

BERMUDA

COMPANIES ACT 1981

1981 : 59

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[preamble and words of enactment omitted]

PART I

INTERPRETATION AND APPLICATION

Short title and commencement

1 This Act may be cited as the Companies Act 1981.

[Commencement provisions omitted]

Interpretation

2 (1) In this Act unless the context otherwise requires—

"accurate" has the meaning given to that term in section 2 of the Beneficial Ownership Act 2025;

"adequate" has the meaning given to that term in section 2 of the Beneficial Ownership Act 2025;

"affiliated company" has the meaning given in section 86(3);

"appointed digital asset exchange"*[Repealed by 2020 : 18 s. 84]*

"appointed jurisdiction" means a jurisdiction appointed under subsection (10);

"appointed newspaper" means the Gazette or newspaper appointed by the Registrar under subsection (6);

"appointed stock exchange" means any stock exchange appointed by the Minister under subsection (9);

"arrangement" includes a reorganization of the share capital of a 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;

"attorney" means barrister and attorney;

"bearer shares" means shares that may be transferred by delivery of the warrant or certificate relating thereto;

"benefit company" has the meaning given in section 156R;

"Bermuda Constituent Entity" has the meaning given to that term in section 2 of the CIT Act;

"Bermuda Monetary Authority" means the Bermuda Monetary Authority established under the Bermuda Monetary Authority Act 1969;

"book and paper" includes minutes, financial statements, accounts, records of account, beneficial ownership register, deeds and writings;

"bye-laws" means the bye-laws of a company as originally passed or as lawfully altered from time to time;

"CIT Act" means the Corporate Income Tax Act 2023;

"CIT Agency" means the Corporate Income Tax Agency established pursuant to the Corporate Income Tax Agency Act 2024;

"civil penalty"*[Repealed by 2020 : 18 s. 84]*

"company" means a company to which this Act applies by virtue of section 4(1);

"company limited by shares" and "company limited by guarantee" have the meanings given in section 5(2)(a) and (b);

"competent regulatory authority" means any authority appointed by the Minister by notice in an appointed newspaper;

"contributory" has the meaning given in section 159;

"Court" means the Supreme Court;

"creditors' voluntary winding up" has the meaning given in section 206(4);

"current" has the meaning given to that term in section 2 of the Beneficial Ownership Act 2025;

"debenture" includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

"default fine" has the meaning given in section 280;

"director", except as provided under subsection (1A), includes—

(a) any person duly elected or appointed as a director of a company;

(b) an alternate director; and

(c) any person occupying the position of director by whatever name called;

"document" includes books and papers, notices, written requests, reports, returns, applications, instruments, registers and legal processes, including orders and summonses;

"electronic record" has the meaning given in section 2 of the Electronic Transactions Act 1999, and includes any electronic code or device necessary to decrypt or interpret the electronic record;

"exempted company" has the meaning given in section 127;

"exempted undertaking" means an exempted company, or permit company or an exempted partnership as defined in the Exempted Partnership Act 1992 or an exempted LLC as defined in section 21 of the Limited Liability Company Act 2016;

"general rules" means general rules made under section 288(2) and includes forms;

"holding company" has the meaning given in section 86(2);

"Initial Coin Offering" or "ICO"[Repealed by 2020 : 18 s. 84];

"land" in relation to land held by a company under this Act, includes land covered by water and any building erected on land and any estate, interest or right in or over any land or building, except that it does not include easements or mortgages in or over any land or building;

"local company" means any company incorporated in Bermuda other than an exempted company;

"member" has the meaning given in section 19;

"members' voluntary winding up" has the meaning described by section 201;

"memorandum" means the memorandum of association of a company, as originally delivered to the Registrar or as lawfully altered from time to time;

"minimum subscription" has the meaning given in section 28;

"Minister" means the Minister of Finance or such other Minister as may be appointed to administer this Act;

"mutual company" has the meaning given in section 152;

"non-resident insurance undertaking" has the meaning given in section 1 of the Non-Resident Insurance Undertakings Act 1967 ;

