing Regulations

**2.** At the end of paragraph 2 of Schedule 2 to the Business Licensing Regulations there shall be added the following paragraph –

"3. (1) Where a fee has been paid under paragraph 2 in respect of a licence for carrying on the business of company management or company agent and the licensee has subsequently been issued with or refused, a licence under the Company Management (Licensing) Ordinance 1999 a proportion of the fee paid under paragraph 2 shall be repaid to the payer.

*1 of 1999*

(2) The proportion referred to in subparagraph (1) shall be the same proportion of the fee paid as the period commencing on the date of issue of the licence under the Company Management (Licensing) Ordinance and ending not later than 31st March in the immediately following year, has to a year, counting part of a month as one month.".

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Business Licensing (Amendment) Regulations 2000 amend the Business Licensing Regulations so that where a person holding a business licence for carrying on the business of company management or company agent obtains or is refused, a company management or company agent licence under the Company Management (Licensing) Ordinance 1999, that person can have a refund of the unexpired portion of the business licensing fee,

# BUSINESS LICENSING (AMENDMENT) REGULATIONS 2001

## Arrangement of Regulations

Article

1. Citation and commencement
2. Amendment of Business Licensing Regulations

# BUSINESS LICENSING (AMENDMENT) REGULATIONS 2001

*(Legal Notice 28 of 2001)*

*cap 130*

**MADE** by the Governor under section 25 of the Business Licensing Ordinance.

Citation and commencement

**1.** These Regulations may be cited as the Business Licensing (Amendment) Regulations 2001 and shall come into operation on 1st August 2001.

Amendment of Business Licensing Regulations

**2.** In Schedule 2 to the Business Licensing Regulations subparagraph (4) of paragraph 2 shall be repealed.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Business Licensing (Amendment) Regulations 2001 amend the Business Licensing Regulations.

Subparagraph (4) of paragraph 2 of Schedule 2 to the Business Licensing Regulations has been repealed so that now where a person is required to hold more than one licence, all business licences are paid in full.

# BUSINESS LICENSING (AMENDMENT) ORDINANCE 2003

(Ordinance 5 of 2003)

## Arrangement of Sections

Section

1. Citation
2. Amendment to the Business Licensing Ordinance.

TURKS AND CAICOS ISLANDS

# BUSINESS LICENSING (AMENDMENT) ORDINANCE 2003

**(Ordinance 5 of 2003)**

*Assent*..... *November 4, 2003*

*Publication in Gazette* ..... *November 4, 2003*

*Commencement* ..... *November 4, 2003*

**AN ORDINANCE** TO AMEND THE BUSINESS LICENSING ORDINANCE AND FOR CONNECTED PURPOSES.

**ENACTED** by the Legislature of the Turks and Caicos Islands.

Citation

**1.** This Ordinance may be cited as the Business Licensing (Amendment) Ordinance 2003.

Amendment to the Business Licensing Ordinance

**2.** The Business Licensing Ordinance is amended as follows –

*(a)* in section (2), immediately after the definition of the word "business" insert the following –

"Committee" means the Business Licensing Committee established under section 4A."

*(b)* insert immediately after section 4, the following –

Business Licensing Committee

"4A. (1) The Governor shall appoint not more than nine and not less than five persons to constitute a Business Licensing Committee and each such person shall, subject to this section, hold office as such for a period not exceeding three years to be specified in the notice appointing him, but may be re-appointed.

(2) A person who is a member of the Executive Council shall be disqualified for appointment as a member of the Committee and any member of the Committee who becomes a member of the Executive Council shall forthwith cease to be a member of the Committee.

(3) A member of the Committee may resign his office as such with immediate effect by notice in writing delivered to the Governor.

(4) Whenever the total number of members of the Committee continuing to hold office as such falls below five the Governor shall, as soon as conveniently may be, appoint other persons to be members of the Committee to remedy the deficiency.

(5) The Governor shall appoint a member of the Committee to be Chairman thereof, and such person shall, subject to this section, hold office as such Chairman –

*(a)* so long as he remains a member of the Committee; or

*(b)* for such period, if any, (being less than that for which he is appointed a member of the Committee) as is specified in the notice appointing him as Chairman;

*(c)* until by notice in writing delivered to the Governor, he resigns his office as such Chairman, whichever shall be the shortest period.

(6) The Governor may by notice in writing revoke, without any necessity to assign any reason, the appointment of any person as a member of, or as Chairman of, the Committee.

Secretary

**4B.** (1) The Governor shall appoint a public officer to be the Secretary of the Committee.

(2) The Secretary of the Committee shall attend at all meetings of the Committee but shall not vote on any matter or question before the Committee.

(3) The duties and functions of the Secretary shall be

*(a)* to receive applications for licences under this Ordinance;

*(b)* to prepare minutes of all meetings of the Committee;

*(c)* to sign and issue all licences or notices of refusal of licences under this Ordinance; and

*(d)* to maintain the Committee's records; and

*(e)* such other duties as he may be required by the Chairman of the Committee to perform.

Meetings of the Committee

**4C.** (1) Meetings of the Committee shall be convened by the Chairman of the Committee.

(2) Notwithstanding subsection (1), the Chairman shall within fourteen days after receiving a notice from the Governor requiring him so to do convene a meeting of the Committee to take place within fourteen days after the dispatch of the notice convening such meeting.

(3) Meetings of the Committee may be held at any place within the Islands.

Direction

**4D.** The Minister may give direction in writing to the Committee not inconsistent with this Ordinance as to the policy to be pursued by the Committee as to the grant or refusal of licences under this Ordinance, and no question as to whether or not the Committee has complied in any particular case with any such directions shall be inquired into in any Court.

Function of the Committee

**4E. (1)** The functions of the Committee shall be to consider and decide upon applications for licences under this Ordinance.

(2) It shall be lawful for the Committee to seek and obtain the advice of any person to assist it with the discharge of its functions under subsection (1)";

*(c)* in section 5 –

(i) in subsections (1), (2) and (4) for the words "Permanent Secretary, Finance" wherever they occur substitute the word "Committee",

(ii) in subsection (3) and (4) for the word "him" substitute the word "it".

*(d)* in sections 6, 8, 9, 10, for the words "Permanent Secretary, Finance" wherever they occur substitute the word "Committee".

*(e)* in section 11 –

(i) for the words "Permanent Secretary, Finance" substitute the word "Committee",

(ii) for the word "he" substitute the word "it".

*(f)* in sections 12, 13, 14, for the words "Permanent Secretary, Finance," wherever they occur, substitute the word "Committee".

*(g)* in section 15 (2), for the words "Permanent Secretary, Finance," wherever they occur, substitute the word "Committee".

*(h)* in section 17 (1) –

(i) for the words "Permanent Secretary, Finance" substitute the word "Committee";

(ii) for the word "him" where it occurs the second time, substitute the word "it".

*(j)* in section 18 –

(i) for the words "Permanent Secretary, Finance," wherever they occur, substitute the word "Committee";

(ii) in subsection (1) for the word "him" substitute the word "it".

*(k)* in section 19, for the words "Permanent Secretary, Finance" wherever they occur, substitute the word "Committee"; and

*(l)* in section 22, for the words "Permanent Secretary, Finance" wherever they occur, substitute the words "Chairman of the Committee".

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# BUSINESS LICENSING (AMENDMENT) ORDINANCE 2004

(Ordinance 26 of 2004)

## Arrangement of Sections

SECTION

1. Short title
2. Amendment to the Business Licensing Ordinance.

TURKS AND CAICOS ISLANDS

# CHAPTER 122

# COMPANIES ORDINANCE

and Subsidiary Legislation

**Revised Edition**
showing the law as at 15 May 1998

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance 1997.

This edition contains a consolidation of the following laws—


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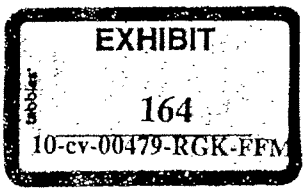

# CHAPTER 122

# COMPANIES ORDINANCE

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# CHAPTER 122

## COMPANIES ORDINANCE

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

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

*[20 January 1982]* Commencement

### PART I

### INTRODUCTION

Short title

1. This Ordinance may be cited as the Companies Ordinance.

Interpretation

2. (1) In this Ordinance, unless the context otherwise requires—

"auditor" means a person holding a currently valid certificate under the hand of the Permanent Secretary, Finance certifying that in his opinion such person is of good standing and qualified to undertake the audit of a company; *(Inserted by Ord. 11 of 1989 and Amended by L.N. 41/1994)*

"Court" means the Supreme Court of the Turks and Caicos Islands;

"company" except where the context excludes an exempted company, means a company formed and registered under this Ordinance or an existing company and includes a company for the time being registered under Part IX; *(Amended by Ord. 11 of 1989)*

"director" includes any person occupying the position of director, by whatever name called; *(Inserted by Ord. 1 of 1993)*

"exempted company" means a company registered as an exempted company under section 181;

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

"Governor" means—

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

(*b*) in relation to other companies, the Governor in Council;

*(Inserted by L.N. 41/1994)*

"Islands" means the Turks and Caicos Islands;

"Judge" means a Judge of the Supreme Court;

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

"nominal capital" means the capital of the company authorised by the Memorandum of Association;

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

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

"public notice" means a notice published in the Government *Gazette*;

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

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

"special resolution" means a special resolution as defined in section 58.

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

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

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

Registrar

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

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

## PART II

### CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ORDINANCE

Mode of forming company

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

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

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

*(Substituted by Ord. 4 of 1994)*

Mode of limiting liability of members

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

Memorandum of association of a company limited by shares

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

*(a)* the name of the proposed company, with the addition of the word "Limited" or the abbreviation "Ltd" as the last word in such name;

*(b)* a statement that the registered office of the company is within the Islands, and the address of such registered office;

*(c)* *Repealed by Ord. 4 of 1994;*

*(d)* a declaration that the liability of the members is limited; and

*(e)* the amount of nominal capital with which the company proposes to be registered, divided into shares of a certain fixed amount (or, if it is stated therein that the shares are to be of no par value, the aggregate consideration for which such shares may be issued) which capital or aggregate consideration may be expressed in and subscribed for, or paid, in any one or more currencies. *(Amended by Ord. 11 of 1989)*

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

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

Memorandum of association of a company limited by guarantee

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

*(a)* the name of the proposed company, with the addition of the word "Limited" or the abbreviation "Ltd" as the last word in such name;

*(b)* a statement that the registered office of the company is within the Islands and the address of such registered office;

*(c)* *Repealed by Ord. 4 of 1994;*

*(d)* a declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is

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

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

Objects of memorandum of association may be altered by special resolution

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

*(a)* to carry on its business more economically and more efficiently;

*(b)* to attain its main purpose by new or improved means;

*(c)* to enlarge or change the local area of its operations;

*(d)* to carry on business which under existing circumstances may conveniently or advantageously be combined with the business of the company;

*(e)* to restrict or abandon any of the objects specified in the memorandum of association;

*(f)* to sell or dispose of the whole or any part of the undertaking of the company; or

*(g)* to amalgamate with any other company or body of persons:

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

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

*(a)* if the nominal capital of the company is divided into shares of fixed amounts, by members holding not less than fifteen *per centum* in nominal value of the share capital for the time being issued of the company or any class of such capital;

*(b)* if the share capital of the company is divided into shares of no par value, by members holding shares of the company for the time being issued giving

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

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

Provided that an application shall not be made by any person who has consented to or voted in favour of the alteration.
*(Substituted by Ord. 11 of 1989).*

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

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

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

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

*(a)* quash the order;

*(b)* confirm the order with alterations;

*(c)* make any order as to costs.

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

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

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

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

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

Location of registered office may be changed

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

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

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

*(Substituted by Ord. 4 of 1994)*

Memorandum of association of an unlimited company

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

*(a)* the name of the proposed company;

*(b)* the address of the registered office of the company;

*(c)* *Repealed by Ord. 4 of 1994;*

*(d)* a declaration that the liability of its members is unlimited.*(Inserted by Ord. 1 of 1993)*

Signature and effect of memorandum of association

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

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

Power of company limited by shares to alter its share capital

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

*(a)* increase its nominal capital by new shares of such amount as it thinks expedient;

*(b)* consolidate and divide all or any of its share capital;

*(c)* convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;

*(d)* subdivide its shares, or any of them, into shares of an amount smaller than that fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived; and

*(e)* cancel shares of nominal capital which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

*(Amended by Ord. 11 of 1989)*

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

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

Special resolution for reduction of share capital

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

*(a)* extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

*(b)* either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

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

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

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

Application to Court for confirming order; objections by creditors

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

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

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

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

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

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

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

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

Order confirming reduction and powers of Court on making such order

**15.** (1) The Court, if satisfied with respect to every creditor of the company who under section 14 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the Court makes any such order, it may—

*(a)* if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order add to its name as the last words thereof the words "and reduced"; and

*(b)* make an order requiring the company to publish as the Court directs the reasons for reduction or such other information in regard thereto as the Court may think expedient with a view to giving proper information to the public and if the Court thinks fit, the causes which led to the reduction.

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

Registration of order and minute of reduction

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

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

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

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

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

Liability of members in respect of reduced shares

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

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

*(a)* every person who was a member of the company at the date of the registration of the order for reduction and minute shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and

*(b)* if the company is wound up, the Court, on application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories in a winding up.

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

Penalty for concealment of names of creditors

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

*(a)* knowingly or wilfully conceals the names of any creditors entitled to object to the reduction; or

*(b)* knowingly or wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

*(c)* aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

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

Every company to have at least one director and a secretary

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

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

Articles prescribing regulations for companies

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

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

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

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

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

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

Adoption and application of Tables A or B

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

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

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

Printing and signature of articles

**22.** Articles shall—

*(a)* be divided into paragraphs numbered consecutively; and

*(b)* be signed by every subscriber of the memorandum of association in the presence of at least one witness who shall sign his name and state his address and occupation.

Alteration of articles by special resolution

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

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

Adoption and effect of articles of association

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

Registration

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

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

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

*(a)* the name of the company;

*(b)* the address of the registered office of the company;

*(c)* the amount of nominal capital of the company and the number of shares into which it is divided and the fixed amounts thereof;

*(d)* the names and addresses and occupations of subscribers to the memorandum of association and the number of shares taken by every subscriber;

*(e)* the date of execution of the memorandum of association;

*(f)* the date of filing the memorandum of association;

*(g)* the registered number assigned to the company;

*(h)* in the case of a company limited by guarantee or which has no limit placed on the liability of its members that the same is limited by guarantee or is unlimited;

*(i)* in the case of an exempted company limited by shares and having a class of shareholders with unlimited liability, particulars of those classes of shareholders with limited liability and those classes with unlimited liability; and

*(j)* in the case of an exempted company limited by guarantee and having a class of members with unlimited liability, particulars of those classes of members with limited liability and those classes with unlimited liability:

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

Fees

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

*(Amended by Ord. 4 of 1994)*

Certificate of incorporation

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

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

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

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

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

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

*Repealed*

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

Members to be provided with copy of memorandum and articles

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

Restrictions on registration of certain names

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

*(b)* contains the words "Chamber of Commerce" unless the company is a company which is to be registered under a licence granted by the Registrar in pursuance of section 78 without the addition of the word "Limited" or the abbreviation "Ltd" to its name;

*(c)* except with the express written consent of the Permanent Secretary, Finance, contains, whether in English or any other language, the words "assurance", "bank", "Building Society", "Commonwealth", "Co-operative Society", "fidelity", "friendly society", "guarantee", "indemnity", "insurance", "re-insurance", "trust", "trustee", "underwriter", any derivatives of any of those words or any other word which in the opinion of the Registrar bears a similar connotation to any word referred to in this paragraph; or *(Substituted by Ord. 11 of 1989 and Amended by L.N. 41/1994)*

*(d)* is, in the opinion of the Registrar undesirable or misleading.

(2) Except with the consent of the Registrar no company shall be registered by a name which—

*(a)* contains the words "royal", "imperial", or "empire", or in the opinion of the Registrar suggests, or is calculated to suggest, the patronage of Her Majesty or of any member of the Royal Family or connection with Her Majesty's Government or any department thereof in the United Kingdom or elsewhere; or

*(b)* contains the words "municipal" or "chartered" or any words which in the opinion of the Registrar suggest, or are calculated to suggest, connection with any public board or other local authority or with any society or body incorporated by Royal Charter.

(3) In the event that a company is registered with an identical or similar name to a company already registered the Registrar may order the company last so registered to change its name.

(4) In the event that a company is registered with a name which contravenes the provisions of this section, the company, with the sanction of the Registrar, may, and if the Registrar so orders, shall, change its name. *(Inserted by Ord. 11 of 1989)*

(5) If a company fails within such reasonable time as the Registrar may specify in a written notice served upon the company to comply with an order under subsection (3) or (4), he may strike

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

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

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

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

Change of name

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

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

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

Certain companies may not hold land, etc

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

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

*(b)* is not an exempted company registered under Part VII nor a foreign company registered under Part X;

*(c)* has for the time being no member which is itself an exempted company or a company the beneficial ownership of which is wholly or in part directly or indirectly held by any exempted company; and

*(d)* does not for the time being have any of its shares issued and outstanding as bearer shares pursuant to section 32.

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

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

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

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

*(Inserted by Ord. 9 of 1992)*

Validity of acts of company

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

*(a)* in proceedings by a member or a director against the company to prevent the doing or continuation of unauthorised acts, or the transfer of real or personal property by or to the company;

*(b)* in proceedings by the company, whether acting directly or through a liquidator or other legal representative or through shareholders of the company in a representative capacity, against the

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

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

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

*(Inserted by Ord. 4 of 1994)*

## PART III

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

### *Prospectus*

Prospectus etc. to be approved by Registrar

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

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

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

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

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

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

*(Inserted by Ord. 4 of 1994)*

*Distribution of Capital*

Share or interest in company to be personalty

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

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

Shares may be divided into fractions

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

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

*(Inserted by Ord. 11 of 1989)*

Share values may be expressed in certain fractions or percentages

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

Issue and effect of bearer shares

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

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

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

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

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

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

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

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

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

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

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

Application of premiums received on issue of shares

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

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

*(a)* the preliminary expenses of the company; or

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

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

Power to issue shares at a discount

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

Provided that—

*(a)* the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company; *(Amended by Ord. 11 of 1989)*

*(b)* the resolution must specify the maximum rate of discount at which the shares are to be issued;

*(bb)* the shares to be issued at a discount must first be offered proportionately to all members of the company holding shares of the same class. Any such shares not taken after offering must be offered to members who took shares at such first offering in proportion to the number of shares taken. Any shares remaining after such second offering may, in

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

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

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

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

Power to issue redeemable preference shares

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

Provided that—

*(a)* no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of redemption;

*(b)* no such shares shall be redeemable unless they are fully paid;

*(c)* the premium, if any, payable on redemption, must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed; and

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

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

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

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

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

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

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

Definition of member

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

Transfer by personal representative

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

Register of members

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

*(a)* the names, addresses and occupations (if any) of the members of the company with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing, save in the case of shares that are fully paid, each share by its number, and of the amount paid, or agreed to be considered paid, on the shares of each member;

*(b)* the date on which any person was entered on the register as a member;

*(c)* the date on which any person ceased to be a member:

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

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

*(Substituted by Ord. 11 of 1989)*

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

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

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

*(a)* the amount of the nominal share capital of the company and the number of shares into which it is divided;

*(b)* the number of shares issued from the commencement of the company up to the date of the summary and whether issued for cash or other consideration;

*(c)* the amount of calls made on each share;

*(d)* the total amount of calls received;

*(e)* the total amount of calls unpaid;

*(f)* the total amount of shares forfeited;

*(g)* the names and addresses of the persons, other than any person who was a member solely by virtue of his holding bearer shares, who have ceased to be members since the last list was made, and the number of shares held by each of them; and
*(Amended by Ord. 11 of 1989)*

*(h)* the names, addresses and occupations of the directors and secretary of the company.

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

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

*(a)* within such further period, if any, as the Registrar, acting in his discretion, may by notice addressed to the company specify; or

*(b)* within the period of twelve months next following such General Meeting, whichever be the shorter, together with (in addition to the appropriate fee payable under the foregoing provisions of this section) a late filing fee of $5 for each day after the

last day for making such returns or otherwise such lesser fee as the Registrar may direct.
*(Amended by Ord. 11 of 1989 and Ord. 4 of 1994)*

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

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

Penalty on company not making returns

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

Certificate of shares or stock

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

Inspection of register

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

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

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

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

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

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

Remedy for improper entry or omission of entry in register

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

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

Notice to Registrar of rectification of register

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

Register to be evidence

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

*Liability of Members*

Liability of present and past members of company

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

*(a)* a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for a period of six months or upwards prior to the commencement of the winding-up;

*(b)* a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member;

*(c)* a past member shall not be liable to contribute to the assets of the company unless existing members are able to satisfy the Court that they do not have the financial resources to pay the contributions required to be made by them in pursuance of this Ordinance;

*(d)* in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member except where such member or past member holds or held shares of a class which are expressly stated in the memorandum of association to carry unlimited liability as provided in section 182(3); *(Amended by Ord. 4 of 1994)*

*(e)* in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of associa-

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

*(f)* nothing in this Ordinance shall invalidate any provisions contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract; and

*(g)* no sum due to any member of a company in his character of a member by way of dividends, profits or otherwise shall be deemed to be a debt of the company payable to such member in a case of competition between himself and any other creditor not being a member of the company, but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

## PART IV

## MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ORDINANCE

### *Provisions for Protection of Creditors*

Registered office of company

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

Notice of situation of registered office

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

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

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

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

*(Substituted by Ord. 4 of 1994)*

Publication of name of company

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

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

*(Substituted by Ord. 4 of 1994)*

Penalties on non-publication of name

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

Register of mortgages

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

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

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

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

Register of directors and officers

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

Penalty on company not keeping a register of directors

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

Penalty for carrying on business without a member

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

*Provisions for Protection of Members*

General meetings

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

Accounts

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

*(a)* all sums of money received and expended by the company and the matter in respect of which the receipt and expenditure take place;

*(b)* all sales and purchases of goods by the company; and

*(c)* the assets and liabilities of the company.

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

Definition of special resolution

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

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

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

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

Provisions where no regulations as to meetings

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

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

Requisitioning of meetings

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

*(a)* in the case of a company having a capital divided into shares of fixed amounts, by members holding not less than fifteen *per centum* of the shares of the company for the time being issued;

*(b)* in the case of a company having capital divided into shares of no par value, by members holding shares of the company for the time being issued giving rights to not less than fifteen *per centum* of the dividends of the company; or

*(c)* in the case of a company not having capital divided into shares, by members being in number not less than fifteen *per centum* of the total number of persons for the time being entered on the register of the company as members.