"Official Receiver" means the Official Receiver appointed under section 3 or such other person as may be performing his duties under this Act;

"officer" in relation to a body corporate, includes director and secretary;

"overseas company" means any body corporate incorporated outside Bermuda other than a non-resident insurance undertaking;

"permit" means a permit issued under section 134;

"permit company" means any company with a valid permit;

"prescribed" means prescribed by statutory instrument made under this Act;

"prospectus" means any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares or debentures in a company;

"receiver" or "manager" have the meaning given in section 272;

"register" means the register of companies maintained under section 14(1);

"Registrar" means the Registrar of Companies appointed under section 3 or such other person as may be performing his duties under this Act;

"relevant activity" has the meaning given in section 2 of the Economic Substance Act 2018.

"representative entity" means any company, partnership or LLC on any register administered by the Registrar of Companies together with the name and email address of a contact individual associated with such entity;

"share" means share in the share capital of a company and includes stock;

"statutory meeting" means the meeting required to be held under section 70;

"subsidiary company" has the meaning given in section 86;

"unlimited liability company" has the meaning given in section 5(2)(c).

(1A) No person shall, in any circumstance, be appointed to be a nominee director of a company.

(2) Wherever in this Act an obligation or duty is placed on a company or a company is authorised to do any act, then unless it is otherwise provided such obligation, duty or act may be carried out by the directors of the company, or by the director of the company, where the affairs of the company are managed by only one director.

(2A) Wherever in this Act an obligation or duty is placed on directors or directors are authorised to do any act, then unless it is otherwise provided such obligation, duty or act may be carried out by the director of the company, where the affairs of the company are managed by only one director.

(3) A person shall not be deemed within the meaning of any provision of this Act to be a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

(4) The expressions "shall be liable to a fine" or "shall be liable to imprisonment" when used in this Act shall mean "shall be guilty of a summary offence and shall be liable on conviction to a fine" or "shall be guilty of a summary offence and shall be liable on conviction to imprisonment", as the case may be, and all fines and terms of

imprisonment shall be deemed to be maximum fines or periods of imprisonment, as the case maybe.

(5) Where it is stated that a person shall be guilty of contempt of court he shall be deemed to have committed an offence under section 5 of the Administration of Justice (Contempt of Court) Act 1979 *[title 8 item 1B]*.

(6) The Registrar shall from time to time publish in the Gazette a list of newspapers appointed for the purposes of this Act.

(7) Any requirement in this Act to use the word "Limited" may be met by the use of the abbreviation "Ltd.".

(8) In this Act the expression "member" includes shareholder and the expression "shareholder" includes member.

(9) The Minister may appoint a stock exchange and shall cause the appointment to be published in an appointed newspaper.

(10) The Minister may appoint a jurisdiction and shall cause the appointment to be published in an appointed newspaper.

[Section 2 amended by 1992:51 effective 1 July 1992; by 1992:66 effective 8 August 1992; by 1993:37 effective 13 July 1993; by 1994:22 effective 13 July 1994; by 1998:35 effective 5 October 1998; "competent regulatory authority" inserted by 2003:1 s.2 effective 14 February 2003; "book and paper" amended, "document" substituted, "electronic record" inserted, by 2006:40 s.2 effective 29 December 2006; subsection (1) "director" repealed and substituted by 2011 : 43 s. 2 effective 18 December 2011; subsection (2) repealed and substituted by 2011 : 43 s. 2 effective 18 December 2011; subsection (2A) inserted by 2011 : 43 s. 2 effective 18 December 2011; subsection (1) "land" inserted by 2014 : 13 s. 2 effective 27 March 2014; subsection (1) "exempted undertaking" amended by 2016 : 40 s. 258 effective 1 October 2016; subsection (1) "book and paper" amended by 2017 : 13 s. 2(1) effective 10 March 2017; Section 2 subsection (1) definitions "book and paper" amended and "Bermuda Monetary Authority" inserted by 2017 : 41 s. 2 effective 23 March 2018; Section 2 subsection (1) definitions "appointed digital asset exchange", "civil penalty" and "Initial Coin Offering" / "ICO" inserted by 2018 : 20 s. 2 effective 9 July 2018; Section 2 subsection (9) amended by 2018 : 20 s. 2 effective 9 July 2018; Section 2 subsection (1) definition "relevant activity" inserted by 2019 : 50 s. 5 effective 24 December 2019; Section 2 subsection (1) definitions "appointed digital asset exchange", "civil penalty" and "Initial Coin Offering or ICO" repealed by s. 84 effective 6 May 2020; Section 2 subsection (9) repealed by effective 6 May 2020Section 2 amended by 1992:51 effective 1 July 1992; by 1992:66 effective 8 August 1992; by 1993:37 effective 13 July 1993; by 1994:22 effective 13 July 1994; by 1998:35 effective 5 October 1998; "competent regulatory authority" inserted by 2003:1 s.2 effective 14 February 2003; "book and paper" amended, "document" substituted, "electronic record" inserted, by 2006:40 s.2 effective 29 December 2006; subsection (1) "director" repealed and substituted by 2011 : 43 s. 2 effective 18 December 2011; subsection (2) repealed and substituted by 2011 : 43 s. 2 effective 18 December 2011; subsection (2A) inserted by 2011 : 43 s. 2 effective 18 December 2011; subsection (1) "land" inserted by 2014 : 13 s. 2 effective 27 March 2014; subsection (1) "exempted undertaking" amended by 2016 : 40 s. 258 effective 1 October 2016; subsection (1) "book and paper" amended by 2017 : 13 s. 2(1) effective 10 March 2017; Section 2 subsection (1) definitions "book and paper" amended and "Bermuda Monetary Authority" inserted by 2017 : 41 s. 2 effective 23 March 2018; Section 2 subsection (1) definitions "appointed digital asset exchange", "civil penalty" and "Initial Coin Offering" / "ICO" inserted by 2018 : 20 s. 2 effective 9 July 2018; Section 2 subsection (9) amended by 2018 : 20 s. 2 effective 9 July 2018; Section 2 subsection (1) definition "relevant activity" inserted by 2019 : 50 s. 5 effective 24 December 2019; Section 2 subsection (1) definitions "appointed digital asset exchange", "civil penalty" and "Initial Coin Offering or ICO" repealed by 2020 : 18 s. 84 effective 6 May 2020; Section 2 subsection (9) repealed by 2020 : 18 s. 84 effective 6 May 2020; Section 2 subsection (9) inserted by 2021 : 51 s. 2 effective 24 December 2021; Section 2 subsection (1) definitions "Bermuda Constituent Entity", "CIT Act", "CIT Agency" and "representative entity" inserted by 2024 : 41 s. 2 effective 28 December 2024; Section 2 subsection (1) definitions "accurate", "adequate" and current" inserted by BR 100 / 2025 para. 2 effective 3 November 2025; Section 2 subsection (1) definition "benefit company" inserted by 2025 : 21 s. 2 effective 1 December 2025; Section 2 subsection (1) definition "director" repealed and substituted, and subsection (1A) inserted by 2025 : 27 s. 2 effective 10 December 2025]

Delivery of electronic records to and from the Registrar

2A (1) The Minister may, in the rules, provide that where there is a requirement in the Act or in any statutory instrument made under the Act for a person to file any document or for the Registrar to issue any certificate or other document, such filing or issuing thereof shall be made by means of an electronic record.

(2) For the purposes of subsection (1), "to file" includes to send, forward, give, deliver, provide, deposit, furnish, issue, leave at, serve, submit, circulate, lay, make available or lodge.

(3) The rules made under subsection (1)—

(a) may provide for any other matter related to electronic records for purposes of this Act; and

(b) shall be subject to the negative resolution procedure.