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

*(a)* the failure to hold a meeting of the company as required by section 56;

*(b)* by default of the company or any director or officer thereof in complying with any of the provisions of section 8(4), 30(2), 34(2), 40 or 42 or any order or direction made under any such provision; or

*(c)* persons entitled to requisition under this section wishing to propose a special resolution;

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

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

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

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

*(Inserted by Ord. 11 of 1989)*

Recording of special resolutions

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

Copies of special resolutions

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

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

Resolutions assented to in writing

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

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

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

*(Inserted by Ord. 11 of 1989)*

Attorney General may order report on affairs of a company

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

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

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

*(a)* in the performance of his duties under this Ordinance or of official duties for which he is responsible; or

*(b)* pursuant to an order or direction of a court,

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

*(Inserted by Ord. 11 of 1989)*

Appointment of inspector to report on affairs of companies

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

*(a)* in the case of a company having a capital divided into shares, upon the application of members holding not less than fifteen *per centum* of the shares of the company for the time being issued;

*(b)* in the case of a company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the total number of persons for the time being entered on the register of the company as members; and

*(c)* in the case of any company, upon the application of the Attorney General. *(Inserted by Ord. 11 of 1989)*

Powers of inspectors

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

Report of inspectors

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

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

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

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

Inspection by resolution of the company

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

Inspectors' report admissible as evidence

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

*Notices*

Returns, etc., to Registrar

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

Service of notice on company

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

Postal service

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

Authentication of summons, notices etc

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

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

Evidence of proceedings of meetings

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

Security for costs in actions brought by companies

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

Declaration in action against members

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

*Arbitration*

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

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

*General Penalty*

General penalty

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

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

*Unlimited Liability of Directors*

Articles of association may provide for unlimited liability of directors

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

Modification of section 47

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

*(a)* subject to the provisions hereinafter contained, any such director, whether past or present shall, in addition to his liability (if any), to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding up a member of an unlimited company;

*(b)* no contribution required from any past director who has ceased to hold such office for a period of one year or upward prior to the commencement of such winding up, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company;

*(c)* no contribution required from any past director in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company;

*(d)* subject to the provisions contained in the regulations of the company, no contribution required from any director shall exceed the amount (if any) which he is liable to contribute as an ordinary member,

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

Power of directors to bind company

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

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

*(Inserted by Ord. 11 of 1989)*

*Associations Not for Profit*

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

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

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

*Contracts*

Common seal and how contracts may be made

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

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

*(a)* any contract which, if made between private persons, would be by law required to be in writing, and, if made according to English law, to be under seal, may be made on behalf of the company in writing under the common seal of the company;

*(b)* any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company;

*(c)* any contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing may be made by parol on behalf of the company by any person acting under the express or implied authority of the company.

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

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

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

Bills of exchange and promissory notes

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

Execution of deeds abroad

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

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

Power for company to have official seal for use abroad

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

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

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

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

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

Authentication of documents

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

*Arrangements and Reconstructions*

Power to compromise with creditors and members

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

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

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

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

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

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

Provisions for facilitating reconstruction and amalgamation of companies

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

*(a)* the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

*(b)* the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

*(c)* the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

*(d)* the dissolution, without winding up, of any transferor company;

*(e)* the provision to be made for any person who, within such time and in such manner as the Court directs, dissents from the compromise or arrangement; and

*(f)* such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

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

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

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

Power to acquire shares of dissentient shareholders

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

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

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

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

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

## PART V

## WINDING UP OF COMPANIES UNDER THIS ORDINANCE

### *Preliminary*

"Contributory" defined

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

Nature of liability of contributory

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

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

Death of contributory

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

Bankruptcy of contributory

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

*Repealed*

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

*Winding up by Court*

Circumstances in which company may be wound up by Court

**92.** A company may be wound up by the Court if—

*(a)* the company has passed a special resolution requiring the company to be wound up by the Court; or

*(b)* the company does not commence its business within a year from its incorporation or suspends its business, or does not carry on business for a period of six consecutive months; or

*(c)* there is no member of the company; or

*(d)* the company is unable to pay its debts; or

*(e)* the Court is of the opinion that it is just and equitable that the company should be wound up; or

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*(f)* the company, being a financial institution licensed under the Banking Ordinance or under any enactment repealing or replacing that Ordinance, has had its licence to carry on banking business revoked.

Company, when deemed unable to pay its debts

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

*(a)* a creditor by assignment or otherwise to whom the company is indebted at law or in equity in a sum exceeding $500 then due, has served on the company by serving or having served at its registered office a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum or to secure or compound for the same to the reasonable satisfaction of the creditor; or

*(b)* execution or other process issued on a judgement, decree or order obtained in the Court in favour of any creditor at law or in equity in any proceedings instituted by such creditor against the company, is returned unsatisfied in whole or in part; or

*(c)* it is proved to the satisfaction of the Court that the company is unable to pay its debts as they fall due in the ordinary course of business. *(Amended by Ord. 11 of 1989)*

Application for winding up to be made by petition

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

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

*(Amended by Ord. 11 of 1989)*

Sitting in chambers

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

Commencement of winding up

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

Court may grant injunction

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

Powers of Court on hearing petition

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

Stay of proceedings after order for winding up

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

Copy of order to be forwarded to Registrar

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

Power of Court to stay any proceedings

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

Effect of order on share capital of company limited by guarantee

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

Court may have regard to wishes of creditors or contributories

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

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

*Official Liquidators*

Appointment of official liquidators

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

Resignation, removals, filling of vacancies and compensation

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

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

Style and duties of official liquidator

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

Powers of official liquidator

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

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

*(b)* to carry on the business of the company so far as may be necessary for the beneficial winding up thereof;

*(c)* to sell the real and personal property, effects and choses in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

*(d)* to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents; and for that purpose to use, when necessary, the company's seal;

*(e)* to prove, rank, claim and draw a dividend in the matter of the bankruptcy or insolvency of any contributory for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of bankruptcy or insolvency, as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors;

*(f)* to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, and from time to time raise upon the security of the assets of the company any requisite sum or sums of money; and the drawing, accepting, making or endorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of the carrying on of the business thereof;

*(g)* to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any moneys due from a contributory or from his estate which cannot be conveniently done in the name of the company; and in any such case any moneys due shall, for the purpose of enabling him to take such letters or recover such moneys, be deemed to be due to the official liquidator himself; and

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

Discretion of official liquidator

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

Appointment of attorney to be official liquidator

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

*Ordinary Powers of Court*

Collection and application of assets

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

Provisions as to representative contributories

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

Power to require delivery of property

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

Power to order payment of debts by contributory

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

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

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

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

Power to make calls

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

Power to order payment into bank

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

Regulation of account

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

Default by representative contributory

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

Order to be conclusive evidence

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

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

Power to exclude creditors not proving within time fixed

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

Court to adjust rights of contributories

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

Orders as to costs

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

Dissolution of company

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

Registrar to record dissolution

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

Penalty for not reporting dissolution of company

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

*Extraordinary Powers of Court*

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

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

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

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

Examination of parties by Court

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

Power to arrest contributory in certain cases

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

Powers of Court cumulative

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

*Enforcement of Orders*

Power to enforce orders

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

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

*Voluntary Winding Up of Company*

Circumstances in which company may be wound up voluntarily

**130.** A company may be wound up voluntarily—

*(a)* when the period, if any, fixed for the duration of the company by the articles of association expires, or the event, if any, occurs, upon the occurrence of which it is provided, by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; or

*(b)* if the company has passed a special resolution requiring the company to be wound up voluntarily.

Commencement of voluntary winding up

**131.** A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising such winding up.

Effect of voluntary winding up on status of company

**132.** When a company is wound up voluntarily the company shall, from the date of the commencement of such winding up, cease to carry on its business, except in so far as may be required for the beneficial winding up thereof, and all transfers of shares except transfers made to or with the sanction of the liquidator or any alteration in the status of the members of the company taking place after the commencement of such winding up shall be void, but its corporate state and all its corporate powers shall (whether otherwise provided by its regulations or not) continue until the affairs of the company are wound up.

Notice of resolution to wind up voluntarily

**133.** Notice of any special resolution passed for winding up a company shall be published in the *Gazette*. *(Amended by Ord. 11 of 1989)*

Consequences of voluntary winding up

**134.** The following consequences shall ensue upon the voluntary winding up of a company—

*(a)* the property of the company shall be applied to satisfaction of its liabilities *pari passu*, and subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company;

*(b)* a liquidator or liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property;

*(c)* the company in general meeting shall appoint such person or persons as it thinks fit to be liquidator or

liquidators and may fix the remuneration to be paid to him or them;

*(d)* if one liquidator only is appointed, all the provisions shall apply to him;

*(e)* upon the appointment of liquidators all the powers of the directors and secretary shall cease, except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers;

*(f)* when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment or in default of such determination by any number not less than two;

*(g)* the liquidators may without the sanction of the Court exercise any powers conferred by this Ordinance on the official liquidators;

*(h)* the liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

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

*(j)* the liquidators shall pay the debts of the company and shall adjust the rights of the contributories amongst themselves.

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

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

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

Power of company to delegate authority to appoint liquidators

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

Arrangement when binding on creditors

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

Right of creditor or contributory to appeal

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

Liquidators or contributories in voluntary winding up may apply to Court

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

Liquidators may call general meetings

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

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

Vacancy among liquidators

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

Power to appoint liquidators

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

Liquidators' account on conclusion of winding up

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

Liquidators to report meeting to Registrar

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

Costs of voluntary liquidation

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

Saving of rights of creditors

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

Power to adopt proceedings of voluntary winding up

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

*Winding up Subject to the Supervision of the Court*

Power to direct voluntary winding up to be subject to supervision

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

Petition for winding up subject to supervision

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

Court may have regard to wishes of creditors

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

Power to appoint additional liquidators in winding up subject to supervision

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

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

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

Effect of order for winding up subject to supervision of Court

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

Appointment in certain cases of voluntary liquidators as official liquidators

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

*Supplementary Provisions*

Dispositions after the commencement of the winding up voided

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

Books of the company to be evidence

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

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

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

*(a)* where the company has been wound up by or subject to the supervision of the Court in such manner as the Court directs; and

*(b)* where the company has been wound up voluntarily in such manner as the company by special resolution directs. *(Amended by Ord. 11 of 1989)*

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

Inspection of books

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

Power of assignee to sue

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

Debts of all descriptions to be proved

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

Preferential payments

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

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

*(b)* all wages or salary of any clerk or servant in respect of services rendered to the company during four months before the relevant date;

*(c)* all wages of any workman or labourer not exceeding $400 in respect of services rendered to the company during two months before the relevant date.

(2) The foregoing debts shall—

*(a)* rank equally amongst themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

*(b)* so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

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

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

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

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

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

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

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

*(a)* as respects a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and

*(b)* in any other case, the date of the commencement of the winding up.

General scheme of liquidation may be sanctioned

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

Power to compromise

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

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

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

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

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

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

Mode of determining price

*Cap. 47*

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

Certain attachments and executions to be void

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

Avoidance of preference in certain cases

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

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

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

*(a)* any payment by the company being wound up to any of its creditors;

*(b)* any payment or delivery to the company being wound up;

*(c)* any conveyance or assignment by the company being wound up for valuable consideration;

*(d)* any contract, dealing or transaction by or with the company being wound up for valuable consideration:

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

(i) that the payment, delivery, conveyance, assignment, contract, dealing or transaction, as the case may be, takes place before the date of the presentation of a petition for winding up the company in the case of a company being wound up by the Court or subject to the supervision of the Court, or a resolution for winding up the company in the case of a voluntary winding up; and

(ii) that the person (other than the company) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not, at the time of the payment, delivery, conveyance, assignment, contract, dealing or transaction, notice of the company being unable to pay its debts as they become due from its own moneys before that time.

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

Power to assess damages against delinquent directors and officers

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

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

*Repealed*

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

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

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

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

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

Penalty for perjury

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

*Power of Court to make Rules*

Rules of Court

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

## PART VI

## REMOVAL OF DEFUNCT COMPANIES UNDER THIS ORDINANCE

Company not operating may be struck off register

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

Company being wound up may be struck off register if no liquidator appointed or affairs fully wound up

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

Registrar to publish fact of company being struck off register

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

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

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

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

Liability of members of company to remain

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

Registrar not liable for any act performed under this Part

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

Property to be vested in Governor

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

## PART VII

## EXEMPTED COMPANIES

What companies may apply to be registered as exempted companies

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

Registration of exempted companies

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

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

English language and a foreign language if—

*(a)* an application in that behalf is made to the Registrar by or on behalf of the company or the proposed company; and

*(b)* the application is accompanied with a translation of the name of the company into the English language certified in such manner and by such person as the Registrar may require.

*(Inserted by Ord. 4 of 1994)*

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

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

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

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

Memorandum of association of exempted companies

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

*(a)* the name of the proposed company; and

*(b)* the address in the Islands at which the registered office of the proposed company is to be situate; and

*(c)* where the proposed company is to be limited by shares—

(i) the amount of the capital of the company and the number of shares into which it is divided and the fixed amounts thereof if such shares have a nominal or par value or the aggregate consideration for which the said shares may be issued if they are without nominal or par value;

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

(ii) a declaration that the liability of the members is limited or, where the memorandum contains a declaration in the terms specified in subsection (3), a declaration specifying the liability of members holding shares of each particular class; or

*(d)* where the proposed company is to be limited by guarantee, a declaration that each member undertakes to contribute to the assets of the company in the event of the company being wound up during the time that he is a member, or within one year afterwards, for the payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of the winding up of the company, and for the adjustment of the rights of the contributories amongst themselves—

(i) such amount as may be required not exceeding a specified amount to be therein named; or

(ii) where the memorandum contains a declaration in the terms specified in subsection (4), an unlimited amount; or

*(e)* where the proposed company is to be an unlimited company, a declaration that the liability of its members is unlimited.

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

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

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

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

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

Declaration by proposed company

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

Fee for registration of an exempted company

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

Non-exempted companies may become exempted companies

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

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

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

Application of Ordinance to exempted companies

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

(2) The following provisions of this Ordinance shall not

apply to exempted companies—

SECTION

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

*(Amended by Ords. 5 of 1990 and 4 of 1994)*

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

*(a)* ordinary resolutions;

*(b)* minutes of annual general meetings and meetings of directors.

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

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

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

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

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

Alteration of memorandum of association

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

Annual return

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

*(a)* since the previous return or since registration, as the case may be, there has been no alteration in the memorandum of association, other than an alteration in the name of the company effected in accordance with section 30 or an alteration already reported in accordance with section 186;

*(b)* the operations of the exempted company since the last return or since registration of the exempted company, as the case may be, have been mainly outside the Islands; and

*(c)* the provisions of sections 191 and 192 have been and are being complied with.

Annual fees

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

Failure to comply with sections 187 or 188

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

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

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

False statement in declaration

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

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

An exempted company may become a company which is not exempted

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

Prohibited Enterprises

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

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

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

Exempted company to have representative resident in Islands

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

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

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

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

*(Substituted by Ord. 11 of 1989)*

Prohibited sale of securities

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

Penalty for carrying on business contrary to provisions of Part VII

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

Powers of an exempted company respecting its own shares

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

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

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

*(Substituted by Ord. 11 of 1989)*

Registration of charges

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

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

"company" means exempted company;

"property" includes undertaking.

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

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

*(a)* in the case of a charge created by the company, the date of its creation, and in the case of a charge which is existing on property acquired by the company, the date of the acquisition of the property;

*(b)* the amount secured by the charge;

*(c)* a description of the property charged sufficient to identify that property;

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

*(d)* the name and address of the company (and its company registration number), the person filing the particulars (if different from the company) and the person having an interest in the charge; and

*(e)* details of any prohibition or restriction (if any) contained in the instrument (if any) creating the charge on the power of the company to create any future charge ranking in priority to or equally with the charge in respect of which the filing is made,

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

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

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

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

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

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

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

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

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

*(b)* the company refuses to authorise a person to sign on its behalf,

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

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

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

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

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

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

*(Inserted by Ord. 13 of 1997)*

Priorities of charges

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

*(a)* charges created prior to the date on which this section comes into force shall continue to rank in the order in which they would have ranked had this section not come into force, and where they would have taken priority over a charge created on or after the date on which this section comes into force they shall continue to take such priority after the coming into force of this section;

*(b)* charges created on or after the date on which this section comes into force and registered under this section shall rank in order of the date and time of entry in the register as provided in section 195A (4), and shall take priority over an unregistered charge created on or after the date on which this section comes into force, so however that a floating charge registered under this section shall not take priority over a fixed charge created after the registration of the floating charge (whether or not the fixed charge is itself registered) unless in respect of the floating charge there is entered on the register a prohibition or restriction mentioned in section 195A(3)*(e)*;

*(c)* charges created on or after the date on which this section comes into force but which are unregistered shall rank among themselves in the order in which they would have ranked had this section not come into force, so however that where any of such charges is subsequently registered paragraph *(b)* shall apply.

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

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

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

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

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

*(Inserted by Ord. 13 of 1997)*

*Repealed*

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

Exemption from taxes

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

*(a)* any tax or duty to be levied on profits or income or on capital assets, gains or appreciations; and

*(b)* any such tax or duty, or tax in the nature of estate duty or inheritance tax, payable on the shares, debentures or other obligations of a company.

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

*(a)* be evidenced by a certificate issued at no extra charge in the name of the Governor;

*(b)* not apply so as to exempt a company from increases in fees charged under this Ordinance; and

(c) not apply so as to exempt from any tax on land a company or corporation that is a land holding corporation as defined in the Land Holding Companies (Share Transfer Duty) Ordinance. Cap. 15H

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

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

(a) if it had obtained the undertaking referred to in the original section 197, at any time after 2 August, 1993 and before the expiration or the lapsing of the undertaking; or

(b) if it had not obtained such undertaking, at any time after 2 August, 1993;

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

*(Substituted by Ord. 1 of 1993)*

Redemption and purchase of shares

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

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

(3) (a) No share may be redeemed or purchased unless it is fully paid.

(b) An exempted company may not redeem or purchase any of its shares if as a result of the redemption or purchase there would no longer be any other member of the company holding shares.

(c) Redemption of shares may be effected in such manner as may be authorised by or pursuant to the company's articles of association.

(d) If the articles of association do not authorise the manner of purchase, an exempted company shall not purchase any of its own shares unless the manner of purchase has first been authorised by a special resolution of the company in general meeting.

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

*(e)* The premium (if any) payable on redemption or purchase must have been provided for out of the profits of the company or out of the share premium account of the company before or at the time the shares are redeemed or purchased.

*(f)* Subject to the provisions of subsection (5) shares may only be redeemed or purchased out of profits of the company or out of the proceeds of a fresh issue of shares made for the purposes of the redemption or purchase.

*(g)* Shares redeemed or purchased under this section shall be treated as cancelled on redemption or purchase, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption or purchase of shares by a company is not to be taken as reducing the amount of the company's authorised share capital.

*(h)* Without prejudice to paragraph *(g)*, where an exempted company is about to redeem or purchase shares, it has power to issue shares up to the nominal value of the shares to be redeemed or purchased as if those shares had never been issued:

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

(4) *(a)* Where under this section shares of an exempted company are redeemed or purchased wholly out of the profits of the company, the amount by which its issued capital is diminished in accordance with paragraph *(g)* of subsection (3) on cancellation of the shares redeemed or purchased, shall be transferred to a reserve called "the capital redemption reserve".

*(b)* If the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.

*(c)* Paragraph *(b)* does not apply if the proceeds of the fresh issue are applied by the company in making a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Provided that this paragraph shall not apply if—

(i) the terms of redemption or purchase provided for the redemption or purchase to take place at a date later than the date of the commencement of the winding up; or

(ii) during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.

*(b)* There shall be paid in priority to any amount which the company is liable by virtue of paragraph *(a)* to pay in respect of any shares—

(i) all other debts and liabilities of the company (other than any due to members in their character as such); and

(ii) if other shares carry rights whether as to capital or as to income which are preferred to the rights as to capital attaching to the first mentioned shares, any amount due in satisfaction of those preferred rights,

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

(8) *(a)* Any redeemable preference shares issued by an exempted company before 31 December, 1989 are subject to redemption in accordance with the provisions of this section.

*(b)* Any capital redemption reserve fund established by an exempted company before 31 December, 1989 is to be known as the company's capital redemption reserve and be treated as if it had been established for the purposes of subsection (4); and accordingly, a reference in any law, the articles of association of any company or any other instrument to a company's capital redemption reserve fund is to be construed as a reference to the company's capital redemption reserve.

*(Substituted by Ord. 11 of 1989)*

## PART VIIA

## LIMITED LIFE COMPANIES

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

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

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

*(a)* to register a proposed company as an exempted company under section 180;

*(b)* to re-register a non-exempted company as an exempted company under section 184A; or

*(c)* to register a foreign company as being continued in the Islands as if it had been incorporated as an exempted company under section 205.

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

*(Inserted by Ord. 1 of 1993)*

Registration as a limited life company

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

*(a)* where the company was not already registered as a company prior to the application, if—

(i) it has at least two subscribers;

(ii) the memorandum of association of the company limits the life of the company to a period of 50 years from the date of its incorporation or less; and

(iii) the name of the company includes at its end "Limited Life Company" or the abbreviation "LLC"; or

*(b)* where the company was already registered as a company prior to the application, if—

(i) the Registrar has been supplied with a declaration that it has at least two members;

(ii) the Registrar has been supplied, where the duration of the company is not already limited to a period of 50 years or less, with a certified copy of a special resolution of the company altering its memorandum of association to limit the duration of the company to a period of 50 years from the date of its incorporation or less; and

(iii) the Registrar has been supplied, in accordance with section 30, with a copy of a special resolution of the company changing its name to a name that includes at its end "Limited Life Company" or the abbreviation "LLC".

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

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

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

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

*(Inserted by Ord. 1 of 1993)*

Maximum duration of a limited life company

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

Contents of articles of association

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

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

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

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

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

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

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

Winding up of a limited life company

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

*(a)* when the period fixed for the duration of the company expires;

*(b)* if the members of the company pass a special resolution requiring the company to be wound up and dissolve; or

*(c)* subject to any contrary provisions in the articles of association, upon the happening of any one or more of the following events—

(i) the bankruptcy, death, insanity, retirement, resignation, withdrawal, expulsion, termination, cessation, or dissolution of a member;

(ii) the transfer of any share or other interest in the company in contravention of the articles of association;

(iii) the redemption, repurchase or cancellation of all the shares of a member of the company; or

(iv) the occurrence of any event (whether or not relating to the company or a member) of which it is provided in the articles of association that the company is to be dissolved.
*(Amended by Ord. 4 of 1994)*

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

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

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

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

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

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

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

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

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

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

Cancellation of registration

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

*(a)* the Registrar removes its name from the register under section 206; or

*(b)* the Registrar issues a certificate of change of name in accordance with section 30(2) which records a change of name for the company that does not include at its end "Limited Life Company" or "LLC"; or

*(c)* the company passes a special resolution to alter its memorandum of association to provide for a period of duration for the company that exceeds or is capable of exceeding 150 years from the date of its incorporation;

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

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

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

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

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

*(Inserted by Ord. 1 of 1993)*

Section 38 to apply to a limited life company

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

Definition

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

## PART VIII

## CONFIDENTIAL RELATIONSHIPS IN RELATION TO EXEMPTED COMPANIES

Interpretation

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

*Cap. 118*

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

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

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

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

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

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

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

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

*(Amended by L.N. 41/1994)*

Application and scope

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

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

*(a)* in compliance with the directions of the Supreme Court pursuant to section 201;

*(b)* by or to—

(i) any professional person acting in the normal course of business or with the consent, express or implied, of the relevant principal;

(ii) a police officer of the rank of Inspector or above investigating an offence committed or alleged to have been committed within the jurisdiction;

(iii) a police officer of the rank of Inspector or above, specifically authorised by the Governor in that behalf, investigating an offence committed or alleged to have been committed outside the Islands, which offence, if it had been committed in the Islands, would have been an offence against its laws;

(iv) the Permanent Secretary, Finance, or, in relation to particular information specified by the

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

(v) a bank or financial institution in any proceedings, cause or matter when and to the extent to which it is reasonably necessary for the protection of the bank's interest, either as against its customers or as against third parties in respect of transactions of the bank or financial institution for or with its customers;

(vi) the relevant professional person with the approval of the Permanent Secretary, Finance, when necessary for the protection of himself or any other person against crime; *(Amended by L.N. 41/1994)*

*(c)* in accordance with the provisions of this or any other Ordinance.

Directions regarding the giving in evidence of confidential information

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

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

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

*(a)* that the evidence be given; or

*(b)* that the evidence shall not be given; or

*(c)* that the evidence be given subject to conditions which he may specify whereby the confidentiality of the information is safeguarded.

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

*(a)* divulgence of the statement, answer or testimony to be restricted to certain named persons;

*(b)* evidence to be taken *in camera*;

*(c)* reference to the names, addresses and descriptions of any particular persons to be by alphabetical letters, numbers or symbols representing such persons, the key to which shall be restricted to persons named by him.