[Section 2A inserted by 2006:40 s.3 effective 29 December 2006; amended by 2009:38 s.2 effective 19 July 2009; Section 2A repealed and substituted by 2020 : 52 s. 2(2) effective 31 May 2021; Section 2A amended by 2021 : 51 s. 4 effective 24 December 2021]

Delivery of electronic records in other circumstances

2AA (1) Subject to section 2A, where there is a requirement in this Act, in any statutory instrument made under this Act or in any bye-laws of a company to provide a document to a person, or for a document to accompany another document, the requirement may, unless precluded by the bye-laws of a company, be met by the delivery, or deemed delivery, of an electronic record of the document in accordance with this section.

(2) For the purposes of subsection (1), "to provide" includes to send, forward, give, deliver, submit, file, deposit, furnish, issue, leave at, serve, circulate, lay, make available or lodge.

(3) An electronic record of a document may be delivered to a person by communicating it by electronic means to the person at the address or number that has been notified by the person for the purposes of communication by electronic means.

(4) Subject to subsection (7), an electronic record of a document is deemed to have been delivered to a person if it is published on a website and the person is sent a notice which includes details of—

(a) the publication of the document on the website, the address of the website, the place on the website where the document may be found and how the document may be accessed on the website; and

(b) how the person is to notify the company that the person elects to receive the document in a physical form if the person wishes to receive the document in a physical form.

(5) If, in accordance with a notice sent to a person under subsection (4), the person elects to receive a document in a physical form, the company shall send to that person such document within seven days of receipt of that person's election.

(6) The accidental omission of a company to send a document to a person in accordance with subsection (5), or the non-receipt by the person of a document that has been duly sent to that person, does not invalidate deemed delivery of that document to that person pursuant to subsection (4).

(7) If there is a requirement that a person have access to a document for a specified period of time, the person must be notified of the publication of the document before the commencement of the period and, subject to subsection (8), the document must be published on the website throughout the whole of the period.

(8) Nothing in subsection (7) shall invalidate the deemed delivery of an electronic copy of a document under subsection (4) if—

(a) the document is published for at least part of a period; and

(b) the failure to publish it throughout the whole of the period is wholly attributable to circumstances that the person providing the document could not reasonably have been expected to prevent or avoid.

(9) Subject to any rules made under section 199, this section shall not apply to the sending or receipt of any documents to or by the Court.

(10) Sections 10 and 17 of the Electronic Transactions Act 1999 do not apply to the delivery of an electronic record in accordance with this section.

[Section 2AA inserted by 2021 : 51 s. 3 effective 24 December 2021]

Appointment of Registrar

3 There shall be appointed a Registrar of Companies and an Official Receiver both of whom shall be public officers and shall have the powers and discharge the duties conferred or imposed upon them by this Act or any other Act.

[Section 3 amended by 2017 : 14 s. 20 effective 24 March 2017]

Application

4 (1) This Act shall apply to—

(a) all companies registered under it or registered before 1 July 1983 under the Companies (Incorporation by Registration) Act 1970;

(b) all companies limited by shares incorporated by Act in Bermuda prior to or after 1 July 1983, except to such extent (if any) as may otherwise be expressly provided in the incorporating Act;

(c) all mutual companies incorporated prior to 1 July 1983 to which Part XII applies; and

(d) any overseas company so far as any provision of this Act requires it to apply.

(1A) In respect of—

(a) non-resident insurance undertakings, section 2 and Parts XIII and XIV shall apply to them except those sections in Part XIII relating exclusively to members' voluntary liquidations and for the purposes of section 2 and Parts XIII and XIV "insurance business" has the meaning assigned to it in the Non-Resident Insurance Undertakings Act 1967 ;

(b) permit companies, section 2 and Parts III, V, XI and XIII except those sections in Part XIII relating exclusively to members' voluntary liquidations shall apply to them.

(1B) Sections 99 to 101 shall apply to non-resident insurance undertakings, except that a non-resident insurance undertaking shall only be entitled to propose a scheme of arrangement with its creditors or any class of creditors, and not with its shareholders or any class of shareholders.