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

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

*(a)* whether such order would operate as a denial of the rights of any person in the enforcement of a just claim;

*(b)* any offer of compensation or indemnity made to any person desiring to enforce a claim by any person having an interest in the preservation of secrecy under this Part of this Ordinance; and

*(c)* in any criminal case, the requirements of the interests of justice.

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

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

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

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

Offences and penalties

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

*(a)* being in possession of confidential information however obtained;

(i) divulges it; or

(ii) attempts, offers or threatens to divulge it; or

*(b)* wilfully obtains or attempts to obtain confidential information,

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

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

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

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

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

Regulations

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

Attorney General's fiat

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

## PART IX

## TRANSFER OF COMPANIES FROM AND TO ANOTHER JURISDICTION

Continuation in the Islands of company incorporated elsewhere

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

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

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

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

*(a)* that such application is not prohibited by the country or jurisdiction in which the foreign company has been incorporated; and

*(b)* that the consent of such number or proportion of the shareholders, debenture-holders and creditors of the foreign company as may be required by the laws of the country or jurisdiction of incorporation to such application has been obtained.

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

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

*(a)* its winding up has commenced;

*(b)* a receiver of its property has been appointed;

*(c)* there is any scheme or order in relation thereto whereby the rights of creditors are suspended or restricted; or

*(d)* any proceedings for breach of the laws of the country or jurisdiction of incorporation have been commenced against such foreign company, not being proceedings arising out of an event which on the date of the occurrence thereof did not constitute such a breach.

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

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

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

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

*(a)* to create a new legal entity;

*(b)* to prejudice or affect the continuity of the company;

*(c)* to affect the property of the company;

*(d)* to render defective any legal or other proceedings instituted or to be instituted, by or against the company or any other person.

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

*(a)* so much of its constitution as would, if it had been incorporated under this Ordinance, have been required by this Ordinance to be included in its memorandum of association shall be deemed to be the registered memorandum of association of the company; and

*(b)* so much of its constitution as does not, by virtue of the preceding paragraph, comprise its memorandum of association shall be deemed to be the registered articles of association of the company, and shall be binding on the company and its members accordingly save in so far as the company has after its

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

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

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

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

Continuation outside Islands of company incorporated under this Ordinance

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

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

*(a)* the holders of not less than three quarters of the debentures of the company, if any, of each class, and where any shares of the company are in existence, holders of not less than three quarters of such shares of each class, have authorised such application; and

*(b)* the company has caused to be published in the *Gazette* not less than fourteen days before submitting an application to the Registrar a notice of its intention to make such application; and

*(c)* it lodges with the Registrar an affidavit sworn by a director of the company in which are set out the names and addresses of its creditors and the total amount of its indebtedness to creditors.

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

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

*(b)* the intended transfer of domicile is unlikely to be detrimental to the rights or proper interests of any of the creditors of the company; and

*(c)* the company at the time of such application is not in breach of any of its duties or obligations under this Ordinance,

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

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

Provided that nothing in this subsection shall—

*(a)* prevent such a company from being registered in the Islands as a foreign company at any time after it has ceased to be a company incorporated in the Islands; or

*(b)* take away or affect the jurisdiction of any court in the Islands to hear and determine any proceedings commenced therein by or against the company before it ceased to be a company registered in the Islands.

(5) For the purposes of this section—

*(a)* a person who has, in the Islands or elsewhere, commenced proceedings against a company, other than proceedings to recover a debt alleged to be owed by the company to the taxation or revenue authority of any country or jurisdiction, or has counter claimed against a company in proceedings commenced by the company shall be deemed to be a creditor of the company;

*(b)* no person shall be deemed to be a creditor of a company in respect of any debt owed to the taxation or revenue authority of any country or jurisdiction.

## PART X

## COMPANIES INCORPORATED OUTSIDE THE ISLANDS CARRYING ON BUSINESS WITHIN THE ISLANDS

Definition of foreign companies

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

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

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

*(a)* a copy, certified under the public seal of the country, city, place or Registrar under the laws of which the foreign company has been incorporated, of its charter, statutes or memorandum and articles of association or other instrument constituting or defining its constitution and if the instrument is not written in the English language a certified translation thereof;

*(b)* a list of its directors containing such particulars with respect to the directors as are by this Ordinance required to be contained with respect to directors in the register of the directors of a company;

*(c)* the names and addresses of some one or more than one person resident in the Islands authorised to accept on its behalf service of process and any notices required to be served on it; and

*(d)* shall pay to the Registrar a fee of $250 upon registration and thereafter a similar fee upon each anniversary of such registration.

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

*Repealed*

209. *Repealed by Ord. 21 of 1992.*

Registration of foreign companies incorporated in a foreign country

210. (1) Upon compliance with the provisions of section 208, the Registrar shall issue a certificate under his hand and seal of office that the company is registered under this Ordinance.

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

Return to be delivered to Registrar where documents, etc., altered

211. If in the case of any foreign company any alteration is made in—

*(a)* its charter, statutes or memorandum and articles of association or any such instruments as aforesaid; or

*(b)* the names or addresses of the persons authorized to accept service on its behalf;

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

Obligation to state name of company, whether limited, and country where incorporated

212. *(a)* Every foreign company shall state the country in which the foreign company is incorporated in every prospectus inviting subscriptions for its shares or debentures in the Islands;

*(b)* Every foreign company shall—

(i) conspicuously exhibit on every place where it carries on business in the Islands the name of the foreign company or company incorporated in a foreign country and the country in which it is incorporated; and

(ii) cause the name of the foreign company or company incorporated in a foreign country and of the country in which it is incorporated to be stated in legible characters on all its bill heads, letter paper, notices, advertisements and other official publications; and

(iii) if the liability of the members of the foreign company or company incorporated in a foreign country is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and on all its bill heads, letter paper, notices, advertisements and other

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

Service on foreign company to which Part X applies

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

Provided that—

*(a)* where any such foreign company or company incorporated in a foreign country makes default in delivering to the Registrar the name and address of a person resident in the Islands who is authorised to accept on behalf of the foreign company or company incorporated in a foreign country service of process or notices; or

*(b)* if at any time all the persons whose names and addresses have been so delivered are dead or have ceased to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served,

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

Deeds executed out of and within the Islands

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

(*a*) the execution of such deed, and the seal thereto affixed is the common seal of the foreign company; and

(*b*) the same was affixed thereto by the authority of the board of directors or officers of such foreign company and in conformity with the articles of association of such foreign company; and

(*c*) there is affixed the signature of the directors, secretary or officers to any such deed (where such signatures are required by the charter, statutes, memorandum or articles of association of such foreign company),

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

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

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

Removing company's name from register

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

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

Penalties for failing to comply with provisions of Part X

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

Interpretation of Part X

**217.** For the purpose of this Part—

"director", in relation to a foreign company, includes any person in accordance with whose directions or instructions the directors of the foreign company are accustomed to act; and

"place of business" includes a share transfer or registration office.

## PART XI

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

Application to existing companies

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

*(a)* in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Ordinance as a company limited by shares;

*(b)* in the case of a company limited by guarantee, as if the company had been formed and registered under this Ordinance as a company limited by guarantee; and

*(c)* in the case of a company other than a limited company, as if the company had been formed and registered under this Ordinance as an unlimited company.

Date of incorporation

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

Articles of association remain

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

**221.** *Expired.*

## PART XII

## GENERAL

Power of Registrar to prohibit sale of securities

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

Maintenance of company records and public inspection thereof

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

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

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

*(a)* search a file or bundle in his custody;

*(b)* make any facsimile, reproduction or copy of any document in his custody or any extract from such document;

*(c)* report on a search made by him and transmit it or any copy, document or extract made by him by mail or any electronic means.

*(Inserted by Ord. 11 of 1989)*

Power of Registrar to examine registers

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

Regulations

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

*(a)* the form of any document;

*(b)* any fee that may be prescribed under this Ordinance and such other fees to be paid for doing, or forbearing from doing anything;

*(c)* the days and hours during which the office of the Registrar shall be open for business of any class;

*(d)* the conditions upon which members of the public have access to any file, bundle or document in his custody;

*(e)* such other things as may be incidental to, or conducive of, such purposes.

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

**225.** *Expired.*

Requirement as to licences under any other law

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

Registrar to have certain immunities

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

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

*(Inserted by Ord. 11 of 1989)*

## FIRST SCHEDULE

*(First Schedule repealed by section 3 (b) of Ord. 4 of 1994)*

## SECOND SCHEDULE

### TABLE "A"

**Regulations for the Operation and Management of a Company which may be Incorporated by Reference in its Articles of Association.**

1. (1) In these Regulations "the Ordinance" means the Companies Ordinance.

(2) Where any provision of the Ordinance is referred to, the reference is to that provision as modified by any Ordinance for the time being in force.

*Interpretation*

2. In these Regulations unless there be something in the subject or context inconsistent therewith—

"Auditor" means the person for the time being performing the duties of auditor of the Company and includes any individual or partnership;

"the Company" means the Company for which these Articles are approved and confirmed;

"Debenture" means debenture stock, mortgages, bonds and any other such securities of the Company whether constituting a charge on the assets of the Company or not;

"Directors" means the directors for the time being of the Company;

"Member" means the person or corporation or body corporate or partnership registered in the Register as the holder of shares in the Company and, when two or more persons are so registered as joint holders of shares, means the person whose name stands first in the Register as one of such holders;

"Month" means calendar month;

"Notice" means written notice unless otherwise specifically stated;

"Paid-up" means paid up and credited as paid-up;

"Register" means the register of members to be kept pursuant to section 38 of the Ordinance;

"Registered Office" means the registered office for the time being of the Company;

"The Seal" means the common seal of the Company;

"Secretary" means the person appointed to perform the duties of Secretary of the Company and includes any Assistant or Acting Secretary;

"Special resolution and ordinary resolution" has the meaning assigned thereto by the Ordinance;

"Written and In Writing" shall unless the contrary intention appears, be construed as including printing, lithography, photography, reproduction and other modes of representing words in a visible form;

Words importing the singular number only include the plural number, vice versa;

Words importing the masculine gender only include the feminine gender;

Words importing persons include corporations.

3. The business of the Company may be commenced as soon after the incorporation of the Company as the Directors shall think fit, and notwithstanding that only part of the shares may have been allotted.

4. The Directors may pay out of the capital or other monies of the Company, all expenses incurred in or about the formation and establishment of the Company including the expenses of registration.

5. None of the funds of the Company shall be used for the purchase of or as a loan on the security of any of the shares of the Company.

*Shares*

6. The shares shall be under the control of the Directors who may allot or otherwise dispose of the same to such persons, on such terms and conditions, and at such times as the Directors think fit.

7. Subject to the provisions, if any, in that behalf of the Memorandum of Association and to regulation 18 hereof or to any direction that may be given by the Company in general meeting and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital or otherwise as the Company may from time to time by special resolution determine.

8. The Company shall maintain a register of its members and every person whose name is entered as a member in the register of members shall be entitled without payment to receive within two months after allotment or lodgement of transfer (or within such other period as the conditions of issue shall provide) one certificate for all of his shares or several certificates each for one or more of his shares. Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid thereon. Provided that in respect of a share or shares held jointly by several persons

the Company shall not be bound to issue more than one certificate and delivery of a certificate for a share to one of the several joint holders shall be sufficient delivery to all such holders.

9. Save as herein otherwise provided, the Company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and accordingly shall not, except as ordered by a court of competent jurisdiction, or as provided by any Ordinance, be bound to recognise any equitable or other claim to or interest in such share on the part of any other person.

*Certificate for Shares*

10. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the Company and signed by a Director and countersigned by the Secretary or another Director specifying the share or shares held by him and the amount paid up thereon:

Provided that in respect of a share or shares held jointly by several persons the Company shall not be bound to issue more than one certificate and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

11. If any certificate be worn out or defaced, then upon production thereof to the Directors, they may order the same to be cancelled, and may issue a new certificate in lieu thereof; and if any certificate be lost or destroyed, then upon proof thereof to the satisfaction of the Directors, and on such indemnity as the Directors seem adequate being given, a new certificate in lieu thereof may be given to the party entitled to such lost or destroyed certificate.

*Transfer of Shares*

12. The instrument of transfer shall be in a form approved by the Board of Directors, and shall be executed by or on behalf of both the transferor and transferee, and the transferor shall be deemed to remain the holder of a share until the name of the transferee is entered in the Register in respect thereof.

13. The Directors may decline to register a transfer of any share on which the Company has a lien. They may also decline to register a transfer of any share to any person of whom they do not approve and they may also decline to register a transfer of any share without assigning any reason therefor; provided that if the Directors refuse to register a transfer they shall notify the transferee within two months of such refusal.

14. The Directors may decline to recognise any instrument of transfer unless it is accompanied by the certificate of the shares to which it relates,

and by such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer.

15. The joint holders of a share may transfer such share to any one or more of such joint holders, and the joint holders of two or more shares may transfer such shares or any or either of them to one or more of such joint holders, and the surviving holder or holders of any share or shares previously held by them jointly with a deceased Member may transfer any such share to the executors or administrators of such deceased Member.

*Transmission of Shares*

16. The personal representatives of a deceased registered Member (not being one of several joint holders) shall be the only person or persons recognised by the Company as having any title to the shares registered in the name of such deceased Member, and in case of the death of any one or more of the joint registered holders of any registered share, the survivors shall be the only persons recognised by the Company as having any title to or interest in such shares.

17. Any person becoming entitled to a share in consequence of the death or bankruptcy of a Member shall, upon such evidence being produced as may from time to time be properly required by the Directors, have the right either to be registered as a Member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the Directors shall, in either case, have the same right to decline or suspend registration as they would have in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

*Redeemable Shares*

18. Subject to the provisions of the Memorandum of Association, shares may be issued on the terms that they may, or at the option of the Company may, be redeemed on such terms and in such manner as the Company, before issue of the shares, may determine.

*Bearer Shares*

19. The Company may issue bearer shares, and the Directors may accordingly, with respect to any shares which are fully paid up (in any case in which they shall in their discretion think fit so to do), upon an application in writing signed by the person registered as the holder of such shares and authenticated by such affidavit, statutory declaration or other evidence (if any) as the Directors may from time to time require as to the identity of the person signing the request, and upon receiving the share certificate, issue under seal at the expense in all respects of the person applying for the same bearer shares duly stamped stating that the bearer is entitled to the shares therein specified, and may, in any case in which such shares are so

issued, provide by coupons or otherwise for the payment of the future dividends or other money on the shares.

**20.** Subject to the provisions of these presents the bearer shall be deemed to be a Member of the Company and shall be entitled to the same privileges and advantages as he would have had if his name had been included in the Register as the holder of the shares.

**21.** No person shall, as the holder of bearer shares, be entitled (1) to sign a requisition for calling a meeting or to give notice of intention to submit a resolution to the meeting or (2) to attend or vote by himself or his proxy, or exercise any privilege as a member at a meeting, unless he shall in case (1) before or at the time of lodging such requisition or giving such notice of intention as aforesaid, or in case (2) three days at least before the day fixed for the meeting have deposited at the Registered Office the bearer shares in respect of which he claims to act, attend or vote as aforesaid, and unless the bearer shares shall remain so deposited until after the meeting or any adjournment thereof shall have been held.

Not more than one name shall be received as that of the holder of a bearer share.

*(Note. There is no regulation 22 in the Ordinance as enacted.)*

**23.** To any person so depositing a bearer share there shall be delivered a certificate stating his name and address, and describing the shares included in bearer shares so deposited, and bearing the date of issue of the certificate, and such certificate shall entitle him, or his proxy duly appointed, as hereinafter provided to attend and vote at any general meeting held within three months from the date of the certificate in the same way as if he were the registered holder of the shares specified in the certificate.

**24.** Upon delivery of the certificate to the Company the bearer of the certificate shall be entitled to receive the bearer shares in respect of which the certificate was given.

**25.** The holder of bearer shares shall not, save as aforesaid, be entitled to exercise any right as a Member, unless (if called upon by any Director or the Secretary so to do) he produces his bearer shares and states his name and address.

**26.** The Directors may from time to time make regulations as to the terms upon which, if they in their discretion think fit, all new bearer shares or coupons may be issued and in any case in which a bearer share or coupon may have been worn out, defaced or destroyed.

**27.** The shares included in any bearer share shall be transferred by the delivery of the share certificate without any written transfer and without

registration, and to shares so included the provisions hereinbefore contained with reference to the transfer of and to the lien of the Company on shares shall not apply.

28. Upon surrender of his bearer share certificate to the Company for cancellation, the holder shall be entitled to have his name entered as a Member in the Register in respect of the shares included in the bearers share certificate, but the Company shall in no case be responsible for any loss or damage incurred by any person by reason of the Company entering in the Register upon the surrender of the bearer share certificate the name of any person not the true and lawful owner of the bearer shares surrendered.

*Variation of Rights*

29. If at any time share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

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

*Lien on Shares*

31. The Company shall have a first and paramount lien and charge on all shares (whether fully paid-up or not) registered in the name of a member (whether solely or jointly with others) for all debts, liabilities or engagements to or with the Company (whether presently payable or not) by such person or his estate, either alone or jointly with any other person, whether a member or not but the Directors may at any time declare any share to be wholly or in part exempt from the provisions of this Article. The registration of a transfer of any such share shall operate as a waiver of the Company's lien (if any) thereon. The Company's lien (if any) on a share shall extend to all dividends or other monies payable in respect thereof.

32. The Company may sell, in such manner as the Directors think fit, any shares on which the Company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor

until the expiration of fourteen days after notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder or holders for the time being of the share, or the person, of which the Company has notice, entitled thereto by reason of his death or bankruptcy.

33. To give effect to any such sale the Directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

34. The proceeds of such sale shall be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

*Call on Shares*

35. *(a)* The Directors may from time to time make calls upon the Members in respect of any monies unpaid on their shares (whether on account of the nominal value of the shares or by way of premium or otherwise) and not by the conditions of allotment thereof made payable at fixed terms, provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least fourteen days notice specifying the time or times of payment) pay to the Company at the time or times specified the amount called on the shares. A call may be revoked or postponed as the Directors may determine. A call may be made payable by instalments.

*(b)* A call shall be deemed to have been made at the time when the resolution of the Directors authorising such call was passed.

*(c)* The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

36. If a sum called in respect of a share is not paid before or on a day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding ten *per centum* per annum as the Directors may determine, but the Directors shall be at liberty to waive payment of such interest either wholly or in part.

37. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium or otherwise, shall for the purpose of these Articles be deemed to be a call duly made, notified and payable on the date on which by the terms of issue of the same becomes payable and in the case of non-payment all the relevant provisions of these Articles as to payment of interest forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

38. The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls or interest to be paid and the times of payment.

39. *(a)* The Directors may, if they think fit, receive from any Member willing to advance the same, all or any part of the monies uncalled and unpaid upon any shares held by him, and upon all or any of the monies so advanced may (until the same would but for such advances, become payable) pay interest at such rate not exceeding (unless the Company in general meeting shall otherwise direct) seven *per centum per annum*, as may be agreed upon between the Directors and the member paying such sum in advance.

*(b)* No such sum paid in advance of calls shall entitle the member paying such sum to any portion of a dividend declared in respect of any period prior to the date upon which such sum would, but for such payment, become presently payable.

*Forfeiture of Shares*

40. *(a)* If a Member fails to pay any call or instalment of a call or to make any payment required by the terms of issue on the day appointed for payment thereof, the Directors may, at any time thereafter during such time as any part of the call, instalment or payment remains unpaid, give notice requiring payment of so much of the call, instalment or payment as is unpaid, together with any interest which may have accrued and all expenses that have been incurred by the Company by reason of such non-payment. Such notice shall name a day (not earlier than the expiration of fourteen days from the date of giving of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment, at or before the time appointed, the shares in respect of which such notice was given will be liable to be forfeited.

*(b)* If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice

has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited share and not actually paid before the forfeiture.

(c) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.

41. A person whose shares have been forfeited shall cease to be a Member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay the Company all monies which, at the date of forfeiture, were payable by him to the Company in respect of the shares together with interest thereon, but his liability shall cease if and when the Company shall have received payment in full of all monies whenever payable in respect of the shares.

42. A certificate in writing under the hand of one Director and the Secretary of a Company that a share in the Company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of the fact therein stated as against all persons claiming to be entitled to the share. The Company may receive the consideration given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to forfeiture, sale or disposal of the share.

43. The provisions of these regulations as to forfeiture apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium as if the same had been payable by virtue of a call duly made and notified.

*Conversion of Shares into Stock*

44. The Company may by ordinary resolution convert any paid-up shares into stock and re-convert any stock into paid-up shares of any denomination.

(a) The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations as and subject to which, the shares from which the stock arose might previously to conversion have been transferred or as near thereto as circumstances admit; the Directors may from time to time fix the minimum amount

of stock transferable, but so that such minimum shall not exceed the nominal amount of shares from which the stock arose.

*(b)* The holders of stock shall, according to the amount of stock held by them have the same rights, privileges and advantages as regards dividends, voting at meetings of the Company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the Company and in assets on winding up) shall be conferred by an amount of stock which would not if existing in shares have conferred that privilege or advantage.

**45.** Such of these presents as are applicable to paid up shares shall apply to stock and the words "share" and "shareholder" herein shall include "stock" and "stockholder".

AMENDMENT OF MEMORANDUM OF ASSOCIATION, CHANGE OF LOCATION OF REGISTERED OFFICE AND ALTERATION OF CAPITAL

**46.** *(a)* Subject to and in so far as permitted by the provisions of the Ordinance, the Company may from time to time by ordinary resolution alter or amend its Memorandum of Association otherwise than with respect to its name and objects and may, without restricting the generality of the foregoing—

(i) increase the share capital by such sum to be divided into shares of such amount or without nominal or par value as the resolution shall prescribe and with such rights, priorities and privileges annexed thereto, as the Company in general meeting may determine;

(ii) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(iii) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum of Association subject to the provisions of the Ordinance, and so that as between the holders of the resulting shares one or more of such shares may by the resolution by which the sub-division is affected be given any preference or advantage as regards dividend, capital, voting or otherwise over the others or any other such shares;

(iv) cancel any shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person or which have been

forfeited, and diminish the amount of its share capital by the amount of the shares so cancelled.

*(b)* Subject to the provisions of the Ordinance the Company may by Special Resolution change its name or alter its objects.

*(c)* Subject to the provisions of the Ordinance the Company may by Special Resolution redeem any of its shares, or reduce its share capital, any capital Redemption Reserve Fund, or any share Premium Account.

*(d)* Subject to the provisions of the Ordinance the Company may by resolution of the Directors change the location of its registered office.

**47.** The Company may from time to time by Special Resolution reduce its share capital in any manner authorised and with and subject to any incident prescribed or allowed by law.

**48.** Anything done in pursuance of either of the last two preceding regulations shall be done in manner provided and subject to any conditions imposed by the Ordinance so far as they shall be applicable, and, so far as they shall not be applicable, in accordance with the terms of the resolution authorising the same, and, so far as such resolution shall not be applicable, in such manner as the Directors deem most expedient. Whenever on any consolidation Members shall be entitled to any fractions of shares the Directors may sell all or any of such fractions and shall distribute the net proceeds thereof amongst the Members entitled to such fractions in due proportions. In giving effect to any such sale the Directors may authorise some person to transfer the shares sold to the purchaser thereof and the purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings relating to the transfer.

*Borrowing Powers*

**49.** The Directors may exercise all the powers of the Company to borrow, raise or secure money and to mortgage or charge its undertaking, property and uncalled capital, and to issue debentures and other securities, whether outright or as collateral security for any debt, liability or obligation of the Company or of any third party.

*General Meetings*

**50.** A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting or the date of the certificate of incorporation of the Company in respect of the first meeting) and place as may be resolved

by the Company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the Company's incorporation occurs, and at such place as the Directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the Directors.

**51.** The above-mentioned general meeting shall be called the ordinary general meeting; all other general meetings shall be called extraordinary general meetings.

**52.** The Directors may, when ever they think fit, and they shall on the requisition of members of the Company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the Company at the date of the deposit carrying the right to voting at general meetings of the Company, proceed to convene a general meeting of the Company.

**53.** When all the members in person or by proxy sign the minutes of an ordinary or extraordinary general meeting the same shall be deemed to have been duly held notwithstanding that the members have not actually come together or that there may have been technical defects in the proceedings, and a resolution in writing in one or more parts signed by all the members shall be as valid and effectual as if it had been passed at a meeting of the members duly called and constituted.

*Notice of General Meetings*

**54.** Subject to the provisions of the Ordinance relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter provided, or in such other manner (if any) as may be prescribed by the Company in general meeting, to such persons as are, under the regulations of the Company, entitled to receive such notices from the Company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

**55.** The accidental omission to give notice of a general meeting to, or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

*Proceedings at General Meeting*

**56.** Save as provided by regulation 53 no business shall be transacted at any general meeting unless a quorum of members is present at the time

when the meeting proceeds to business: save as herein otherwise provided, two members personally or by proxy present together representing personally the majority of the issued share capital of the Company shall be a quorum.

57. Save as provided by regulation 53 if within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved: in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

58. Save as provided by regulation 53 the Chairman, if any, of the Board of Directors shall preside as Chairman at every general meeting of the Company or if there is no such Chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Directors present shall elect one of their number to be Chairman of the meeting.

59. The Chairman may, with the consent of any general meeting duly constituted hereunder, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a general meeting is adjourned for thirty days or more notice of the adjourned meeting shall be given as in the case of an original meeting; save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned general meeting.

60. Save as provided by regulation 53 at any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those members together hold not less than fifteen *per centum* of the paid-up capital of the Company, and, unless a poll is so demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

61. If a poll is demanded as aforesaid, it shall be taken in such manner and at such time and place as the Chairman of the meeting directs and either at once, or after an interval or adjournment, or otherwise, and the results of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In

case of any dispute as to the admission or rejection of a vote, the Chairman shall determine the same, and such determination made in good faith shall be final and conclusive.

*Votes of Members*

62. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present, in person at a general meeting shall have one vote and on a poll every member shall have one vote for each share registered in his name in the register.

63. Votes may be given either personally or by proxy.

64. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

65. A member of unsound mind, or in respect of whom an order has been made by any court, having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver or legal representative, or other person in the nature of a committee, receiver or legal representative appointed by that court, and any such committee, receiver, legal representative or other person may on a poll, vote by proxy.

66. No member shall be entitled to vote at any general meeting unless he is registered as a shareholder of the Company on the date of such meeting nor unless all calls or other sums presently payable by him in respect of shares in the Company have been paid.

67. No objection shall be raised to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is given or tendered and every vote not disallowed at such general meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairman of the general meeting whose decision shall be final and conclusive.

*Proxies*

68. The instrument appointing a proxy shall be in writing and shall be executed under the hand of the appointer or of his attorney duly authorised in writing, or if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorised in that behalf. A proxy need not be a member of the Company.

69. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority, shall be deposited at the Registered Office

of the Company or at such other place as is specified for that purpose in the notice convening the general meeting not less than two hours before the time for holding the meeting, or adjourned meeting.

70. The instrument appointing a proxy may be in any usual or common form and may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy shall be deemed to include the power to demand or join or concur in demanding a poll.

71. A vote given in accordance with the terms of an instrument or proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed or the transfer of shares in respect of which the proxy is given provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at the office before commencement of the general meeting, or adjourned general meeting, at which it is sought to use the proxy.

72. Any corporation which is a member of the Company may in accordance with its Articles or in the absence of such provisions by resolution of its Directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any class of members of the Company, and the person so authorised shall be entitled to exercise the same power on behalf of the corporation which he represents as the corporation could exercise if it were an individual member of the Company.

*Directors*

73. There shall be a Board of Directors consisting of not less than one or more than ten persons (exclusive of Alternate Directors) provided however that the Company may from time to time by ordinary resolution increase or reduce the limits in the number of Directors but so that there shall not be less than one.

74. The Directors of the Company shall be elected at the first ordinary meeting of the Company after incorporation, and in every subsequent year at the first ordinary meeting of the year. They shall be elected for a year but shall hold office until their successors are duly elected or until the office is vacated as provided by regulation 95. A Director shall not require any qualification by way of holding any shares or other securities of the Company.

75. The remuneration to be paid to the Directors shall be such remuneration as the Directors shall determine. Such remuneration shall be deemed to accrue from day to day. The Directors shall also be entitled to be paid their travelling, hotel and other expenses properly incurred by them in going to, attending and returning from meetings of the Directors, or any

committee of the Directors, or general meetings of the Company, or otherwise in connection with the business of the Company, or to receive a fixed allowance in respect thereof as may be determined by the Directors from time to time, or a combination partly of one such method and partly the other.

76. No person shall be disqualified from the office of Director or Alternate Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director or Alternate Director shall be in any way interested or be liable to be avoided, nor shall any Director or Alternate Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or transaction by reason of such Director holding office or of the fiduciary relation thereby established. A Director (or his Alternate Director in his absence) shall be at liberty to vote in respect of any contract or transaction in which he is so interested as aforesaid: Provided However that the nature of the interest of any Director or Alternate Director in any such contract or transaction shall be disclosed by him or the Alternate Director appointed by him at or prior to its consideration and any vote thereon.

77. A general notice that a Director or Alternate Director is a shareholder of any specified firm or Company and is to be regarded as interested in any transaction with such firm or Company shall be sufficient disclosure under regulation 76 and after such general notice it shall not be necessary to give special notice relating to any particular transaction.

*Alternate Directors*

78. Any Director may at any time appoint any other Director or any other person approved by the Directors to be an Alternate Director of the Company, and may at any time remove any Alternate Director so appointed by him. An Alternate Director so appointed shall not be entitled to receive any remuneration from the Company, nor be required to hold any qualification but shall otherwise be subject to the provisions of these regulations with regard to Directors. An Alternate Director shall (subject to his giving to the Company an address in the Islands at which notices may be served upon him) be entitled to receive notice of all meetings of the board and to attend and vote as Director at any such meeting at which the Director appointing him is not personally present and where he is a Director to have a separate vote at meetings of Directors on behalf of each Director he represents in addition to his own vote and generally shall be entitled to perform all the functions of his appointer as a Director in the absence of such appointer. An Alternate Director shall *ipso facto* cease to be an Alternate Director if his appointer ceases for any reason to be a Director, provided that if any Director retires but is re-elected by the meeting at which such retirement took effect any appointment made by him pursuant to this regulation which was in force immediately prior to his retirement

shall continue to operate after his re-election as if he had not so retired. All appointments and removals of Alternate Directors shall be effected by writing under the hand of the Director making or revoking such appointment left at the Registered Office.

*Powers and Duties of Directors*

**79.** The business of the Company shall be managed by the Directors who may exercise all such powers of the Company as are not, by the Ordinance or these regulations, required to be exercised by the Company in general meeting, subject, nevertheless, to any regulations, being not inconsistent with the aforesaid regulations or provisions as may be prescribed by the Company in general meeting but no regulation made by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made.

**80.** The Directors may from time to time and at any time by power of attorney appoint any Company, firm, person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exerciseable by the Directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney as the Directors may think fit to delegate all or any of the powers, authorities and discretions vested in him.

**81.** The Directors may from time to time appoint one or more of their body to the office of Managing Director or manager for such terms and at such remuneration (whether by way of salary or commission or participation in profits, or partly in one way and partly in another) as they may think fit but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a Director, or if the Company in general meeting resolves that his tenure of the office of Managing Director or manager be determined.

**82.** All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors shall from time to time by resolution determine.

**83.** The Directors shall cause minutes to be made in books provided for the purpose—

*(a)* of all appointments of officers made by the Directors;

(b) of the names of the Directors present at each meeting of the Directors and of any committee of the Directors;

(c) of all resolutions and proceedings at all meetings of the Company, and of the Directors and of committees of Directors; provided that any minutes of such meetings if purporting to be signed by the Chairman thereof or by the Chairman of the next succeeding meeting, shall be sufficient evidence of the proceedings without any further proof of the facts therein stated.

*Local Management*

**84.** (a) The Directors may from time to time provide for the management of the affairs of the Company abroad in such manner as they shall think fit and the provisions contained in the three next following paragraphs shall be without prejudice to the general powers conferred by this paragraph.

(b) The Directors from time to time and at any time may establish any committee, local board or agency for managing any of the affairs of the Company abroad and may appoint any persons to be members of such committee or local board or any managers or agents and may fix their remuneration.

(c) The Directors from time to time and at any time may delegate to any such committee, local board, manager or agent any of the powers, authorities and discretions for the time being vested in the Directors and may authorise the members for the time being of any such local board, or any of them to fill any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit; the Directors may at any time remove any person so appointed and may annul or vary any such delegation, but no person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.

(d) Any such delegates as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities, and discretions for the time being vested in them.

*Proceedings of Directors*

**85.** Save as provided by regulation 88 the Directors shall meet together for the dispatch of business, convening, adjourning and otherwise regulating their meetings as they think fit. Questions arising at any meeting

shall be decided by a majority of votes of the Directors and Alternate Directors present at a meeting at which there is a quorum; the vote of an Alternate Director not being counted if his appointor be present at such meeting. In case of an equality of votes, the Chairman shall have a second or casting vote.

**86.** A Director or Alternate Director may, and the Secretary on the requisition of a Director or Alternate Director shall, at any time summon a meeting of the Directors by at least five days' notice in writing to every Director and Alternate Director (to which the regulation relating to a notice to members of a general meeting shall apply) unless notice is waived by all the Directors (or their Alternates) either at, before or after the meeting is held and PROVIDED FURTHER if notice is given in person, by telegram, telefax, telex, cablegram or wireless the same shall be deemed to have been given on the day it is delivered to the directors or transmitting organisation as the case may be.

**87.** Save as provided by regulation 88 (also 85) the quorum necessary for transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall, when the number of Directors exceeds three, be at least half the number of Directors and when the number of Directors does not exceed three, be one Director.

**88.** When a majority of the Directors sign the minutes of a meeting of the Directors the same meeting shall be deemed to have been duly held at the date and time stated notwithstanding that the Directors have not actually come or that there may have been technical defects in the proceedings and any resolution in writing in one or more parts, contained in the said minutes, signed by those Directors shall be as valid and effectual as if the resolution had been passed at a meeting of the Directors duly called and constituted.

**89.** *(a)* A Director may be represented at any meetings of the Board of Directors by a proxy appointed by him in which event the presence or vote of the proxy shall for all purposes be deemed to be that of the Director.

*(b)* The provisions of regulations 68, 69, and 70 shall *mutatis mutandis* apply to the appointment of proxies by Directors.

**90.** The continuing Directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the Company as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a general meeting of the Company, but for no other purpose.

**91.** The Directors may delegate any of their powers to a committee consisting of such member or members of their body as they think fit: any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.

**92.** The Directors may elect a Chairman of their meetings and determine the period for which he is to hold office, but if no such Chairman is elected, or if at any meeting the Chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be Chairman of the meeting.

**93.** A committee may elect a Chairman of its meetings; if no such Chairman is elected, or if at any meeting the Chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be Chairman of the meeting.

**94.** A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present and in case of an equality of votes the Chairman shall have a second or casting vote.

**95.** All acts done by any meeting of the Directors or of a committee of Directors, or by any person acting as a Director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

*Vacation of Office of Director*

**96.** The office of a Director shall be vacated:

*(a)* if he gives notice in writing to the Company that he resigns the office of Director;

*(b)* if he absents himself (without being represented by proxy or an Alternate Director appointed by him) from three consecutive meetings of the Board of Directors without special leave of absence from the Directors, and they pass a resolution that he has by reason of such absence vacated office;

*(c)* if he dies, becomes bankrupt or makes any arrangement or composition with his creditors generally;

*(d)* if he is found a lunatic or becomes of unsound mind.

*Retirement of Directors*

**97.** At the first and every subsequent Annual General Meeting of the Company all of the Directors constituting the Board of Directors immedi-

ately prior to such meeting shall be automatically retired from office and a new Board of Directors shall be elected. All Directors so retired from office automatically shall be eligible for election as Directors at the Annual General Meeting.

98. The Company, at the Annual General Meeting at which a Director is automatically retired in the manner aforesaid, may fill the vacated office by electing a person thereto, and in default the retiring Director shall, if offering himself for re-election, be deemed to have been re-elected unless at such Annual General Meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such Director shall have been put to the Annual General Meeting and lost.

99. The Directors shall have power at any time and from time to time to appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors but so that the total amount of Directors (exclusive of Alternate Directors) shall not at any time exceed the number fixed in accordance with these regulations. Any Director appointed under this regulation shall hold office only until the next following Annual General Meeting and then shall be eligible for re-election.

100. The Company may by Ordinary Resolution remove any Director before the expiration of his period of office and may by Ordinary Resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he is appointed was last elected a Director.

*Officers*

101. The Company may have a President and shall have a Secretary who may be an individual ordinarily resident in the Islands, or body corporate whose registered office is situated in the Islands appointed by the Directors who may also from time to time appoint such other officers as they consider necessary, all for such terms, at such remuneration and to perform such duties, and subject to such provisions as to disqualification and removal as the Directors from time to time prescribe.

102. A provision of the Ordinance or these regulations requiring or authorising a thing to be done by a Director and an officer shall not be satisfied by its being done by the one person acting in the dual capacity of Director and officer.

*Presumption of Assent*

103. A Director of the Company who is present at a meeting of the Board of Directors at which action on any Company matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the Minutes of the meeting or unless he shall file his written

dissent from such action with the person acting as the Secretary of the Meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favour of such action.

*Seal*

104. The Seal shall only be used by the authority of the Directors or a committee of Directors authorised by the Directors in that behalf and every instrument to which the Seal has been affixed shall be signed by one person who shall be a Director and countersigned by another person who shall be either the Secretary or another Director or some person appointed by the Directors for the purpose, but no instrument may be validly signed if bearing only the signatures of a Director and an Alternate Director appointed by him: Provided that the Company may have for use in any territory district or place not in the Islands an official seal which shall be a facsimile of a common seal of the Company:

Provided further that a Director, Secretary or other officer may affix the Seal of the Company over his signature alone to any document of the Company required to be authenticated by him under seal.

*Authentication of Deeds and Documents*

105. All deeds executed on behalf of the Company may be in such form and certain such powers, provisos, conditions, covenants, clauses and agreements as the Directors, or the Company in general meeting, shall think fit, and, in addition to being sealed with the seal, shall be signed by a Director or such other person as the Directors or the Company in general meeting shall from time to time appoint, and countersigned by the Secretary or an Assistant Secretary or such other person as the Directors or the Company in general meeting shall from time to time appoint.

*Indemnity*

106. The Directors, Secretary and other officers for the time being of the Company and the Trustee for the time being acting in relation to any of the affairs of the Company and their heirs, executors, administrators and personal representatives respectively shall be indemnified out of the assets of the Company from and against all actions, proceedings, costs, charges, losses, damages and expenses which they or any of them shall or may incur or sustain by reason of any act done or omitted in or about the execution of their duty in their respective offices or trusts, except such (if any) as they shall incur or sustain by or through their own wilful neglect or default respectively and no such officer or trustee shall be answerable for the acts, receipts, neglects or defaults of any other officer or trustee or for joining in any receipt for the sake of conformity or for solvency or honesty of any bankers or other persons with whom any monies or effects belonging to the

Company may be lodged or deposited for safe custody or for any insufficiency of any security upon which any monies of the Company may be invested or for any other loss or damage due to any such cause as aforesaid or which may happen in or about the execution of his office or trusts unless the same shall happen through the wilful neglect or default of such officer or trustee.

*Dividends and Reserve*

**107.** Subject to the right of persons (if any) entitled to shares with special rights as to dividend, the profits of the Company which it shall be determined to distribute shall be divisible among the members holding shares in proportion to the capital paid up on such shares held by them respectively.

**108.** Subject to the Ordinance, the Directors may from time to time declare dividends on shares of the Company outstanding and authorise payment of the same out of the funds of the Company: PROVIDED HOWEVER that the Directors may from time to time pay to the members such interim dividends as appear to the Directors to be justified by the profits of the Company.

**109.** No dividend shall be payable except out of the profits of the Company.

**110.** Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, if dividends are to be declared on a class of shares they shall be declared and paid rateably on the shares of such class outstanding: PROVIDED HOWEVER that dividends so payable on partly paid shares shall be applied on the purchase price and shall not, except to the extent of any excess, be paid to the holder of such shares, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the shares.

**111.** The Directors may deduct from any dividend payable to any member all sums of money (if any) presently payable by him to the Company on account of calls or otherwise.

**112.** The Directors may declare that any dividend or bonus be paid wholly or partly by the distribution of specific assets and in particular of paid up shares, debentures, or debenture stock of itself or of any other Company or in any one or more of such ways and where any difficulty arises in regard to such distribution the Directors may settle the same as they think expedient and in particular may issue fractional certificates and fix the value for the distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all members and may vest any such specific assets in trustees as may seem expedient to the Directors.

**113.** Unless otherwise directed any dividend, interest or other monies payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder thereof, and in case of joint holders, to the holder who is first named on the register of members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other monies payable in respect of the share held by them as joint holders.

**114.** No dividend shall bear interest against the Company.

**115.** The Directors may, before recommending any dividend, set aside, out of the profits of the Company, such sums as they think proper as a reserve fund to meet contingencies, or for equalising dividends, or for special dividends or bonuses, or for repairing, improving, and maintaining any of the property of the Company, and for such other purposes as the Directors shall in their absolute discretion think conducive to the interest of the Company; and may invest the several sums so set aside upon such investments (other than shares of the Company) as they may think fit, and from time to time deal with and vary such investments, and dispose of all or any part thereof for the benefit of the Company, and may divide the reserve fund into such special funds as they think fit and employ the reserve fund or any part thereof in the business of the Company, and that without being bound to keep the same separate from the other assets.

*Capitalisation of Profits and Reserves*

**116.** The Company in general meeting may, upon the recommendation of the Directors, resolve that it is desirable to capitalise the whole or any part of the amount for the time being standing to the credit of any of the Company's reserve accounts, or to the credit of the profit and loss account, otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any accounts for the time being unpaid on any shares held by such members respectively, or paying up in full unissued shares or debentures of the Company to be allotted and distributed, credited as fully paid up, to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other, and the Directors shall give effect to such resolution.

**117.** Whenever such a resolution as aforesaid shall have been passed, the Directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares, debentures or securities, if any, and generally shall do all acts and things required to give effect thereto, with full power

to the Directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise and as they think fit in the case of shares, debentures or securities becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members interested into an agreement with the Company providing for the allotment to them respectively, credited as fully paid up, of any further shares, debentures or securities to which they may be entitled upon such capitalisation, or as the case may require, for the payment up by the Company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

*Accounts*

**118.** The Directors shall cause proper books of accounts to be kept with respect to:—

*(a)* all sums of money received and expended by the Company; and the matters in respect of which the receipt or expenditure takes place;

*(b)* all sales and purchases of goods by the Company;

*(c)* the assets and liabilities of the Company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.

**119.** The books of account shall be kept at the registered office of the Company, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

**120.** The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of members not being Directors, and no member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by the Company in general meeting.

**121.** Once at the least in every year the Directors shall, unless waived by a resolution of the members in general meeting, lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than six months before such meeting.

**122.** Unless waived by a resolution of the members in general meeting, a balance sheet shall be prepared in every year, and laid before the Company in general meeting, and such balance sheet shall contain a summary of the property and liabilities of the Company.

*Audit*

**123.** Unless waived by a resolution of the members in general meeting, the Directors shall make all necessary arrangements for an annual audit of the books and accounts of the Company.

**124.** The Company may at any Annual General Meeting appoint an auditor or auditors of the Company who shall hold office until the next Annual General Meeting and may fix his or their remuneration.

**125.** The Directors may before the first Annual General Meeting appoint an auditor or auditors of the Company who shall hold office until the first Annual General Meeting unless previously removed by a resolution of the shareholders at that meeting. The Directors may fill any casual vacancy in the office of auditor but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act. The remuneration of any auditor appointed by the Directors under this Article may be fixed by the Directors.

**126.** Every auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and Officers of the Company such information and explanation as may be necessary for the performance of the duties of the auditors.

**127.** The auditors shall at the next Annual General Meeting following their appointment and at any other time during their term of office, upon request of the Directors or any general meeting of the shareholders, make a report on the accounts of the Company in general meeting during their tenure of office.

*Notice*

**128.** Notices shall be in writing and may be given by the Company to any member either personally or by sending it by post, cable or telex to him or to his address as shown in the register of members, such notice to be forwarded airmail if the address be outside the Turks and Caicos Islands.

**129.** *(a)* Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice, and to have been effected at the expiration of sixty hours after the letter containing the same is posted as aforesaid.

*(b)* Where a notice is sent by cable or telex, service of the notice shall be deemed to be effected by properly addressing, pre-paying and sending through a transmitting organisation the notice, and to have been effected at the

expiration of forty-eight hours after the same is sent as aforesaid.

**130.** A notice may be given by the Company to the joint holders of record of a share by giving the notice to the joint holder first named on the register of members in respect of their shares.

**131.** A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a share or shares in consequence of the death or bankruptcy of a member by sending it through the post as aforesaid in a pre-paid letter addressed to them by name, or by the title of representatives of the deceased, or trustee in bankruptcy, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

**132.** Notice of every general meeting shall be given in any manner hereinbefore authorised to—

*(a)* every person shown as a member in the register of members as of the date for such meeting except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the register of members;

*(b)* every person upon whom the ownership of a share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a member where the member but for his death or bankruptcy would be entitled to receive notice of the meeting; and

*(c)* the Company's auditors for the time being, if any.

No other person shall be entitled to receive notices of general meetings.

*Winding Up*

**133.** If the Company shall be wound up the Liquidator may, with the sanction of a special resolution of the Company and any other sanction required by the Ordinance, divide amongst the members in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The Liquidators may with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the Liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

134. If the Company shall be wound up, and the assets available for distribution amongst the members as such shall be insufficient to repay the whole of the paid-up share capital, such assets shall be distributed so that, as nearly as may be, the losses shall be borne by the members in proportion to the capital paid-up, or which ought to have been paid up, at the commencement of the winding up, on the shares held by them respectively. And if in a winding up the assets available for distribution amongst the members shall be more than sufficient to repay the whole of the capital paid up at the commencement of the winding up, the excess shall be distributed amongst the members in proportion to their share holdings respectively. This regulation is without prejudice to the rights of the holders of shares issued upon special terms and conditions.

*Amendment of Regulations*

135. Subject to the Ordinance, the Company may at any time and from time to time by Special Resolution alter or amend these Regulations in whole or in part.

TABLE "B"

Regulations for the Operation and Management of an Exempted Company which may be Incorporated by Reference in its Articles of Association.

(1) In these Regulations the following words and expressions shall, where not inconsistent with the context, have the following meanings respectively:—

"Members" means the person, body corporate or partnership registered in the Register of Members as the holder of shares in the Company, and when two or more persons are so registered as joint holders of shares, means the person whose name stands first in the Register of Members as one of such joint holders;

"Notice" means written notice unless otherwise specifically stated;

"the Ordinance" means the Companies Ordinance;

"the Company" means the Company for which these Articles are approved and confirmed;

"Secretary" means the person appointed to perform the duties of Secretary of the Company and includes any Assistant or Acting Secretary;

"Auditor" includes any individual or partnership.

(2) In these Regulations, unless there be something in the subject or context inconsistent with such construction, words importing the plural number shall be deemed to include the singular number.