(2) Where the provisions of a private Act incorporating a company conflict with the provisions of this Act the provisions of the private Act shall prevail provided that—

(a) where reference is made in the private Act to any provision of an Act repealed by this Act then if there is a provision in this Act corresponding or nearly corresponding to the provision repealed then that provision shall apply;

(b) when reference is made in the private Act to any provision of an Act repealed by this Act and there is no provision in this Act corresponding or nearly corresponding to the provision repealed then that provision shall continue to have effect; and

(c) notwithstanding any provision in the private Act from 1 July 1984 Parts VI (excepting section 91), VII, VIII, XIII, XIV and XV shall apply to the company.

[Section 4 amended by 1992:51 effective 1 July 1992; Section 4 subsection (1B) inserted by 2010 : 23 s. 2 effective 29 March 2010]

Restricted business activities

4A (1) No company shall carry on any restricted business activity set out in the Ninth Schedule without the consent of the Minister.

(2) The Minister may, by order subject to the negative resolution procedure, amend the Ninth Schedule by addition, deletion or variation of any restricted business activity.

(3) An application for consent under subsection (1) shall be in such form and accompanied by such documents as the Minister may determine.

(3A) *[Repealed by 2020 : 18 s. 84]*

(3B) The Minister's consent given under subsection (1) in relation to the offering of professional services as a barrister and attorney may be given subject to such conditions regarding the registration of associates working wholly or mainly in any jurisdiction outside Bermuda as the Minister may consider appropriate to impose.

(4) Where the Minister refuses to grant his consent under subsection (1), he shall not be bound to assign any reason for his refusal and his decision shall not be subject to appeal or review in any court.

(5) *[Deleted by 2003:1]*

(6) *[Deleted by 2003:1]*

(7) Subject to subsection (8), an application for consent and any documents accompanying any such application shall be treated as confidential by the Minister and all public officers having access thereto.

(8) Subsection (7) does not preclude the disclosure of information for the purpose of enabling or assisting the Minister to exercise or perform any functions conferred upon him by this Act.

(9) Where a company carries on any restricted business activity in contravention of subsection (1), the company may, on the application of the Registrar, be wound up by the court pursuant to section 161.

(10) If a company makes default in obtaining the Minister's consent as required by subsection (1), the company and every officer of the company who is in default shall be liable to a fine of one hundred dollars for every day during which the default continues.

[Section 4A inserted by 1998:35 effective 5 October 1998; subsection (1) substituted, (5) and (6) deleted, and (9)-(10) inserted, by 2003:1 s.3 effective 14 February 2003 subject to saving in 2003:1 s.20(1); Section 4A subsection (3A) inserted by 2018 : 20 s. 3 effective 9 July 2018; Section 4A subsection (3A) repealed by 2020 : 18 s. 84 effective 6 May 2020; Section 4A subsection (3B) inserted by 2020 : 25 s. 5 effective 29 June 2020; Section 4A subsection (8) repealed and substituted by BR 100 / 2025 para. 2 effective 3 November 2025]

Restricted business activity relating to corporate land holding

4AA (1) No company shall carry on any restricted business activity relating to corporate land holding as set out in paragraph (c) of the Ninth Schedule without the consent of the Minister under section 4A, which consent shall be given subject to the provisions of this section.

(2) Subject to subsection (3), where the Minister is satisfied that an application under subsection (1) is in accordance with the policy approved by the Cabinet, he may consent to such application.

(3) The Minister's consent given under subsection (2)—

(a) may be made subject to such conditions as the Minister may consider as appropriate to impose;

(b) may be modified or the conditions applicable to the consent modified and such modification shall, where necessary, be implemented by the company within such time period as the Minister may stipulate;

(c) may be revoked where a company contravenes any condition subject to which the consent is granted, except that the Minister shall not confirm a decision to revoke his consent until he has—

(i) given the company notice in writing of his intention to revoke his consent specifying therein the grounds on which he proposes to revoke such consent; and

(ii) afforded the company an opportunity of submitting to him a written statement of its objections to the revocation of the consent.

(4) A company shall not change the business purpose for which the land is held without the Minister's previous consent, and where a company makes any such changes without the Minister's consent the Minister may, in terms of subsection (3)(c), revoke his consent given under subsection (2).

(5) Where the Minister revokes his consent under subsections (3)(c) or (4), the company affected shall divest itself of the land for which it had obtained the Minister's consent under subsection (2) within a period of three years from the date of the Minister's revocation of his consent.

(6) The policy referred to in subsection (2)—

(a) shall set out the requirements the Minister must consider before determining whether to give his consent under subsection (2); and

(b) shall be published in the Ministry website and be available for inspection at the offices of the Ministry.

[Section 4AA inserted by 2014 : 13 s. 3 effective 27 March 2014]

Prohibited business activities

4B (1) No company shall carry on any prohibited business activity set out in the Tenth Schedule.

(2) The Minister may, by order subject to the negative resolution procedure, amend the Tenth Schedule by addition, deletion or variation of any prohibited business activity.

(3) Where a company carries on any prohibited business activity in contravention of subsection (1), the company may, on the application of the Registrar, be wound up by the Court pursuant to section 161.

[Section 4B inserted by 1998:35 effective 5 October 1998]

PART II

INCORPORATION OF COMPANIES

Mode of forming a company

5 (1) Any one or more persons by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration may form a company with or without limited liability.

(2) Such a company may be—

(a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares held by them, in this Act termed "a company limited by shares";

(b) a company having the liability of its members limited by the memorandum to such an amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of it being wound up, in the Act termed "a company limited by guarantee"; or

(c) a company not having any limit on the liability of its members, in this Act termed an "unlimited liability company".

(3) A company limited by guarantee shall only be formed if—

(a) its purpose is to promote art, science, religion, charity, sport, education or any other social or useful purpose and its profits, if any, and other income is to be used in promoting its purposes and no dividends are to be paid to its members;

(b) it is a mutual company; or

(c) it is a company that has been exempted by or under an exemption order made under section 10(2) of the Trusts (Regulation of Trust Business) Act 2001.

[Section 5 amended by 1993:37 effective 13 July 1993; by 1994:22 effective 13 July 1994; subsection (3)(c) inserted by 2006:40 s.4 effective 29 December 2006]

Information regarding economic substance

5A Every company to which this Act applies shall provide to the Registrar on its application for incorporation or registration (in such form as the Registrar may determine) information as to whether or not the company proposes to carry on a relevant activity, and the type of relevant activity proposed to be carried on by the company.

[Section 5A inserted by 2019 : 50 s. 5 effective 24 December 2019]

Information on whether company is Bermuda Constituent Entity

5B Every company to which this Act applies shall provide to the Registrar on its application for incorporation or registration, in such form as the Registrar may determine, information as to whether or not the company shall, upon its incorporation or registration, be a Bermuda Constituent Entity (following commencement of the CIT Act) and, if a Bermuda Constituent Entity, details of its representative entity in Bermuda for these purposes, provided that information submitted pursuant to this section shall not be publicly available, but may be shared by the Registrar with the CIT Agency.

[Section 5B inserted by 2024 : 41 s. 2 effective 28 December 2024]

Registration of companies

6 (1) An application for registration of a company shall be in such form as may be prescribed by rules made under section 288 and shall be accompanied by such documents as the Minister may determine.

(2) Not more than three months prior to an application for registration of a local company the applicant shall publish in an appointed newspaper an advertisement

announcing the intention to incorporate the local company specifying the name and stating its proposed objects.

(3) *[repealed]*

(4) The Registrar shall refuse to register a company limited by guarantee if the Registrar is of the opinion that the purpose of the company is not one of the purposes referred to in subsection 5(3).

(5) Any person aggrieved by a decision of the Registrar under subsection (4) may appeal to the Minister whose decision shall be final.

[Section 6 amended by 1990:52 effective 12 July1990; repealed and replaced by 1998:35 effective 5 October 1998; subsection (3) repealed, and (4) amended, by 2006:40 s.5 effective 29 December 2006]

Reserving a company name

6A (1) The name of a company may be reserved not more than three months prior to an application being made under section 6(1) for a period not exceeding three months from the date the name is reserved.

(2) To reserve a name under subsection (1), the relevant fee prescribed in the Government Fees Regulations 1976 shall be paid.