(3) Expressions referring to writing shall, unless the contrary intention appears, be construed as including printing, lithography, photography and other modes of representing words in a visible form.

(4) Unless the context otherwise requires, words or expressions contained in these Regulations shall bear the same meaning as in the Ordinance or any statutory modification thereof in force for the time being.

(5) Shares may be issued on the terms that they may, or at the option of the Company may, be redeemed on such terms and in such manner as the Company before issue of the shares, may determine and the Company may issue bearer shares in such form and in such manner as the Directors think fit.

(6) Where joint holders are registered holders of a share or shares then in the event of the death of any joint holder or holders the remaining joint holder or holders shall be absolutely entitled to the said shares and the Company shall recognize no claim in respect of the estate of any joint holder except in the case of the last survivor of such joint holders.

(7) Every Member shall be entitled to a certificate under the Seal of the Company specifying the shares held by him and that the same are fully paid up. If any such certificate shall be proved to the satisfaction of the Directors to have been worn out, lost, mislaid or destroyed the Directors may cause a new certificate to be issued, and request an indemnity for the lost certificate if they see fit.

(8) All shares shall be fully paid and non-assessable.

*Registration of Members*

(9) The Company shall keep in one or more books a Register of its Members and shall enter therein the following particulars, that is to say—

*(a)* the name and address of each Member, the number of shares held by him and the amount paid or agreed to be considered to be paid on such shares;

*(b)* the date on which each person was entered in the register of Members; and

*(c)* the date on which any person ceased to be a Member.

*Transfer of Shares*

(10) Except in the case of bearer shares the instruments of transfer shall be in a form or as near thereto as circumstances admit as Form A hereunder. The transferor shall be deemed to remain the holder of such share until the same has been transferred to the transferee in the Register of Members.

"FORM A

*Transfer of a Share or Shares*

FOR VALUE RECEIVED *(fill in amount for purposes of stamp duty) (name in full of transferor)* hereby sell, assign and transfer unto *(name in full of transferee)* of *(address)* share*(s)* or stock represented by the within certificate.

Dated:

.....
(Transferor)

.....
(Transferee)"

(11) The Directors may decline to register the transfer of a share without assigning any reason therefor.

(12) The Directors may decline to recognise any instrument of transfer unless it is accompanied by the certificate of the shares to which it

relates, and by such other evidence as the Directors may reasonably require, to show the right of the transfer or to make the transfer.

(13) The joint holder of a share may transfer such share to any one or more such joint holders, and the joint holders of two or more shares may transfer such shares or any or either of them to one or more of such joint holders, and the surviving holder or holders of any share or shares previously held by them jointly with a deceased Member may transfer any such share to the executors or administrators of such deceased Member.

*Transmission of Shares*

(14) The executors or administrators of a deceased Member shall except as provided hereafter be the only person recognized by the Company as having any title to his shares, but this shall not apply in the case of one or more joint holders of a share or shares, except in the case of the last survivor of such joint holders. On production of evidence of the death of a joint holder of a share or shares the remaining holder or holders shall automatically become entitled to the issue of a new certificate in the name of the remaining holder or holders.

(15) Any person entitled to a share in consequence of the death of any Member, may be registered as a Member upon such evidence as the Directors may deem sufficient, or may, instead of being registered himself, elect to have some person named by him registered as a transferee of such share.

*Meetings*

(16) The Directors may convene a Special Meeting of the Company whenever in their judgement such a Meeting is necessary upon fourteen days notice in writing to each of the Members, mailed to each Member at his address as registered in the Register of Members by air mail (if appropriate) and such notice shall state the time, place and as far as practicable the objects of the Meeting.

(17) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

(18) Members holding not less than one-tenth part in value of the shares of the Company shall at all times have the right by requisition to the Secretary of the Company, to require a Special Meeting to be called for the transaction of any business specified in such requisition, such Meeting shall be called within two months after such requisition.

(19) A meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in these Regulations, be deemed to have been properly called if it is so agreed by all the Members entitled to attend and vote thereat.

(20) *(a)* At any General Meeting of the Company one or more Members present in person and representing in person or

by proxy in excess of 50% of the outstanding voting shares of the capital stock of the Company shall form a quorum for the transaction of business; if within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the following day at the same time and place or to such other day and such other time as the Directors may determine.

*(b)* The Chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, and only the business left unfinished at the meeting from which the members present in person or represented by proxy have adjourned shall be dealt with. It shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at the adjourned meeting; save and except for a meeting adjourned *sine die*, when notice of the adjourned meeting shall be given as in the case of an original meeting.

(21) (1) Subject to any rights or restrictions lawfully attached to any class of shares, at any General Meetings of the Company each registered Member shall be entitled to one vote for each share held by him and such vote may be given in person or by proxy.

(2) At any General Meeting of the Company any question proposed for the consideration of the Members shall be decided on a simple majority of the votes of such Members and such majority shall be ascertained in accordance with the provisions of these regulations.

(3) At any General Meeting of the Company a declaration by the Chairman that a question proposed for consideration has, on a show of hands, been carried, or carried unanimously or by a particular majority or lost and an entry to that effect in a book containing the Minutes of the proceedings of the Company shall, subject to the provisions of subparagraph (4), be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such question.

(4) Notwithstanding the provisions of subparagraph (3), at any General Meeting of the Company, it shall be lawful, in respect of any question proposed for the consideration of the Members (whether before or on the declaration of the result of a show of hands as provided for in subparagraph (3), for a poll to be demanded by any of the following persons:

*(a)* the Chairman of such Meeting; or

*(b)* at least three Members present in person or represented by proxy; or

*(c)* any Member or Members present in person or represented by proxy and holding between them not less than one-

tenth of the total voting rights of all the Members having the right to vote at such Meetings.

(5) Where, in accordance with the provisions of subparagraph (4), a poll is demanded, and subject to any rights or restrictions for the time being lawfully attached to any class of shares, every Member present in person at such Meeting shall have one vote for each share of which he is the holder or for which he holds a proxy and such vote shall be counted in such manner as the Chairman may direct and the result of such poll shall be deemed to be the resolution of the Meeting at which the poll was demanded and shall replace any previous resolution upon the same matter which has been the subject of a show of hands.

(6) A poll demanded, in accordance with the provisions of sub-paragraph (4), for the purpose of electing a Chairman, or on a question of adjournment shall be taken forthwith and a poll demanded on any other question shall be taken at such Meeting as the Chairman may direct.

(22) When a vote is taken by ballot each Member entitled to vote shall be furnished with a ballot paper on which he shall record his vote in such manner as shall be determined at the Meeting having regard to the nature of the question on which the vote is taken; and each ballot paper shall be signed or initialled or otherwise marked so as to identify the voter. At the conclusion of the ballot the ballot paper shall be examined by the Chairman with assistance of a Member appointed for the purpose, and the result of the ballot shall be declared by the Chairman.

(23) An instrument appointing a proxy shall be in writing under the hand of the Member or his attorney duly authorised in writing or, if the Member is a corporation either under seal or under the hand of an officer or attorney of the corporation duly authorised, and shall be in the Form B hereunder or such other form as the Directors may from time to time approve:—

"FORM B

..... LIMITED

PROXY

I/WE .....
of .....
..... the holder of
.....shares
in the above named Company.

hereby appoint ..... of .....
or failing him ..... of .....
or failing him ..... of .....

as my/our proxy to vote on my/our behalf at the .....
General Meeting of the Company to be held on the ..... day of
..... 19\20 ....., and at any adjournment thereof.

Dated this ..... day of ..... 19\20 .....

Signed by the above named

.....

in the presence of

.....

Witness

....."

(24) Any corporation which is a Member of the Company may by resolution of its Directors authorise such person as it thinks fit to act as its representative at any Meeting of the Members of the Company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Member of the Company.

*Minutes*

(25) The Directors shall cause Minutes to be duly entered in books provided for the purpose—

*(a)* of all elections and appointments of Officers;

*(b)* of the names of the Directors or their Alternates present at each Meeting of the Directors and of any Committee of the Directors;

*(c)* of all resolutions and proceedings of each General Meeting of the Members, Meetings of the Directors and Meetings of Committees of the Directors, provided that any minute of such Meetings, if purporting to be signed by the Chairman thereof or by the Chairman of the next succeeding Meeting, shall be sufficient evidence of the proceedings without any further proof of the facts therein stated, and further provided that when all the Members in person or by proxy sign the Minutes of an ordinary or extraordinary general meeting, and when a majority of the Directors sign the minutes of a meeting of the Directors, the same shall be deemed to have been duly held, notwithstanding that the Members or Directors have not actually come together or that there may have been technical defects in the proceedings, and a resolution in writing in one or more parts signed by all the Members or a majority of the Directors shall be as valid and effectual as if it had been passed at a meeting duly called and constituted.

*Directors*

(26) The business of the Company shall be managed and conducted by a Board of Directors consisting of not less than one and such number in excess thereof as the Members may from time to time determine who shall hold office until their successors are elected or appointed and any General Meeting may authorise the Board of Directors to fill any vacancy in their numbers.

(27) The Directors may meet for the transaction of business, adjourn and otherwise regulate their meetings as they see fit.

(28) *(a)* A meeting of the Directors may be convened by the Secretary or by any Director. The Secretary shall convene a Meeting of the Directors of which notice may be given by telephone or otherwise whenever he shall be required so to do by any Director.

*(b)* The Members of the Board of Directors may participate in a meeting by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

*(c)* The Directors may pass a resolution without holding a meeting if a consent in writing setting out the resolution required by all of the Directors is filed in the minutes of the proceedings of the Board. Such consent shall have the same effect as an unanimous vote.

(29) The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be a majority.

(30) Any Director, or his firm, partner or Company may act in a professional capacity for the Company, and he shall be entitled to remuneration for professional services as if he were not a Director; provided that nothing herein contained shall authorise a Director or his firm to act as auditor of the Company.

(31) All acts done by any Meeting of the Directors or of a Committee of Directors or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

*General Powers of Directors*

(32) *(a)* The business of the Company shall be managed by the Directors, who may pay all expenses incurred in promoting

and incorporating the Company, and may exercise all such powers of the Company as are not, by this Ordinance or by these regulations required to be exercised by the Company in General Meeting, subject, nevertheless, to any of these regulations, to the provision of any Ordinance and to any regulations made there-under, being not inconsistent with these regulations or provisions, as may be prescribed by the Company in General Meeting; but no regulations made by the Company in General Meeting shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made.

*(b)* The Directors may from time to time and at any time by power of attorney appoint any Company, firm or person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions so vested in the attorney.

*(c)* The Directors may appoint, suspend and remove the managers, secretary, clerks, agents and servants of the Company, and may fix their remuneration and determine their duties, and the securities (if any) to be taken from them respectively, and may appoint and remove the attorney and brokers of the Company.

(33) The Directors may delegate any of their powers to a committee consisting of two or more of the Directors, but every such committee shall conform to such directions as the Directors shall impose on them.

*Officers*

(34) The officers of the Company shall consist of a Secretary and such additional officers as the Directors shall from time to time determine.

(35) The Secretary and additional officers, if any, shall be appointed or elected by the Directors and shall hold office during the pleasure of the Directors.

(36) The Secretary shall attend all Meetings of the Company and of the Directors and shall keep correct minutes of such Meetings and enter the same in proper books provided for the purpose. He shall perform such duties as are prescribed by the Ordinance or these regulations, or as shall be

prescribed by the Directors. The Secretary shall receive such salary as the Directors shall from time to time determine.

(37) The Directors shall exercise a general supervision over the financial affairs of the Company, and shall be responsible for correct keeping of the books, and for safe keeping of all moneys and securities of the Company, and shall submit their accounts and vouchers to the auditor whenever required so to do.

*Dividends*

(38) The Directors may declare a dividend to be paid to the Members, in proportion to their shares, out of the surplus or profits from the business of the Company, and such dividend may be paid wholly or partly in specie in which event the sanction of the Company in General Meeting shall be obtained.

(39) The Directors may from time to time before declaring a dividend set aside out of surplus or profits of the Company such sums as they think proper as a reserve fund to be used to meet contingencies or for equalising dividends or for any other special purpose.

(40) The Directors are authorised and empowered to lend to any officer, Director or Member of the Company any sum or sums of money without restriction as to amount upon such terms and conditions as they in their absolute discretion may determine.

*Accounts and Financial Statements*

(41) The Directors shall cause true accounts to be kept of all transactions of the Company in such manner as to show the assets and liabilities of the Company for the time being.

(42) The financial year end of the Company shall be determined by resolution of the Directors and failing such resolution the financial year end shall be 31st December.

(43) As and when requested by the Members of the Company, a balance sheet made up for the financial year containing a summary of the assets and liabilities of the Company under convenient heads and a statement of income and expenditure for the period requested by the Members shall be laid before the Members in General Meeting.

(44) An independent representative of the Members may be appointed by them as Auditor of the Accounts of the Company and such Auditor shall hold office until the Members shall appoint another Auditor. Such Auditor may be a Member but no Director or Officer of the Company shall during his continuance in office be eligible as an auditor of the Company.

(45) The duties and remuneration of the Auditor shall be fixed by the Company in General Meeting or in such manner as the Shareholders may determine.

*Notices*

(46) Unless otherwise herein or by law expressly provided, a notice may be served by the Company on any Member either personally or by telex or cable to his registered address or by sending it using air mail (if appropriate) through the post prepaid in an envelope addressed to such Member at his address as registered in the Register of Members.

(47) Any notice required to be given to the Members shall with respect to any shares held jointly by two or more persons be given to all such persons.

(48) Any notice shall be deemed to have been served at the time when the same would be delivered in the ordinary course of transmission, and in proving such service it shall be sufficient to prove that the notice was properly addressed and prepaid, if posted, and the time when it was posted or transmitted by telex or to the cable Company as the case may be.

*Seal of the Company*

(49) The Seal of the Company shall not be affixed to any instrument except over the signature of a Director and the Secretary or any two Directors or by some person appointed by the Directors: provided that the Secretary may affix the Seal of the Company over his signature only to any authenticated copies of these regulations, the Memorandum of Association, the minutes of any meetings or any other document required to be authenticated by him and to any instrument which a Meeting of the Directors has specifically approved beforehand.

*Indemnity*

(50) The Directors, Auditors, Secretary and other officers for the time being of the Company and the Trustees (if any) for the time being acting in relation to any of the affairs of the Company and every of them, and every of their heirs, executors and administrators, shall be indemnified and secured harmless out of the assets and profits of the Company from and against all actions, costs, charges, losses, damages and expenses which they or any of them, their or any of their heirs, executors or administrators, shall or may incur or sustain by or by reason of any act done, concurred in or omitted in or about the execution of their duty, or supposed duty, in their respective offices or trusts except such (if any) as they shall incur or sustain by or through their wilful neglect or default respectively and none of them shall be answerable for the acts, receipts, neglects or defaults of the other or others of them or for joining in any receipt for the sake of conformity, or for any bankers or other persons with whom any moneys or effects belonging to the Company shall or may be lodged or deposited for safe custody, or for insufficiency or deficiency or of any security upon which any moneys of or belonging to the Company shall be placed or invested, or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts, or in relation thereto, unless the

same shall happen by or through their own wilful neglect or default respectively.

*Alteration of Regulations*

(51) No Regulation shall be rescinded, altered or amended, and no new Regulation shall be made until the same has been proposed and passed at a Meeting of the Directors and confirmed at a subsequent General Meeting of Members.

## THIRD SCHEDULE

### PART I

### RULES GOVERNING THE ISSUE OF A PROSPECTUS

(1) A prospectus issued by or on behalf of a Company or in relation to an intended Company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(2) Subject to the provisions of paragraphs (9) and (10), every prospectus issued by or on behalf of a Company, or by or on behalf of any person who is or has been engaged or interested in the formation of a Company, must state the matters specified in Part II of this Schedule.

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

(4) Subject to the provisions of paragraphs (9) and (10), it shall not be lawful to issue any form of application for shares in or debentures of a Company unless the form is issued with a prospectus which complies with the requirements of this Part:

Provided that this paragraph shall not apply if it is shown that the form of application was issued either—

*(a)* in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

*(b)* in relation to shares or debentures which were not offered to the public.

(5) If any person acts in contravention of the provisions of paragraph 4 he shall be guilty of an offence and liable on summary conviction to a fine of $1,000.

(6) In the event of non-compliance with or contravention of any of the requirements of paragraphs (2) to (6) inclusive, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

*(a)* as regards any matter not disclosed, he proves that he was not cognisant thereof;

*(b)* he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

*(c)* the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in

the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph (31) of Part II of this Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of matters not disclosed.

(7) Paragraphs (2) to (6) inclusive shall not apply—

*(a)* to the issue to existing members or debenture holders of a Company of a prospectus or form of application relating to shares in or debentures of the Company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or

*(b)* to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued;

but subject as aforesaid, this paragraph shall apply to a prospectus or a form of application whether issued with reference to the formation of a Company or subsequently.

(8) Nothing in paragraphs (2) to (7) inclusive, shall limit or diminish any liability which any person may incur under the general law or this Ordinance apart from this Part of this Schedule.

(9) Where it is proposed to offer any shares in or debentures of a Company to the public by a prospectus issued generally (that is to say, issued to persons who are not existing members or debenture holders of the Company) there may, on the request of the applicant, be given by or on behalf of the Permanent Secretary, Finance a certificate of exemption, that is to say, a certificate that having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and to any limitations on the number and class of persons to whom the offer is to be made, compliance with requirements of Part II of this Schedule would be unduly burdensome.

(10) If a certificate of exemption is given, and if the proposals aforesaid are adhered to, then—

*(a)* a prospectus giving the particulars and information aforesaid in the form in which they are so required to be published shall be deemed to comply with the requirements of Part II of this Schedule; and

*(b)* paragraph (9) shall not apply to any issue, after the permission applied for is granted, of a prospectus or form of application relating to the shares or debentures.

(11) A prospectus inviting persons to subscribe for shares in or debentures of a Company and including a statement purporting to be made by an expert shall not be issued unless—

*(a)* he has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included; and

*(b)* a statement that he has given and has not withdrawn his consent as aforesaid appears on the prospectus.

(12) If any prospectus is issued in contravention of paragraph (11) the Company and every person who is knowingly a party to the issue thereof shall be guilty of an offence and liable on summary conviction to a fine of $1,000.

(13) No prospectus shall be issued by or on behalf of a Company or in relation to an intended Company unless, on or before the date of its publication, there has been delivered to the registrar of companies for registration a copy thereof signed by every person who is named therein as a director or proposed director of the Company, or by his agent authorised in writing, and having endorsed thereon or attached thereto—

*(a)* any consent to the issue of the prospectus required by paragraph (11) from any person as an expert; and

*(b)* in the case of a prospectus issued generally, also a copy of any contract required by paragraph (29) of Part II of this Schedule to be stated in the prospectus or in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, or if in the case of a prospectus deemed by virtue of a certificate granted under paragraph (9) to comply with the requirements of Part II a contract or a copy thereof or a memorandum of a contract is required to be available for inspection in connection with the application made under that paragraph to the Permanent Secretary, Finance a copy or, as the case may be, a memorandum of that contract.

(14) Where a prospectus issued after the commencement of this Ordinance includes any untrue statement, any person who authorised the issue of the prospectus shall be liable—

*(a)* on conviction, to a fine of $1,000 and to imprisonment for two years; or

*(b)* on summary conviction, to a fine of $200 and to imprisonment for three months,

unless he proves either that the statement was immaterial or that he had reasonable ground to believe and did, up to the time of issue of the prospectus, believe that the statement was true.

(15) A person shall not be deemed for the purposes of paragraph (14) to have authorised the issue of a prospectus by reason only of his having given the consent required by paragraph 10 to the inclusion therein of a statement purporting to be made by him as an expert.

PART II

MATTERS TO BE SPECIFIED IN PROSPECTUS

(16) The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the Company.

(17) The number of shares, if any, fixed by the articles as the qualification of a director, and any provisions in the articles as to the remuneration of the directors.

(18) The names, descriptions and addresses of the directors or proposed directors.

(19) Where shares are offered to the public for subscription, particulars as to—

*(a)* the minimum amount which, in the opinion of the directors must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:—

(i) the purchase price of any property purchased or to be purchased which is defrayed in whole or in part out of the proceeds of the issue;

(ii) any preliminary expenses payable by the Company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the Company;

(iii) the repayment of any moneys borrowed by the Company in respect of any of the foregoing matters;

(iv) working capital; and

*(b)* the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

(20) The time of the opening of the subscription lists.

(21) The amount payable on application and allotment of each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

(22) The number, description and amount of any share in or debenture of the Company which any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option, that is to say—

*(a)* the period during which it is exercisable;

*(b)* the price to be paid for shares or debentures subscribed for under it;

*(c)* the consideration (if any) given or to be given for it or for the right to it;

*(d)* the names and addresses of the persons to whom it or the right to it was given or if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

(23) The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

(24) (1) As respects any property to which this paragraph applies—

*(a)* the name and addresses of the vendors;

*(b)* the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the Company is a sub-purchaser, the amount so payable to each vendor;

*(c)* short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the Company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the Company had any interest direct or indirect.

(2) The property to which this paragraph applies is property purchased or acquired by the Company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisi-

tion of which has not been completed at the date of the issue of the prospectus, other than property—

*(a)* the contract for the purchase or acquisition whereof was entered into in the ordinary course of the Company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or

*(b)* as respects which the amount of the purchase money is not material.

(25) The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which the last foregoing paragraph applies, specifying the amount, if any, payable for goodwill.

(26) The amount, if any, paid within the two preceding years, or payable as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscription, for any shares in or debentures of the Company, or the rate of any such commission.

(27) The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

(28) Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

(29) The dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the Company or a contract entered into more than two years before the date of issue of the prospectus.

(30) The names and addresses of the auditors, if any, of the Company.

(31) Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the Company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the Company.

(32) If the prospectus invites the public to subscribe for shares in the Company and the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred

by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

(33) In the case of a Company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the Company or the business to be acquired, as the case may be, has been carried on.

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COMPANIES (FEES) REGULATIONS – SECTION 224

*(Legal Notice No. 8 of 1994)*

*(Made by the Governor under section 224 (b) of the Companies Ordinance)*

*[4 March 1994]* Commencement

Short title

1. (1) These Regulations may be cited as the Companies (Fees) Regulations.

(2) In these Regulations "Ordinance" means the Companies Ordinance.

2. Schedule I shall have effect with regard to fees payable by companies other than exempted companies.

3. Schedule II shall have effect with regard to fees payable by proposed exempted companies and exempted companies.

4. Schedule III shall have effect with regard to fees payable by all companies.

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## SCHEDULE I

*(Regulation 2)*

FEES PAYABLE BY COMPANIES OTHER THAN EXEMPTED COMPANIES

The fees payable by a Company other than an exempted Company shall be as follows:

1. Upon the filing of the memorandum and articles of association of the Company (section 25(4) of the Ordinance)—

| | | |
|---|---|---|
| *(a)* | where the nominal share capital does not exceed ..... | $275 |
| *(b)* | where the nominal share capital exceeds $50,000 but does not exceed $100,000 ..... | $450 |
| *(c)* | where the nominal share capital exceeds $100,000 but does not exceed $750,000 ..... | $550 |
| *(d)* | where the nominal share capital exceeds $750,000 but does not exceed $2,000,000 ..... | $1,050 |
| *(e)* | where the nominal share capital exceeds $2,000,000 ..... | $2,050 |

2. Upon the filing of the annual list of members (section 39 (1) of the Ordinance) ..... $250

---

## SCHEDULE II

*(Regulation 3)*

FEES PAYABLE BY PROPOSED EXEMPTED COMPANIES AND EXEMPTED COMPANIES

The fees payable by proposed exempted companies and exempted companies shall be as follows:

1. Subject to paragraph 2, upon applying for registration as an exempted Company (section 184 of the Ordinance)—

| | | |
|---|---|---|
| *(a)* | where the nominal share capital does not exceed $5,000 | $100 |
| *(b)* | where the nominal share capital exceeds $5,000 but does not exceed $50,000 | $100 and one *per centum* of the amount by which the nominal share capital exceeds $5,000 |
| *(c)* | where the nominal share capital exceeds $50,000 but does not exceed $100,000 | $550 and one-half of one *per centum* of the amount by which the nominal share capital exceeds $50,000 |
| *(d)* | where the nominal share capital exceeds $100,000 but does not exceed $1,000,000 | $800 and one-tenth of one *per centum* of the amount by which the nominal share capital exceeds $100,000 |
| *(e)* | where the nominal share capital exceeds $1,000,000 | $1,700 |

2. Notwithstanding paragraph 1, where application for registration as an exempted Company is made by a foreign Company under section 205 of the Ordinance, the fee payable by such Company shall be $150.

3. Annual fees pursuant to section 188 of the Ordinance—

*(a)* from the first day of January 1994 an exempted Company registered between 1 January and 30 June in any year shall pay the first annual fee of $300 not later than 31 January of the first year following the year of its registration;

*(b)* from the first day of January 1994, an exempted Company registered between 1 July and 31 December in any year shall pay the first annual fee of $300 not later than 31 January of the second year following the year of its registration;

*(c)* except as provided in subparagraphs *(a)* and *(b)*, and subject to subparagraph *(d)* of this paragraph, every exempted Company shall pay an annual fee of $300 not later than 31 January in each year;

*(d)* notwithstanding subparagraph *(c)* of this paragraph, an exempted Company licensed or to be licensed under the Banking Ordinance, the Insurance Ordinance or the Trustees (Licensing) Ordinance, may elect to pay the annual fees in advance at the following rates—

| | |
|---|---|
| 5 years advance payment: | $ 1,000.00 |
| 10 years advance payment: | $ 1,500.00 |
| 20 years advance payment: | $ 2,000.00 |

## SCHEDULE III

*(Regulation 4)*

FEES PAYABLE BY ALL COMPANIES

1. There shall be payable by every Company, upon the filing of a notice of increase of the amount of its nominal share capital, a fee of such amount as is equivalent to the difference between—

*(a)* in the case of a Company other than an exempted Company—

(i) the fees which would have been payable by the Company under subsection (4) of section 25 of the Ordinance had the memorandum of association of the Company, showing the amount of its nominal share capital as increased, been filed on the date on which the notice was filed; and

(ii) the fee which would have been payable by the Company under that subsection had the memorandum of association of the Company, showing the amount of its nominal share capital before the increase, been filed on the date on which the notice was filed;

*(b)* in the case of an exempted Company—

(i) the fee which would have been payable under section 184 of the Ordinance by the Company, as proposed, upon application for registration as an exempted Company, had the application been made on the date on which the notice was filed and the memorandum of association of the Company, as proposed, shown,

on that date, the amount of its nominal share capital as increased; and

(ii) the fee which would have been payable under that section by the Company, as proposed, upon application for registration as an exempted Company, had the application been made on the date on which the notice was filed and the memorandum of association of the Company, as proposed, shown, on that date, the amount of its nominal share capital before the increase (section 43(2) of the Ordinance).

2. There shall be payable a fee of $2,500 by every Company applying for the Registrar's authorisation under section 30C(2) of the Ordinance.

3. There shall be payable a fee of $10 for the provision of information pursuant to section 49(4) of the Ordinance.

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# TURKS AND CAICOS ISLANDS

# COMPANIES (AMENDMENT) ORDINANCE 1999

(Ordinance 9 of 1999)

## Arrangement of Sections

Section

1. Short title and commencement
2. Companies Ordinance (cap. 122) amended

# TURKS AND CAICOS ISLANDS

## COMPANIES (AMENDMENT) ORDINANCE 1999

**(Ordinance 9 of 1999)**

*Assent* ..... *September 27, 1999*

*Publication in Gazette* ..... *October 8, 1999*

*Commencement* ..... *March 28, 2003*

AN ORDINANCE TO AMEND IN THE COMPANIES ORDINANCE THE DATE BY WHICH A LIST OF MEMBERS OF A COMPANY AND SUMMARY RELATING TO CAPITAL, SHARES , DIRECTORS AND SECRETARY MUST BE SUBMITTED TO THE REGISTRAR AND THE PENALTY FOR THEIR LATE SUBMISSION; AND FOR CONNECTED PURPOSES.

**ENACTED By** the Legislature of the Turks and Caicos Islands.

Short title and commencement

**1.** This Ordinance may be cited as the Companies (Amendment) Ordinance 1999 and shall come into operation on such day as the Governor may appoint by notice published in the Gazette.

Companies Ordinance (cap. 122) amended

**2.** The Companies Ordinance shall be amended as follows –

*(a)* in section 39(1) for the words "twenty eight days after the said" there shall be substituted "eight weeks commencing on the date of that";

*(b)* in the proviso to section 39(1) the word "either", the word "or" where it occurs for the first time and paragraph (b) shall be repealed; and

*(c)* in section 40 for the words "$50 for every day during which such default continues" there shall be substituted "$250".

# TURKS AND CAICOS ISLANDS

## COMPANIES (AMENDMENT) (NO. 2) ORDINANCE 1999

(Ordinance 11 of 1999)

### Arrangement of Sections

Section

1. Short title and commencement
2. Section 188 of Companies Ordinance amended

# TURKS AND CAICOS ISLANDS

## COMPANIES (AMENDMENT) (NO. 2) ORDINANCE 1999

**(Ordinance 11 of 1999)**

*Assent*..... *January 19, 2000*

*Publication in Gazette* ..... *January 28, 2000*

*Commencement*..... *March 31, 2000*

**AN ORDINANCE** FURTHER TO AMEND THE COMPANIES ORDINANCE IN ORDER TO PROVIDE FOR A PENALTY FEE FOR EXEMPTED COMPANIES WHICH FAIL TO PAY THE PRESCRIBED ANNUAL FEE WITHIN THE PRESCRIBED TIME.

**ENACTED** By the Legislature of the Turks and Caicos Islands.

Short title and commencement

1. This Ordinance may be cited as the Companies (Amendment) (No. 2) Ordinance 1999 and shall come into operation on such day as the Governor may appoint by notice published in the Gazette.

Section 188 of Companies Ordinance amended *Cap. 122*

2. The Companies Ordinance shall be amended in section 188 by inserting immediately after the word "fee" the words "and such penalty fee, where applicable, as may be prescribed,".

# COMPANIES (FEES) (AMENDMENT) REGULATIONS 2000

## Arrangement of Regulations

Regulation

1. Citation
2. Amendment of Companies (Fees) Regulations

# COMPANIES (FEES) (AMENDMENT) REGULATIONS 2000

*(Legal Notice 7 of 2000)*

**MADE** by the Governor under sections 188 and 224 of the Companies Ordinance.

Citation

1. These Regulations may be cited as the Companies (Fees) (Amendment) Regulations 2000.

Amendment of Companies (Fees) Regulations

2. At the end of Schedule II to the Companies (Fees) Regulations there shall be added the following paragraph –

"4. Where an exempted Company does not pay its annual fee for the year 2000 or any subsequent year until after 31st March in that year, the penalty fee in addition to the exempted Company's annual fee under paragraph 3, shall be $100.".

## EXPLANATORY NOTE

*(This note is not part of the Regulation)*

These Regulations prescribe a penalty fee of $100 on each exempted company which pays its annual fee later than 31st March in any year.

# COMPANIES (AMENDMENT) ORDINANCE 2001

(Ordinance 10 of 2001)

Arrangement of sections

Section
1. Citation and commencement
2. Amendment of Companies Ordinance
3. Savings and transitional provisions

Schedule

TURKS AND CAICOS ISLANDS

COMPANIES (AMENDMENT) ORDINANCE 2001

**(Ordinance 10 of 2001)**

*Assent*..... *May 16, 2001*

*Publication in Gazette* ..... *May 21, 2001*

*Commencement* ..... *May 22, 2001*

**AN ORDINANCE** TO AMEND THE COMPANIES ORDINANCE: AND FOR CONNECTED PURPOSES.

**ENACTED** by the Legislature of the Turks and Caicos Islands.

Citation and commencement

1. This Ordinance may be cited as the Companies (Amendment) Ordinance 2001 and shall come into operation on such day as the Governor may appoint by notice published in the Gazette and different days may be appointed for different purposes.

Amendment of Companies Ordinance *cap 122*

2. The Companies Ordinance shall be amended as provided in the Schedule.

Savings and transitional provisions

3. The Governor may by regulations make such provision including amending any legislation, as he considers necessary, convenient or expedient for savings, transitory or transitional purposes in connection with the coming into operation of any provision of this Ordinance.

## SCHEDULE

*(Section 2)*

AMENDMENT OF COMPANIES ORDINANCE

1. The Companies Ordinance shall be amended as follows.

2. After section 32 there shall be added –

Location of bearer shares

"32A. Subject to sections 32D to 32F bearer shares in a company shall be kept in such manner as may be prescribed in the office of–

(a) the company manager or the company agent licensed under the Company Management (Licensing) Ordinance 1999 or where the company does not have a licensed company manager or licensed agent the secretary of the company; or

(b) an accountant, attorney, bank licensed under the Banking Ordinance or trustee licensed under the Trustees Licensing Ordinance.

32B.The company manager, company agent or secretary of the company shall maintain records in respect of each bearer share in such form as may be prescribed, of –

(a) its location;

(b) its ownership; and

(c) its beneficial ownership.

32C.An accountant, attorney, bank or licensed trustee which keeps bearer shares under section 32A(b) shall notify, in such form as may be prescribed, a change in ownership or beneficial ownership –

(a) to the company manager, company agent or secretary of the company within seven days beginning with the day after the date of the change in ownership; or

(b) where the company is temporarily without a company manager, company agent or company secretary or the manager, agent or secretary is not known to the accountant, attorney, bank or licensed trustee, to the Registrar within 14 days beginning with the day after the date of the change in ownership.

32D. Bearer shares in a company shall not be kept outside the Islands other than in accordance with the conditions in section 32E.

32E.The conditions referred to in section 32D shall be –

(i) the company manager or the company agent licensed under the Company Management (Licensing) Ordinance 1999 of a company whose bearer shares are being kept outside the Islands, shall–

(a) produce to the Registrar a certificate issued by an authority corresponding to the financial services commission which states –

(A) that the custodian of the bearer shares is licensed by the authority; and

(B) that the custodian is subject to the supervision of that authority; and

(b) notify the Registrar in such form as may be prescribed when the custodian commences to hold bearer shares in a company and when it ceases to hold bearer shares in a company; and

(ii) the custodian in its capacity as a custodian of bearer shares shall be subject to legislation corresponding with the

Proceeds of Crime Ordinance 1998 and regulations made under it.

32F. (1) Where the company manager or company agent of a company does not comply with the provisions of section 32E –

*(a)* it or he shall be guilty of an offence and shall be liable on summary conviction to a fine of $20,000 and on conviction on indictment to a fine of $20,000 or imprisonment for a period not exceeding 12 months or to both such fine and imprisonment; and

*(b)* the company which issued the bearer shares shall be struck off the register.

(2) Where the company manager or company agent is a company and commits an offence under this Ordinance, every director and every officer concerned with the management of the company shall be liable with the company to be convicted of that offence unless he satisfies the court that the offence was committed without knowledge or consent or that he took reasonable steps to prevent the commission of the offence.

3. In section 38(1) after the word "members" where it occurs for the first time there shall be inserted the words "and a company other than an exempted company, shall keep the register".

4. At the end of section 38 there shall be added -

"38A An exempted company may keep its register of members at a location other than its registered office on condition –

*(a)* that a record of the location and a copy certified by the secretary as a true copy of the register are kept at its registered office; and

*(b)* that changes made to the register are entered on the certified copy not later than one week beginning with the date of the occurrence of the change.".

5. At the end of section 53 there shall be added -

"53A An exempted company may keep its register containing the names, addresses and occupations of its directors and secretary at a location other than its registered office on condition –

*(a)* that a record of the location and a copy certified by the secretary as a true copy of the register are kept at its registered office; and

*(b)* that changes made to the register are entered on the certified copy not later than one week beginning with the date of the occurrence of the change.

53B . (1) The register of directors and secretary of –

*(a)* an ordinary company may be inspected by a person at no cost; and

*(b)* an exempted company may be inspected only by a member of the company and at no cost.

(2) If inspection under subsection (1) is refused, the company and its directors, managers and officers shall incur-

*(a)* a penalty of $10 for the refusal, and

*(b)* a penalty of $10 for every day during which the refusal continues.

(3) The Registrar may by order compel an immediate inspection of the register by a person who may inspect it under subsection (1).".

6. In section 54 for the words "sections 52 or 53" there shall be substituted "section 52, 53, 53A or 53B".

7. At the end of section 107 there shall be added the following subsection –

"(2)The distribution of the assets of the company under subsection (1)(h) shall be without prejudice –

*(a)* to the rights of preferred creditors under section 160;

*(b)* to an agreement between the company and any creditors including secured and preferred creditors, that the claims of these creditors in the agreement shall be subordinated or otherwise deferred to the claims of other creditors;

*(c)* to rights of set off or netting of claims between the company and other persons whether by agreement or law or to an agreement between the company and other persons to waive or limit these rights.".

8. At the end of section 134 there shall be added the following subsection –

"(2) The payment of the debts of the company under subsection (1)(j) shall be without prejudice –

*(a)* to the rights of preferred creditors under section 160;

*(b)* to an agreement between the company and any creditors including secured and preferred creditors, that the claims of these creditors in the agreement shall be subordinated or otherwise deferred to the claims of other creditors;

*(c)* to rights of set off or netting of claims between the company and other persons whether by agreement or law or to an agreement between the company and other persons to waive or limit these rights.".

9. In section 166(2) –

*(a)* immediately after paragraph (d) there shall be inserted the following paragraph –

"(e) an agreement between the company and any creditors under section 107(2)(b) or (c) or section 134(2)(b) or (c):"; and

*(b)* in the proviso for the words "or transaction" wherever they occur there shall be substituted "transaction or agreement".".

10. In section 185(2) there shall be repealed –

"*38. Register of members*

*42. Inspection of Register*

*44. Remedy for improper entry or omission of entry in register*

*46. Register to be evidence*

*53. Register of directors and officers*

*54. Penalty on company not keeping a register of directors*".

# COMPANIES (AMENDMENT) ORDINANCE 2002

(Ordinance 8 of 2002)

Arrangement of Section

Section

1. Citation and commencement
2. Amendment of the Companies Ordinance

TURKS AND CAICOS ISLANDS

COMPANIES (AMENDMENT) ORDINANCE 2002

(Ordinance 8 of 2002)

*Assent*..... *September 24, 2002*

*Publication in Gazette* ..... *October 4, 2002*

Commencement..... *October 4, 2002*

**AN ORDINANCE** TO AMEND THE COMPANIES ORDINANCE IN RESPECT OF THE HOLDING OF LAND: AND FOR CONNECTED PURPOSES.

**ENACTED** by the Legislature of the Turks and Caicos Islands.

Citation and commencement

**1.** This Ordinance may be cited as the Companies (Amendment) Ordinance 2002 and shall come into operation on such day as the Governor may appoint by notice published in the Gazette.

Amendment of section 30A(2) Companies Ordinance *cap 122*

**2.** In section 30A(2) of the Companies Ordinance between the words "Islands" and " shall" there shall be inserted -

"and held land immediately before the date of coming into operation of the Companies (Amendment) Ordinance 2002".

TURKS AND CAICOS ISLANDS

# CHAPTER 125

# CONFIDENTIAL RELATIONSHIPS ORDINANCE

**Revised Edition**
showing the law as at 15 May 1998

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance 1997.

This edition contains a consolidation of the following laws—

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| CONFIDENTIAL RELATIONSHIPS ORDINANCE | 3 |
| Ordinance 3 of 1979 .. in force 24 July 1979 (L.N. 20/1979) | |
| Amended by Ord. 3 of 1996 .. in force 19 July 1996 | |
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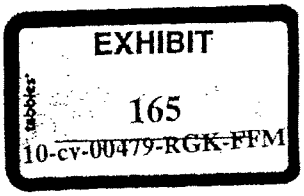
No Subsidiary Legislation has been made under this Ordinance



# CHAPTER 125

# CONFIDENTIAL RELATIONSHIPS ORDINANCE

ARRANGEMENT OF SECTIONS

SECTION
1. Short title
2. Interpretation
3. Application of Ordinance
4. Offences and penalties
5. Saving
6. Regulations
7. Attorney General's fiat

# CHAPTER 125

# CONFIDENTIAL RELATIONSHIPS ORDINANCE

*(Ordinances 3 of 1979 and 3 of 1996)*

AN ORDINANCE TO GIVE SANCTION TO THE DUTY OF NON-DIVULGENCE OF INFORMATION IMPARTED UNDER CONDITIONS OF BUSINESS OR PROFESSIONAL CONFIDENCE, WHETHER EXPRESS OR IMPLIED, AND FOR PURPOSES CONNECTED THEREWITH.

[*3 July 1979*] Commencement

1. This Ordinance may be cited as the Confidential Relationships Ordinance. Short title

2. In this Ordinance, unless the context otherwise requires— Interpretation

"bank" means any bank or other financial institution to which the provisions of the Banking Ordinance apply; *Cap. 118*

"business of a professional nature" includes the relationship between a professional person and his principal, by whatever term the latter may be described, and also the relationship between a bank and a customer of that bank;

"confidential information" includes information concerning any property, or relating to any business of a professional nature or commercial transaction which has taken place, or which any party concerned contemplates may take place, which the recipient thereof is not, otherwise than in the normal course of business or professional practice, authorised by the principal to divulge;

"entitled to possession of confidential information" means so entitled, in the normal course of business or professional practice or by the specific consent of the party who, but for the giving of such consent, would be entitled to require the preservation of the confidentiality of that information;

"Minister" means the person charged for the time being with responsibility for finance;

"normal course of business or professional practice" means the ordinary and necessary routine involved in the efficient carrying out of the instructions of a principal including compliance with such laws and legal processes as arises

out of or in connection therewith and the routine exchange of information between professional persons;

"principal" means a person who has imparted to another person confidential information in the course of his business or professional relationship with that other person, and includes a customer of a bank in relation to his business transactions with that bank;

"professional person" includes an accountant, an attorney (or other legal practitioner by whatever name called), a broker or other kind of commercial agent or adviser, a bank or other financial institution, any public officer or other government official or employee, and such other persons as may be prescribed as being professional persons for the purposes of this Ordinance, and whether or not any such person was licensed or authorised, under any law for the time being in force, to act in that capacity; and also includes any person subordinate to or in the employment or under the control of any such person for the purpose of his professional activities;

"property" includes every present, contingent or future interest or claim, direct or indirect, legal or equitable, positive or negative, in any money or money's worth, real, personal, movable or immovable, rights, charges and securities thereover and all documents and things evidencing or relating thereto.

Application of Ordinance

**3.** (1) Subject to the provisions of subsection (2), this Ordinance shall apply to all confidential information with respect to business of a professional nature which arises in or is brought into the Islands and to all persons who come into possession of such information at any time thereafter, whether within or without the Islands.

(2) This Ordinance shall not apply to confidential information given to or received by—

*(a)* any professional person acting in the normal course of business or professional practice or with the consent, express or implied, of the relevant principal;

*(b)* any person in the course of the taking or giving of evidence, whether within or without the Islands, for the purpose of or in the course of the trial of any person in respect of an alleged criminal offence triable within the Islands or which

would have been so triable if it had been committed within the Islands;

*(c)* a police officer in the execution of his duties whether within or without the Islands, investigating any criminal offence alleged to have been committed within the Islands or which, if it had been committed within the Islands, would have been a criminal offence under the law of the Islands;

*(d)* the Minister or a person exercising powers of examination or investigation under any of the provisions of the Banking Ordinance or any law repealing or replacing that Ordinance;

*(e)* any person in accordance with the provisions of any other Ordinance. *(Inserted by Ord. 3 of 1996)*

Offences and penalties

4. (1) Subject to the provisions of subsection (2) of section 3, any person who—

*(a)* being in possession of confidential information, however obtained—

(i) divulges it to any person not entitled to possession thereof; or

(ii) attempts, offers or threatens to divulge it to any person not entitled to possession thereof;

*(b)* obtains or attempts to obtain confidential information to which he is not entitled,

shall be guilty of an offence:

Provided that it shall be a defence for a person charged with an offence under this subsection if he proves to the satisfaction of the court that, at the time when he divulged, attempted, offered or threatened to divulge or obtained or attempted to obtain (as the case may be), the confidential information in question, he did not know and did not have reasonable grounds to suspect that so doing would be a breach of an express or implied duty to preserve confidentiality or would be contrary to the provisions of this Ordinance.

(2) Any person who, being in possession of information which he knows or has reason to suppose is confidential information, makes use thereof, without the consent of the principal, for the benefit of himself or any other person, shall be guilty of an offence.

(3) Any person who commits an offence under this section shall be liable on summary conviction—

*(a)* in the case of an individual to a fine of $5,000 or to imprisonment for two years or to both such fine and imprisonment; or

*(b)* in the case of a body corporate to a fine of $25,000;

Provided that where an offence under this section is committed by a professional person, that person shall be liable on conviction—

(i) in the case of an individual to a fine of $10,000 or to imprisonment for three years or to both such fine and imprisonment; or

(ii) in the case of a body corporate to a fine of $50,000.

(4) Any person who is convicted of an offence under subsection (1) and is proved to have solicited, received or offered (as the case may be), on behalf of himself or any other person, any reward for doing the act which constituted the offence, shall be liable, in addition to any penalty imposed under subsection (3), to a further fine equivalent to the amount or value of the reward solicited, received or offered and to forfeit the amount or value of any reward actually received by him.

(5) Where an offence under this section is committed by a body corporate and is proved to the satisfaction of the court to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or similar officer (by whatever name called) of that body corporate, or by any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished accordingly.

(6) For the avoidance of doubt, it is hereby declared that, subject to subsection (2) of section 3, a bank which gives a credit reference in respect of a customer, without first obtaining the authority of that customer, shall be guilty of an offence under subsection(1).

Saving

5. Nothing in this Ordinance shall be deemed to affect or derogate from any rule of law or the rights of any person with regard to the civil liability of any person for any breach of any express or implied condition of confidentiality with regard to

any business or professional relations or transactions between them.

Regulations

**6.** The Governor may make regulations for carrying into effect the provisions of this Ordinance and for prescribing anything which is required to be prescribed under any such provisions.

Attorney General's fiat

**7.** No prosecution shall be instituted under this Ordinance except by or with the written consent of the Attorney General.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

| | |
|---|---|
| ROTHWELL, Ltd., a Cayman Islands Corporation,<br><br>Plaintiff,<br><br>v.<br><br>UNITED STATES OF AMERICA,<br><br>Defendant. | ) CASE NO. CV-10-479-RGK (FFMx)<br>)<br>) **REQUEST FOR JUDICIAL NOTICE**<br>) BY PLAINTIFF ROTHWELL, LTD. RE:<br>) MEXICAN PROPERTY LAW AND<br>) EXPERT REPORT<br>)<br>)<br>)<br>) TRIAL: Tuesday, June 14, 2011<br>) TIME: 9:00 A.M.<br>) CTRM: Room 850, United States Courthouse<br>) 255 E. Temple Street<br>) Los Angeles, C<br>) [Hon. R. Gary Klausner] |

Plaintiff Rothwell, Ltd., by and through counsel undersigned, pursuant to Federal Rule of Evidence 201, hereby respectfully requests that this Court take judicial notice of: (1) property laws of Mexico identified by Expert Witness David Connell, Esq., an attorney licensed and practicing law in Mexico, who specializes in Mexican property law; and (2) Mr. Connell's expert opinion (Trial Exhibit #159) which applies those laws to the issues in the above-captioned matter, attached hereto.[1]

[1] For the benefit of the Court and opposing counsel, your undersigned's letter dated February 11, 2011, by which Mr. Connell was engaged is attached as well as your undersigned's response to Mr. Connell's further inquiry in which I wrote "Assume The Following Facts" and

Under Fed.R.Evid. Rule 201(d), judicial notice is mandatory when requested by a party who supplies the court with necessary information. *O'Toole v. Northrop Grumman Corp.*, 400 F.3d. 1218 (10th Cir. 2007). Rule 44.1, F.R.Civ.P., gives wide latitude to a district court in determining issues of foreign law. *See* Rule 44.1, which provides in pertinent part:

> In determining foreign law, the court may consider *any relevant material or source, including testimony, whether or not* submitted by a party or *admissible* under the Federal Rules of Evidence. The court's determination must be treated as a ruling on a question of law. [Emphasis added].

As the Ninth Circuit observed: "[a]lthough pursuant to Rule 44.1, courts may ascertain foreign law through numerous means, expert testimony accompanied by extracts from foreign legal materials has been and will likely continue to be the basic mode of proving foreign law. *Universe Sales Co., Ltd. v. Silver Castle, Ltd.*, 182 F.3d 1036, 1038 (9th Cir. 1999) (holding that district court erred in not considering the declaration of an expert on Japanese law, even though it was unrebutted by the other party). Furthermore,

> An expert witness [testifying about foreign law] is not required to meet any special qualifications. Indeed he need not even be admitted to practice in the country whose law is in issue. 9 C. Wright & A. Miller, *Federal Practice & Procedure* §2444 at 406 (1971).

*In re Grand Jury Proceedings, Marsoner v. U.S.*, 40 F.3d 959, 964 (9th Cir. 1994)(holding district court erred by failing to consider the implications of Austrian law).

Although matters of law are generally inappropriate subjects for expert testimony, the Ninth Circuit recognizes that there may be "instances in rare, highly complex and technical matters where a trial judge utilizing limited and controlled mechanisms, under the matter of trial management, permits some testimony seemingly at variance with the general rule." *Florex v. Arizona,* 516 F.3d 1140, 1166 (9th Cir. 2008), *citing Nieves-Villanueva v. Soto-Rivera,* 133 F.3d 92, 101 (1st Cir. 1997). In *Flores,* the Ninth Circuit found that expert testimony may be helpful especially in a bench trial "where there was no danger that a jury might give too much credence to a legal expert." Moreover, the Ninth Circuit has held that "in considering the admissibility of

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"The Questions Presented."

testimony based on some 'other specialized knowledge,' Rule 702 generally is construed liberally." *U.S. v. Hankey,* 203 F.3d 1160, 1168 (9th Cir. ), *cert. denied,* 530 U.S. 1268 (2000). Furthermore, the Ninth Circuit and other circuits have affirmed trial court decisions to allow experts to refer to terminology from applicable law in expressing their opinions. *Nationwide v. Cass Information Systems, Inc.,* 523 F.3d 1051 (9th Cir. 2008).

Because resolving questions of law is the distinct and exclusive province of this Court, Plaintiff respectfully submits Mr. Connell's expert opinion to assist this Court in determining the laws of Mexico in applying those laws to the facts in this case.

RESPECTFULLY SUBMITTED this 9th day of June, 2011.

WILLIAM A. COHAN, P.C.

By: *s/ William A. Cohan*
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Attorney for Plaintiff Rothwell, Ltd.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of June, 2011, I did cause the foregoing Request for Judicial Notice by Plaintiff Rothwell, Ltd. Re: Mexican property law and Expert Report to be served via the ECF system on the following:

AUSA Valerie Makarewicz, Esq., E-Mail: valerie.makarewicz@usdoj.gov
AUSA Darwin Thomas, Esq., E-Mail: darwin.thomas@usdoj.gov

By: *s/ Alicia Cisneroz*
Alicia Cisneroz, Legal Assistant

Connell &Associates
Mexican Attorneys & Consultants

March 8th, 2011.

William A. Cohan
PRESENT

**SUBJECT:** Expert Witness Report on Mexican Law per letter of William A. Cohan dated February 11, 2011

David William Connell, licensed to practice law in the Country of Mexico (attached is copy of my license number 2540008 granted before the Secretary of Education of Mexico on September, 3rd 1997), currently active in the profession and the managing partner of Connell & Associates with offices in Mexico City, Puerto Vallarta, Jalisco and Ixtapa/Zihuatanejo, Guerrero (see web page www.mexicolaw.com.mx) Our firm principally deals in real estate, development, corporate law and dispute resolution in coastal areas and the advising of foreigners in personal and business dealings in Mexico. For a complete listing of the types of services we provide, partners of the firm, resumes, articles and other publications, seminars and conferences given by our firm, our web page should be consulted. For confirmation of publications of articles, seminars and conferences given, the sources or sponsors of those publication and events can be contacted for verification. I have attached my curriculum vitae to this report.

I am also a licensee supreme court certified expert witness translator for the Supreme Court of the State of Guerrero Mexico (attached is a copy of such license).

I have been asked to give an opinion concerning (1) nature and type of Casa Blanca's corporation (Casa Blanca de Punta Mita, S.A. de C.V.); (2) nature and extent of Casa Blanca's legal and beneficial interests in lots 13 and 14 and improvements thereon; (3) nature and extent of the legal and beneficial interests (if any) of all the other parties identified in the William A. Cohan letter of February 11, 2011 in Casa Blanca (and taking into consideration certain assumptions) ; (4) nature and extent of the legal and beneficial interests (if any) of all the other parties identified in the William A. Cohan letter of February 11, 2011 in lots 13 and 14 and the improvements thereon (and taking into considerations certain assumptions); and (5) the sources I rely upon for my conclusions.

Prior to going through the 5 points mentioned in the paragraph above, it is important to establish that this study will be done based upon the common method of studying a legal question from a position of Mexican law and its application. The manner or approach of this study may differ from that of the approach or manner used in the United States of America due to the principal difference in the two legal systems, this being the United States of America "common law" vs. United States of Mexico "civil law" approach. This notation is of fundamental importance as a Mexican attorney will study the law from a position of hierarchy of law, starting with Mexico's Constitution, the Codes, the Law and then Precedent, Regulations, Norms and legal doctrine.



EXHIBIT
159
10-cv-00479-RGK-FFM

The following is an article that briefly describes this difference of the two legal systems.

## *"MEXICO'S CIVIL LAW SYSTEM COMPARED TO THE U.S. COMMON LAW SYSTEM*

*To better understand the Mexican legal system, it is useful to compare it to the U.S. legal system. A fundamental difference between the two legal systems is that Mexico is a so called "civil law" country while the U.S. is a "common law" country.*

*The U.S. common law system is based on the case law and statutory law of England and the American colonies before the American Revolution. As the name implies, the traditional common law system emphasizes case law, customs and usage rather than legislative enactments. In contrast, Mexico's civil law system is derived primarily from Roman law as set forth in the compilation of codes and statutes of the Emperor Justinian, called Corpus Juris Civilis, and later refined in the French or Napoleonic Code of 1804. Interestingly, the development of Mexican commercial law drew heavily on Italian law. Mexico's legal system is also influenced by colonial law (the Spanish and "Indian" law of Spain's colonization in the areas that became Mexico and other present day Latin American countries), which was a highly formal body of law, including specific collections of not only laws but customs or accepted legal practices, that required the use of intricate regulations and elaborate writings associated with every important act of one's life, such as birth or marriage, and canon law, or religious law, issued by the Catholic Church. This distinction between two systems based on their respective origins, along with the unique traditions and practices stemming from these different origins, is today the clearest and most important distinction.*

*For decades, another important distinction between Mexico's civil law system and U.S. law was the codification of Mexican law, in other words, Mexico's adoption and use of codes (like the Civil Code and Commercial Code). Codification, however, is no longer a significant distinction between the two legal systems. Indeed, the U.S. has enacted several federal codes such as the Tax, Bankruptcy and Immigration Codes, and collections of federal criminal statutes and civil and criminal procedure. Further, virtually every U.S. state has adopted some version of the Uniform Commercial Code. Also, most states have enacted codes covering such areas as Property, Probate, Tax, Family, Education, Government, Health and Safety, Penal matters, Insurance, and Elections.*

*Another traditional distinction between the two systems which has not declined in significance over the years is the importance of and reliance on case law precedent (a principle known as stare decisis) in the U.S. at both state and federal levels, compared with the sparse use of the case law in Mexico. In the U.S. even one case can establish a legal principle that judges will follow in subsequent, similar cases, especially where there is no applicable statute or conflicting precedent on point. State and federal judicial opinions are widely published and circulated. Indeed, so called case reporters constitute the bulk of law books found in U.S. law libraries.*

*Notwithstanding this distinction, case law in Mexico should not be ignored. Certain judgments, called educators, of the federal courts including the Mexican Supreme Court and the circuit courts, and, at the state level, judgments issued at the appellate level (Tribunal Superior de Justicia), have persuasive value and are published although they are not widely circulated.*

*In Mexican administrative law, such as taxation, labor and banking and financial service law, binding rulings and regulations are frequently issued by the corresponding regulatory agencies. These rulings and regulations have the effect of binding case law. Because of its dramatic growth and increasing importance, the dynamic and diverse body of Mexican administrative law is slowly overtaking the more staid institutions of Mexico's traditional civil law system.*

*Also, binding case law precedents not unlike common law precedents do exist in Mexico. These are called jurisprudencia, are published from time to time and are supplemented through restatements, or summaries of what the law is and how it has changed. To qualify as a jurisprudencia definida, the legal principle set forth in a case must interpret Mexican law under a Writ of Amparo, which is a summary proceeding that serves to guarantee constitutional rights. This relevant legal issue must also be decided the same way in 5 consecutive cases by majority vote of the judges and without any inconsistent ruling by the deciding court or the Supreme Court. Such rulings are binding only on equal or lower courts and administrative courts, not on executive administrative agencies. The concept of jurisprudencia has been expanded broadly with the increased use and number of administrative courts in Mexico.*

*Compilations of administrative rules and regulations can combine to create a binding effect within the different categories of administrative law. There are certain limitations on establishing such binding precedents and regulations, because under Mexican law judgments, regulations ruling and administrative orders must be issued in accordance with the underlying statute. However, as a practical matter, the volume of these extra legislative decisions and rules is growing so rapidly that statutory law in Mexico now covers only the most basic and predictable cases and in most situations, one must look beyond the statute for guidance.*

*Each legal system has strengths and weaknesses. Whereas in the U.S. when law is declared unconstitutional its unconstitutionality is usually applied universally, in Mexico, for the reasons stated above, the law is unconstitutional only for the party which filed the amparo case. Others who wish to challenge the law must file their own cases. Many business people consider this requirement inefficient and burdensome, although as a practical matter, most people doing business in Mexico do not engage in this type of litigation.*

*In the opinion of the authors, one advantage to the Mexican legal system is that the full body of Mexican law in a particular area, for example labor law or contract law, is more readily ascertainable and definable in Mexico than in the U.S. In the U.S.*

*lawyers and business people must supplement what a statute says by poring over numerous cases interpreting the statute under myriad fact situations. In Mexico, one simply studies the applicable legal provisions and court decisions limited to a very specific area, and makes the best possible argument given the facts and policy concerns. Further, most new law not found in the standard Mexican codes (Civil, Commercial, Tax, Labor, among others) are published as they are enacted in the Diario Oficial, the Official Gazette of the Federation. Also, in the past, most of the important laws in Mexico have been federal, not state, but Mexico is changing. Mexican states are growing more independent from a traditional centralized Mexico, and administrative law has experienced unprecedented growth on the state level.*

*Additionally, although each state has adopted codes, in the civil areas (not necessarily in the administrative areas) the state codes virtually mirror the codes of the Federal District (D.F.). Conversely, immigration, and environmental laws are the state laws, although recent decades have seen a creeping tendency to Federalize U.S. law. Another advantage to Mexico's civil law system is that in Mexico, legal procedure is not as important as in the U.S. courts, although in certain types of Mexican proceedings there are strict procedural rules which cannot be ignored.*

*One should remember, however, that just because Mexican law is less voluminous and in some ways more manageable than U.S. law does not mean that the outcome of its application is always predictable. Just as in the U.S., Mexican judges and regulatory agencies in the administrative areas do exercise their discretion in applying the law to a case, and because they are not usually hampered by precedent as are judges in the U.S., decisions can vary as Mexican judges must find their own interpretation of the law to the facts."*

"Mexico Legal System Overview" http://www.mexonline.com/lawreview.htm

This study will be conducted as an expert opinion on the application of Mexican law to the questions at hand, and which are the following.

**(1) Nature and type of Casa Blanca's corporation.**

1.- Casa Blanca de Punta Mita, S.A. de C.V. (CBPM) is an independent and distinct entity from the identity of the shareholder. CBPM is a properly formed Mexican corporation of shares (Sociedad Anonima de Capital Variable) as set in Public policy number 582, passed before the faith of Commercial Notary number 38 of the State of Jalisco, Mr. Eduardo de Sal Gongora on the 12th of March 2002 and registered in the public commercial registry of Guadalajara Jalisco on the 15th of May 2002 under commercial file 14393-1.

The founding shareholders set up CBPM as an "S.A. de C.V." or "Sociedad Anonima de Capital Variable", which is the most common form of limited liability commercial entities used in Mexico and regulated in accordance with Mexico's General Law of Commercial Entities (Ley General de Sociedades Mercantiles). It must be noted that commercial law in Mexico is Federal (and not State by State) and therefore this Federal Law applies to all commercial entities within the territory of Mexico. The General Law of Commercial Entities establishes a general premise that all commercial entities set up in accordance with this law (including the S.A. de C.V.) and that are registered in the Public Commercial Registries are entities that are completely independent and distinct from their shareholders.

This general premise of commercial entities being "distinct" from their shareholders is set at the very beginning of the General Law of Commercial Entities, in Article 2, which states:

***"Article 2.- The commercial entities registered in the Public Commercial Registry, have a distinct personality from that of their shareholders."***

This premise of commercial entities being "distinct" and completely independent from their shareholders is clearly set in Mexican law.

2.- Limited Liability nature of CBPM.- In accordance with Article 87 of the General Law of Commercial Entities, the "S.A. de C.V." is an entity comprised of shareholders whose liability is limited to the amount of capital invested. Article 87 establishes:

***"Article 87.- A "Sociedad Anonima" is that which exists under a denomination and is comprised exclusively of shareholders whose obligation is limited to the payment of their shares."***

3.- Conclusion.- The nature and type of Casa Blanca de Punta Mita, S.A. de C.V. is that of a limited liability corporation of shares or what is known and regulated in Mexico as an "S.A. de C.V.". This entity was properly set up and recorded in the public commercial registry in accordance with Mexican law, and therefore mandated to be a distinct and independent entity from that of its shareholders. In coming to this conclusion we have reviewed the document of incorporation of such entity, the Public Commercial Registry, the Constitution of Mexico, the Commercial Code of Mexico (federal) and the General Law of Commercial Entities of Mexico, as well as the applicable rules to such law.

**(2) Nature and extent of the legal and beneficial interests in lots 13 and 14 and improvements thereon:**

In accordance with the Civil Code for the State of Nayarit, title to property is transferred by means of a public deed or "escritura publica" and such deed must be registered in the Public Property Registry that corresponds to the location of the property in question. These provisions of law are set forth in the following Articles of the Civil Code of the State of Nayarit:

*"Article 14.- Real property situated in the State and the moveable property located on such real property will be governed by the dispositions of this code."*

*"Article 1689.- The sale of real property, regardless of its value, must be done via a public deed."*

*CHAPTER II – Of titles subject to registry and the legal effect of registry.*
*Article 2373.- They will be registered in the Registry (Public Property Registry)*
*I.- The titles for whatever means acquired, transferred, modified, encumbered or extinguished the right of ownership, the possession and all other real property rights to real property..."*

**Regarding lot 13B,** we were provided with a copy of the "escritura publica" or public deed to such lot 13B (exhibit CB00176-00195). This public deed is recorded as deed number 8,427 dated the 12th of September 2005, passed before the faith of notary public number 4 of the State of Nayarit, Mr. Jorge Rogelio Careaga Perez. This public deed states that CBPM is the owner of lot 13B with an area of 6,194.65 square meters and located in the subdivision of "Ranchos Punta Mita", in the Municipality of Bahia de Banderas, State of Nayarit Mexico. We verified that the Public Property Registry that corresponds to such property shows 13B to be presently (as of March 1st 2011) in the name of CBPM.

Conclusion regarding nature and extent of the legal and beneficial interest in lot 13B.- In accordance with the Constitution of the State of Nayarit, the Civil Code of the State of Nayarit, the Law of Notaries of the State of Nayarit, as well as the regulations pertaining to such codes and rules, the legally recognized owner of lot 13B herein mentioned is CBPM.

**Regarding lot 14,** we were provided with a copy of a private purchase agreement (exhibits R00416 to R00477) between Cantiles de Mita, S.A. de C.V. (Cantiles) and CBPM regarding the sale of the real property known as lot 14 of the subdivision of "Ranchos Punta Mita", in the Municipality of Bahia de Banderas, State of Nayarit Mexico with an area of 7,769.64 square meters. We were not provided with an "escritura publica" or public deed that was registered in the Public Property Registry regarding this transaction. However, from the reference in the mentioned private purchase agreement, we were provided with sufficient registry information to determine the location of the deed of this lot in the Public Registry. On the 24th of February 2011, and in accordance with Article 49 of the Law of "Catastro" and Registry of the State of Nayarit, Articles 1, 89 and 100 of the Rules of the Public Property and Commercial Registry, the Head of the Office of Public Property and

Commercial Registry of Bucerias, State of Nayarit issued a "CERTIFICATE" of the registry information found and pertaining to lot 14 here above mentioned. Attached to this opinion is a scanned copy of the original "CERTIFICATE" and which clearly shows that as of the date of its issuance of such "CERTIFICATE", the owner of such property before all third parties is "CLUB DE YATES COSTA BANDERAS, S.A. DE C.V."

While CBPM does have the legal ability to file an action to force the compliance of the private purchase agreement of lot 14 in order to be put into a "public deed" to meet the proper legal "form" or formality, until such time as this formality has been reached, it cannot be inferred that CBPM is the legal owner of lot 14. The Civil Code of the State of Nayarit is very clear on this point, which is demonstrated in the following Articles of such Code.

*"Article 1168.- A contract can be invalidated: I. For the incapacity of the parties or one of them. II. For vices in consent; III. Because its object or motives or finality are illegal; IV.* ***Because the consent was not manifested in the form established by the law."*** *(emphasis added)*

*"Article 1169.- Contracts are perfected with pure consent* ***except those that must be set in a form established by the law...."*** *(emphasis added)*

*"Article 1205.- In civil contracts each party will be obligated in the manner and terms in which they wanted to be obligated,* ***without the validity of the agreement requiring determined formalities, except in those cases expressly designated by the law."(emphasis added)***

*"Article 1206.- When the law requires a determined form for a contract, until this form is taken it will not be valid, unless there is a disposition that contradicts this; but if the will of the parties to enter into such agreement is faithfully set, either of the parties can require that the contract is given the legal form."*

*"Article 1605.- When the fault of form produces the nullity of an act, if the will of the parties has undoubtedly remained constant, any of the interested parties can require that the act is given the form set forth in the law."*

*"Article 1620.- If the promissory refuses to sign the documents necessary to give legal form to a contract agreed to, in their rebellion it will be signed by a judge,...."*

*"CHAPTER VIII*
*OF THE FORM OF THE CONTRACT OF PURCHASE AND SALE*
*Article 1688.- The purchase and sale contract does not require any special formality in order to be valid, unless it is regarding real property."*

*"Article, 1689.- The sale of real property, whatever be its value, must be done in a public deed."*

Conclusion regarding nature and extent of the legal and beneficial interest in lot 14.- In accordance with the Constitution of the State of Nayarit, the Civil Code of the State of Nayarit, the Law of Notaries of the State of Nayarit, the Law of "Catastro" and Registry of the State of Nayarit as well as the regulations pertaining to such codes, laws and rules, the legally recognized owner of lot 14 before third parties is CLUB DE YATES COSTA BANDERAS, S.A. DE C.V.. The private purchase agreement herein referred is not contained in a public deed and therefore does not meet the legal form the law of the State of Nayarit requires in order to be considered valid. Currently a defect exists CBPM's interest with respect to lot 14 that cannot be resolved without further legal action.

**(3) Nature and extent of the legal and beneficial interests (if any) of all the other parties identified in the William A. Cohan letter of February 11, 2011 in Casa Blanca;**

Per the letter of Mr. Cohan dated the 11th of February 2011, the following parties (other than CBPM) were identified:

a) Rothwell Ltd. (Cayman Island corporation)
b) The Francis Trust Indenture (Turks & Caicos discretionary trust)
c) Island Films Ltd (Turks and Caicos corporation)
d) Summerland Holdings Ltd (Turks and Caicos corporation)
e) Joseph R. Francis
f) The Francis Trust
g) Sands Media Inc. (US Corporation)
h) Mantra Films Inc (US Corporation)

As stated in point (1) above, among the documents we were provided with was a copy of the "escritura constitutive" or public deed of incorporation of CBPM (exhibit CB00107-00175) set forth in Public policy number 582, passed before the faith of Commercial Notary number 38 of the State of Jalisco, Mr. Eduardo de Sal Gongora on the 12th of March 2002 and registered in the public commercial registry of Guadalajara Jalisco on the 15th of May 2002 under commercial file 14393-1. Per this public deed of incorporation and in accordance with Articles 6 and 91 of the General Law of Commercial Entities, the only founding shareholders of CBPM were:

a) "Island Films Inc." (sic) with 25,000 shares, and
b) "Summer Land Holdings, Limeted" (sic) with 25,000 shares.

Articles 128 and 129 of the General Law of Commercial Entities establish:

*"Article 128.- The "sociedades anonimas" (coporations of shares) will have a registry of shares that contains:*

*I.- The name, nationality and address of the shareholder, and the indication of the shares that pertain to such shareholder, expressing the number, series, class and other particulars;*
*II.- The indication of the payments made;*
***III.- The transfers that are made in the terms set forth in Article 129."*** *(emphasis added)*

*"Article 129.- The corporation will consider as owner of the shares the person who appears registered as such in the registry referred to in the article above. For this case, the corporation must register in such registry, upon petition of any title holder, the transfers that are made."*

We were not provided with the book of registry of shareholders of CBPM to verify if any transfers of shares has or has not taken place since the moment of incorporation.

We were not provided with any accounting records of CBPM or any agreement the shareholders or corporation may have signed with third parties to determine if CBPM had or has currently on its books any agreements concerning loans, capital contributions or other agreements that could affect the interest of the shareholders in CBPM. However, we were told to assume the following:

1. Island Films, Ltd. and Summerland Holdings, Ltd., Turks & Caicos Islands corporations are the sole shareholders of CBPM
2. Rothwell, Ltd., a Cayman Islands Corporation, contributed the funds to purchase lots 13B and 14, directly to the sellers of Lots 13B and 14, without any agreement to retain any interest or rights in the funds contributed or real property, nor as a loan to CBPM;
3. The Francis Trust, a Turks & Caicos Islands trust, is the sole shareholder of Rothwell Ltd., Summerland Holdings Ltd and Island Films Ltd.;
4. Sands Media Inc., and Mantra Films Inc., (U.S. corporations), contributed the funds to develop and improve lots 13B and 14, by directly paying the building contractor, without any agreement to retain any interest or rights to the funds contributed or the real property, nor as a loan to CBPM; and
5. The sole shareholder of Sands Media and Mantra Films is Joseph R. Francis, the settler of The Francis Trust.

**Conclusion to the nature and extent of the legal and beneficial interests (if any) of all the other parties identified in the William A. Cohan letter of February 11, 2011 in Casa Blanca.** Considering the documents we were provided with, the assumptions herein made, as well as those conclusions reached in point (1) herein above, we conclude that unless a transfer of shares has taken place by the initial founding shareholders, the only existing shareholders of CBPM are Island Films Ltd. and Summerland Holdings Ltd., in the amounts and percentages set forth in such document of incorporation. None of the other parties mentioned in the William A. Cohan letter of February 11, 2011 have a beneficial interest in CBPM or are considered shareholders of CBPM. This conclusion was based on the

Constitution of Mexico, the Commercial Code of Mexico, the General Law of Commercial Entities, the rules applying to such law, as well as the documents we were provided.

**(4) Nature and extent of the legal and beneficial interests (if any) of all the other parties identified in the William A. Cohan letter of February 11, 2011 in lots 13 and 14 and the improvements thereon;**

Per the letter of Mr. Cohan dated the 11th of February 2011, the following parties (other than CBPM) were identified:

i) Rothwell Ltd. (Cayman Island corporation)
j) The Francis Trust Indenture (Turks & Caicos discretionary trust)
k) Island Films Ltd (Turks and Caicos corporation)
l) Summerland Holdings Ltd (Turks and Caicos corporation)
m) Joseph R. Francis
n) The Francis Trust
o) Sands Media Inc. (US Corporation)
p) Mantra Films Inc (US Corporation)

As stated in point (1) above, we were provided with a copy of the "escritura constitutive" or public deed of incorporation of CBPM (exhibit CB00107-00175) set forth in Public policy number 582, passed before the faith of Commercial Notary number 38 of the State of Jalisco, Mr. Eduardo de Sal Gongora on the 12th of March 2002 and registered in the public commercial registry of Guadalajara Jalisco on the 15th of May 2002 under commercial file 14393-1. Per this public deed of incorporation and in accordance with Articles 6 and 91 of the General Law of Commercial Entities, the only founding shareholders of CBPM were:

c) "Island Films Inc." (sic) with 25,000 shares, and
d) "Summer Land Holdings, Limeted" (sic) with 25,000 shares.

Articles 128 and 129 of the General Law of Commercial Entities establish:

*"Article 128.- The "sociedades anonimas" (coporations of shares) will have a registry of shares that contains:*
*I.- The name, nationality and address of the shareholder, and the indication of the shares that pertain to such shareholder, expressing the number, series, class and other particulars;*
*II.- The indication of the payments made;*
***III.- The transfers that are made in the terms set forth in Article 129.*** *" (emphasis added)*

*"Article 129.- The corporation will consider as owner of the shares the person who appears registered as such in the registry referred to in the article above. For this case, the corporation must register in such registry, upon petition of any title holder, the transfers that are made."*

We were not provided with the book of registry of shareholders of CBPM to verify if any transfers of shares has or has not taken place since the moment of incorporation.

We were not provided with any accounting records of CBPM or any agreement the shareholders or corporation may have signed with third parties to determine if CBPM had or has currently on its books any agreements concerning loans, capital contributions or other agreements that could affect the interest of the shareholders on CBPM. However, we were told to assume the following:

1.- Island Films, Ltd. and Summerland Holdings, Ltd., Turks & Caicos Islands corporations are the sole shareholders of CBPM
2.- Rothwell, Ltd., a Cayman Islands Corporation, contributed the funds to purchase lots 13B and 14, directly to the sellers of Lots 13B and 14, without any agreement to retain any interest or rights in the funds contributed or real property, nor as a loan to CBPM;
3.- The Francis Trust, a Turks & Caicos Islands trust, is the sole shareholder of Rothwell Ltd., Summerland Holdings Ltd and Island Films, Ltd.;
4.- Sands Media Inc., and Mantra Films Inc., (U.S. corporations), contributed the funds to develop and improve lots 13B and 14, by directly paying the building contractor, without any agreement to retain any interest or rights to the funds contributed or the real property, nor as a loan to CBPM; and
5.- The sole shareholder of Sands Media and Mantra Films is Joseph R. Francis, the settler of The Francis Trust.

**Conclusion to the nature and extent of the legal and beneficial interests (if any) of all the other parties identified in the William A. Cohan letter of February 11, 2011 in lots 13B and 14 and the improvements thereon.** Considering the documents we were provided with, the assumptions herein made, as well as those conclusions reached in points (1) and (2) above, and based on the Constitution of Mexico of the State of Nayarit, the Civil Code of the State of Nayarit, the rules applying to such code, we conclude that none of the other parties identified in the William A. Cohan letter dated February 11, 2011 have a legal interest in lot 13B. We further conclude that CLUB DE YATES COSTA BANDERAS, S.A. DE C.V. is the legal owner of lot 14, however we were not provided with any documentation or assumptions regarding CLUB DE YATES COSTA BANDERAS, S.A. DE C.V. and therefore can only assume that the only entity with a legal or beneficial interest in such lot is CLUB DE YATES COSTA BANDERAS, S.A. DE C.V.. Currently a defect exists CBPM's interest with respect to lot 14 that cannot be resolved without further legal action.

**(5) The source I rely upon for my conclusions.** The sources I relied upon for making my conclusions were those documents provided to me, the assumptions made herein, the information reviewed in

Connell &Associates
Mexican Attorneys & Consultants

the Public Property Registry and the Public Commercial Registry as well as those dispositions contained in the Constitution of Mexico and the Constitution of the State of Nayarit as well as those codes, laws, rules and norms mentioned in this opinion.

Please contact me if you have any question or comment in regards to this opinion. All translations of Codes and Laws were performed by me.

Sincerely,

David W. Connell

Nayarit Gobierno del Estado

Registro Público de la Propiedad Nayarit

---- EL CIUDADANO LICENCIADO ALVARO ERNESTO VIDAL GUTIERREZ, JEFE DE LA OFICINA DEL REGISTRO PUBLICO DE LA PROPIEDAD Y DEL COMERCIO DE BUCERIAS, NAYARIT ----------

C E R T I F I C A:

--- Con Fundamento en el artículo 49 de la Ley Catastral y Registral, 1, 98, 100, del Reglamento del Registro Público de la Propiedad y del Comercio y el artículo 14 fracción XXII de la Ley de Ingresos para el Estado de Nayarit, que revisados los Archivos registrales de esta oficina SI SE ENCONTRO INSCRITO, el inmueble que a continuación se identifica: ----------

= = = "Lote numero 14 que se localiza en el nivel terreno natural de la subdivisión denominada Ranchos Punta Mita, ubicado en el Municipio de Bahía de Banderas, en el Estado de Nayarit, con una superficie de 7,769.64 M2. (Siete Mil Setecientos Sesenta y Nueve Punto Sesenta y Cuatro Metros Cuadrados)" ==========

= = = "EL inmueble descrito se encuentra registrado actualmente mediante Póliza numero 447 de Corredor Publico numero 57 de D.F. México, la cual contiene Aportación a los Derechos Fideicomisarios quedando a favor de: CLUB DE YATES COSTA BANDERAS, S.A. DE C.V. Inscrito bajo la partida 37, Libro 113, de la Sección I, Serie "A"----------

El inmueble antes descrito reporta los siguientes antecedentes:

= = = Con fecha 6 de Septiembre de 1991, Mediante escritura publica número 12555, pasada ante la fe del Notario publico número 13 de Tepic, Nayarit, se constituyó sobre el predio denominado "El Anclote", con superficie de 123-95-87 hectáreas, contrato de Fideicomiso y Garantía, celebrado por el FIDEICOMISO BAHIA DE BANDERAS, a través de su fiduciaria especial BANCO NACIONAL DE OBRAS Y SERVICIOS PUBLICOS, S.N.C., como Fideicomitente y Fideicomisario en primer lugar, CLUB DE YATES COSTA BANDERAS, S. A. DE C. V. como Fideicomitente y Fideicomisaria en Segundo Lugar y BANCA SERFIN, S.A. INSTITUCION DE BANCA MULTIPLE, GRUPO FINANCIERO SERFIN, DIVISIÓN FIDUCIARIA como Fiduciario, registrado bajo partida número 29, del Tomo I, Sección I, serie "A", a fojas 40-41. ------

= = = Posteriormente con fecha 12 de Junio de 1992, se registró escritura publica número 18288, pasada ante la fe del Notario publico número 42, de Guadalajara, Jalisco, que contiene convenio Modificatorio al Fideicomiso donde

Nayarit
Gobierno del Estado

Registro Público de la Propiedad
Nayarit

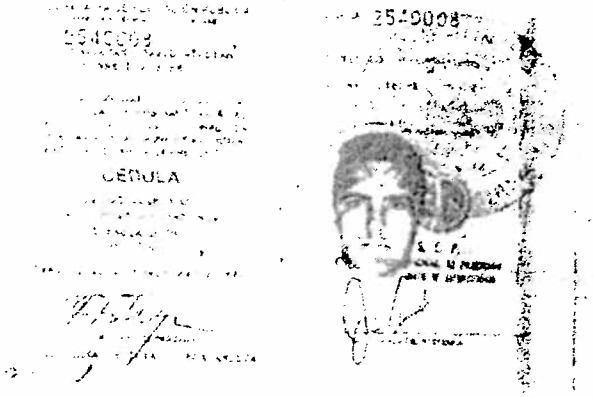
a partir de este las partes tienen el siguiente carácter: FIDEICOMISO BAHIA DE BANDERAS, a través de su fiduciaria especial BANCO NACIONAL DE OBRAS Y SERVICIOS PUBLICOS, S.N.C., como Fideicomitente, BANCA SERFIN, S.A. INSTITUCION DE BANCA MULTIPLE, GRUPO FINANCIERO SERFIN, DIVISIÓN FIDUCIARIA como Fiduciario. y CLUB DE YATES, S. A. DE C. V. como Fideicomisario, registrado bajo partida número 154, del Tomo I, Sección I, serie "A", a fojas 200-203 - - - - - - - - - - - - - - - - - - - - - - - - -

= = = "Con fecha de Mayo de 1999, se registro esc. publica numero 3,524 de Notario numero 9 de Tepic, Nayarit; la cual contiene Modificación de las Cláusulas Segunda y Tercera respecto de la superficie, medidas y linderos , quedando registrado bajo partida numero 45, Libro 44, Sección I, Serie "A". ===

= = = "Con fecha 2 de Junio del 2001, se registro escritura publica numero 5,233 de Notario Publico numero 10 de Nuevo Vallarta, Nayarit, la cual contiene subdivisión de Lotes denominándose Ranchos Punta Mita, quedando registrado bajo partida numero 6, Libro 75, Sección I, Serie "A". ============

= = = Se expide la presente a solicitud del interesado el 24 de Febrero del 2011.- En Bucerias, Municipio de Bahia de Banderas, Nayarit.- Se hizo el pago.

EL JEFE DE LA OFICINA.
LIC. ALVARO ERNESTO VIDAL GUTIERREZ.


CEDULA

CARLOS ALEJANDRO DURAN LOERA, TITULAR DE LA NOTARIA ONCE DEL DISTRITO FEDERAL, C E R T I F I C O : QUE LA COPIA FOTOSTATICA QUE ANTECEDE ES UNA REPRODUCCION FIEL Y EXACTA DE SU ORIGINAL, A QUE ME REMITO Y TENGO A LA VISTA. DEL PRESENTE COTEJO SE TOMO NOTA EN EL ASIENTO NUMERO NOVECIENTOS SESENTA Y UNO, DEL LIBRO UNO DE REGISTRO DE COTEJOS. ----- DOY FE .....

MEXICO DISTRITO FEDERAL A VEINTINUEVE DE SEPTIEMBRE DE MIL NOVECIENTOS NOVENTA Y SIETE.

CARLOS A. DURAN LOERA
NOTARIO ONCE DEL D.F.

Resume
David William Connell
D.O.B. March 16th, 1970

Schooling:

I.- San Dieguito High School, Encinitas California. 1984-1988.

II.- San Diego State University 1989-1992. Major in Spanish. Minor in Physics.

III.- Universidad Tecnologica de Mexico in Mexico City. Law School 1992 – 1995. Graduated with honors.

IV.- University Tecnologica de Mexico. Thesis on Damages, A comparative study of the reparation of damages in the United States, Mexico and France. Thesis defense in Mexico City in March of 1997. Received honorable mentioned. Received license to practice law in Mexico number 2540008, granted by the Ministry of Education in September of 1997.

Experience:

I.- Martinez del Campo del Rio.- 1992-1996. Firm specialized in Corporate Law, Foreign Investment Law, Trademark Law, Tax and Litigation. Had the opportunity to work directly with Carlos Del Rio, ex-Chef Justice of Mexico's Supreme Court. With Mr. del Rio I assisted in the study and preparation of expert testimony for cases in the United States where Mr. del Rio was asked to act as an expert witness on matters of Mexican law. This firm handled many high-end corporate clients including McDonald's Mexico, Bacardi, Chrysler and Conauto.

II.- Peyton, Muriel & Takimoto.- 1996-1998. Began working with firm and was put in charge of establishing a branch office in Ixtapa/Zihuatanejo. In 1998 the firm's name was change to Peyton, Amador & Connell and I was put in charge with opening the Puerto Vallarta branch of the firm and managing both the Ixtapa/Zihuatanejo and Puerto Vallarta offices. Principal work was done in Foreign Investment Law, Real Estate Law, Corporate Law, Development Law, Tax Law and Agrarian Law.

III.- Connell & Associates.- 2000-Present. Creation of Connell & Associates. Currently there are 4 partners in the firm, with over 40 employees and offices in Mexico City, Puerto Vallarta and Ixtapa/Zihuatanejo. The firm specializes in Real Estate Law, Corporate Law, Development Law, Tax Law, Agrarian Law and Commercial Litigation.

IV.- Prudential California Realty-Ixtapa/Zihuatanejo division.- Broker/Owner.- 2007-Present. In 2004 opened and directed a real estate sales company in Zihuatanejo called "The Property Shop". Negotiated with Prudential to open a Zihuatanejo/Ixtapa branch of Prudential which happened in 2007.

V.- Member of Board of Directors of: Hotel Des Artist (Punta Mita, Nayarit), Los Organos (Ixtapa/Zihuatanejo, Guerrero), GDM, S.A. de C.V. (Ixtapa, Guerrero),

Altpromex, S.A. de C.V. (Ixtapa, Guerrero), Escollera de Mita, S. de R.L. de C.V. (Punta Mita, Nayarit).

VI.- General Counsel to various Condominiums including, Porta Fortuna (Punta Mita, Nayarit), Hotel des Artist (Punta Mita, Nayarit), Las Olas (San Pancho, Nayarit), Pontoquito (Costa Banderas, Nayarit), Paradise Coves (Costa Banderas, Nayarit), Cielo (Puerto Vallarta, Jalisco), Molino de Agua (Puerto Vallarta, Jalisco), Villas de la Colina (Puerto Vallarta, Jalisco), amoung others.

Publications, conferences and titles:

I.- Licensed by the Supreme Court of the State of Guerrero Mexico to give expert testimony on Spanish-English/English-Spanish translations under license number 057. 2004-pesent.

II.- Conference/class for the Nayarit and Jalisco Chapters of AMPI (Association of Real estate Professionals – equivalent to National Association of Realtors) on "Ethics and Real Estate in Mexico". March 2005. 125 attendants.

III.- Conference/class for the Nayarit and Jalisco Chapters of AMPI (Association of Real estate Professionals) on "Ejidos and their Lands". July 2005. 85 attendants

IV.- Conference for the Nayarit and Jalisco Chapters of AMPI (Association of Real estate Professionals) on "Offers and Contracts". November 2005. 110 in attendance.

V.- Conference for the Nayarit and Jalisco Chapters of AMPI (Association of Real estate Professionals) on "The Federal Maritime Zone in Mexico". March 2006 115 in attendance.

VI.- One of the 5 principal speaks at the 2006 Puerto Vallarta Real Estate Convention. Spoke on buying property in Mexico and the legal ramifications. The other 4 principal speakers included representatives for Fonatur, GE Capital, the Multiple Listing Service of Puerto Vallarta and Stewart Title Insurance Company.

VI.- Publications include:

1.- "Can I Buy Ejido Land", published in Another Day in Paradise in 2004 and Life Styles magazine in 2005..
2.- "Taking Control of Trust Fees", published 2002 Vallarta Voice.
3.- "Buying Real Estate in Boarder or Costal Areas", published 1998, 23rd edition of the Travelers Guide to Mexico.
4.- "Brief on tax law modifications and new tax rules in Mexico 2008".- Published in Vallarta Lifestyles and Another Day in paradise.
5.- "Income Tax on the Sale of Primary Residence 2009", published in Vallarta Lifestyles February 2009.
6.- "Capital Gains on the Sale of your Home", published Vallarta Life Styles March 2010.

Non-profit work and boards:

I.- Association for the Environmental Conversation of Troncones, A.C..- One of 5 founders. Also President 1998-2000 and Secretary 2001-2002.

II.- Punta Mita Foundation, A.C. (Puerto Vallarta).- Founder and general counsel to foundation. http://www.puntademitafoundation.org/ 2007 – Present

III.- PEACE, A.C. (Puerto Vallarta) Member of Board on Micro finance arm called "Se Mas" and general counsel to this non-profit. 2009 – Present.

WILLIAM A. COHAN, P.C.

ATTORNEY AT LAW

P.O. BOX 3448

RANCHO SANTA FE, CALIFORNIA 92067

TELEPHONE (858) 832-1632

WILLIAM A. COHAN

E-Mail: bill@williamacohan.com

FACSIMILE

(858) 832-1845

February 11, 2011

David W. Connell, Esq.
CONNELL & ASSOCIATES
Condominios Puesta del Sol
Frac. 2 Local 18, Marina Vallarta
Puerto Vallarta, Jal. 48355

Re: Expert Witness Report on Mexican Law
Rothwell, Ltd. v. United States
(Case No. CV-10-479-RGK (FFMx)(C.D. CA)

Dear Mr. Connell,

Please be advised that pursuant to Court ordered deadlines we are required to produce our expert witness Reports on or before March 11, 2011. We have enclosed herewith the following:

1. Retainer Fee wire transfer confirmation to ISC, Inc.'s account;

2. Retainer Agreement;

3. Client Information and Service Sheet;

4. Rothwell, Ltd.'s Complaint for Wrongful Levy against the United States;

5. Documents relating to Casa Blanca de Punta Mita, S.A. de C.V., lots 13 and 14, Bahia de Banderas, Punta Mita, Nayarit, Mexico (See attached list enclosed herewith);

6.. The Francis Trust Indenture (Turks & Caicos discretionary trust) (FT0001-00024);

7.. Island Films, Ltd. articles of incorporation, by-laws, etc. (Turks & Caicos corporation) (IF00001-44); and

8. Summerland Holdings, Ltd. articles of incorporation, by-laws, etc. (Turks & Caicos corporation (SH00001-54)

The United States government seized property located within the United States belonging to

David W. Connell, Esq.
CONNELL & ASSOCIATES

Re: Expert Witness Report on Mexican Law
*Rothwell, Ltd. v. U.S.*, (Case No. CV-10-1479-RGK (FFMx)(C.D. CA)

Page 2

Rothwell, Ltd. on the theory that Rothwell, Ltd., is the "nominee" of U.S. taxpayer Joseph R. Francis. The nominee theory is a question of United States' law as to which we are not seeking any opinion from you. However, the United States relies on certain facts (set forth below) in connection with the Mexican corporation and it's property in support of it's "nominee" theory at issue in the above referenced case. Hence, we are seeking your opinion of the legal interest created and existing under Mexican law based on the following facts to be assumed for your Report:

A: The Francis Trust, a discretionary trust created in and under the laws of the Turks and Caicos Islands, British West Indies, owns the shares of two Turks & Caicos corporations: Island Films, Ltd. and Summerland Holdings, Ltd.

B. Island Films, Ltd. and Summerland Holdings, Ltd. are the shareholders of Casa Blanca de Punta Mita, S.A. de C.V. (hereinafter "Casa Blanca").

C. U.S. taxpayer Joseph R. Francis is a contingent beneficiary of The Francis Trust, i.e. he has no enforceable right to any trust distribution, nor any interest in any asset owned by the trust, trustee(s) of which have total discretion if and when to ever make any distribution.

D. Casa Blanca purchased lot 14 in 2002 and adjoining lot 13 in 2005.

E. A Cayman Island corporation, Rothwell Ltd. (whose shares are also owned by The Francis Trust) contributed the funds to Casa Blanca to purchase adjoining lot 13. There is no loan nor other obligation to repay Rothwell, Ltd.

F. Sands Media, Inc. and Mantra Films, Inc. are two U.S. corporations, whose sole shareholder is Joseph R. Francis.

G. Sands Media and Mantra Films are in the film making and distribution industry. Sands Media and Mantra Films contributed the funds (over $5 million dollars) to develop residential lot 14. There is no loan or other obligation by Casa Blanca to repay Sands Media nor Mantra Films for those construction funds.

H. Sands Media and Mantra Films use Casa Blanca's property to produce films and/or for marketing and promoting films. Joseph Francis also occupies the property on occasions for personal use.

I. Sands Media, Mantra Films and Joseph Francis pay the monthly/yearly expenses

David W. Connell, Esq.
CONNELL & ASSOCIATES

Re: Expert Witness Report on Mexican Law
*Rothwell, Ltd. v. U.S.*, (Case No. CV-10-1479-RGK (FFMx)(C.D. CA)



to maintain the Casa Blanca property; but they do not pay rent to Casa Blanca for the use of the property.

Based on the foregoing facts, we need your written opinion based on the laws of Mexico describing the: (1) nature and type of Casa Blanca's corporation; (2) nature and extent of Casa Blanca's legal and beneficial interests in lots 13 and 14 and improvements thereon; (3) nature and extent of the legal and beneficial interests (if any) of all the other parties identified herein-above in Casa Blanca; (4) nature and extent of the legal and beneficial interests (if any) of all the other parties identified herein-above in lots 13 and 14 and the improvements thereon; and (5) the sources you rely upon for your conclusions.
Please attach your curriculum vitae to your report as we are required to provide that to the opposing party as well.

Please contact me at your earliest convenience to confirm receipt of the materials transmitted herewith and discuss your timetable and the case deadlines and details.

Respectfully,

William A. Cohan

WAC:ac

ASSUME THE FOLLOWING FACTS:

1. Island Films, Ltd. and Summerland Holdings, Ltd., Turks & Caicos Islands corporations are the sole shareholders of Casa Blanca de Punta Mita, S.A. de C.V.

2. Rothwell, Ltd., a Cayman Islands corporation, contributed the funds to purchase Casa Blanca's Lots 13 and 14, directly to the sellers of Lots 13 and 14, without any agreement to retain any interest or rights in the funds contributed or real property, nor as a loan to Casa Blanca (the Mexico corporation);

3. The Francis Trust, a Turks & Caicos Islands trust, is the sole shareholder of Rothwell, Ltd., Island Films, Ltd. And Summerland Holdings, Ltd;

4. Sands Media, Inc., and Mantra Films, Inc., U.S. corporations, contributed the funds to develop and improve Casa Blanca's Lots 13 and 14, by directly paying the building contractor, without any agreement to retain any interest or rights to the funds contributed or the real property, nor as a loan to Casa Blanca; and

5. The sole shareholder of Sands Media and Mantra Films is Joseph R. Francis, the settlor of The Francis Trust.

The Questions Presented::

Based on those facts, what if any legal interest is held by any person other than CBPM under Mexico law in CBPM and CBPM's real property?

For example,

A: What (if any) legal or equitable interest is held by Rothwell, Ltd.?

B: What (if any) legal or equitable interest is held by Sands Media, Inc. and Mantra, Films, Inc.?

C: What (if any) legal or equitable interest is held by The Francis Trust?

D: What (if any) legal or equitable interest is held by Joseph R. Francis?