[Section 6A inserted by 2023 : 12 s. 2 effective 1 April 2023]

Requirements of memorandum

7 (1) The memorandum of every company must state—

(a) the name of the company and, in the case of a company limited by shares or a company limited by guarantee, subject to section 9, the word "Limited" as the last word of the name;

(aa) in the case of a company limited by shares or a company limited by guarantee, that the liability of its members is limited;

(b) the objects of the company or that its objects are unrestricted;

(bb) the secondary name of the company, if any, within the meaning of section 10A(1);

(c) *[deleted by 1982:72]*

(d) the names, addresses and nationalities of the persons who subscribe their names to the memorandum and which of them, if any, has Bermudian status;

(e) whether the company is to be an exempted company;

(f) *[deleted by 1992:51]*

(g) *[repealed by 2014 : 13]*

(h) the period, if any, fixed for the duration of the company, or the event, if any, on the occurrence of which the company is to be dissolved.

(2) In the case of a company limited by shares the memorandum must also state—

(a) the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount; and

(b) that the persons who subscribe their names to the memorandum agree to take such number of shares of the company as may be allotted to them respectively by the provisional directors, not exceeding the number of shares for which they respectively subscribe, and that they agree to satisfy such calls as may be made on them by the directors, provisional directors or promoters in respect of the shares allotted to them.

(3) Subject to section 154 the memorandum of a company limited by guarantee must state that each member undertakes to contribute to the assets of the company in the event of it being wound up while he is a member, or within one year after he ceases to be a member, for the payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs charges and expenses of winding up, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

(4) The memorandum of every company shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.

(4A) Where the memorandum of a company is delivered to the Registrar as an electronic record, it shall be authenticated by each subscriber in the manner directed by the Registrar and subsection (4) does not apply.

(5) A company may not alter the provisions of its memorandum except in a manner provided in this Act.

[Section 7 amended by 1994:22 effective 13 July 1994; subsections (1)(b) and (2)(a) amended, (1)(bb) and (4A) inserted by 2006:40 s.6 effective 29 December 2006; subsection (1)(g) repealed by 2014 : 13 s. 4 effective 27 March 2014]

Prohibition of registration of companies with undesirable names

8 (1) No company shall be registered with a name which in the opinion of the Registrar is undesirable.

(2) Without prejudice to the generality of subsection (1), no company shall be permitted to be registered with a name which—

(a) is identical with the name by which a company is registered or incorporated under this Act or any other Act or so nearly resembles that name as to be likely to deceive unless that company signifies its consent in such manner as the Registrar may require;

(b) contains the words "Chamber of Commerce", or in the opinion of the Registrar suggests or is likely to suggest the patronage of Her Majesty or of any member of the Royal Family or connection with any government whether of Bermuda or elsewhere;

(c) contains the word "municipal" or "chartered" or in the opinion of the Registrar suggests, or is likely to suggest, connection with any public board or other local authority or with any society or body incorporated by Royal Charter;

(d) contains the word "co-operative";

(e) contains the words "building society"; or

(f) in the case of a company limited by shares or a company limited by guarantee, subject to section 9, does not contain the word "Limited"; or

(g) in the case of an unlimited liability company ends with the word "Limited".

(3) If, through inadvertence or otherwise, a company on its first registration or on its registration with a new name is registered with a name which in the opinion of the Registrar too closely resembles the name by which a company in existence is already registered, the first mentioned company may, with the sanction of the Registrar, change its name, and shall, if the Registrar so directs within six months of its being registered by that name, change its name within six weeks of the date of such direction or within such longer period as the Registrar may think fit to allow.

(4) If at any time after a company has been registered it appears to the Registrar that the name under which it is registered is undesirable, the Registrar may notify the company accordingly and may in such notification direct the company to change its name, and the company shall change its name within six weeks of such direction unless within that time it shall have lodged an appeal to the Court against such direction. The Court shall thereupon either cancel or confirm such direction and its decision shall be final and conclusive.

(5) If a company makes default in complying with a direction under subsection (3) or a confirmed direction under subsection (4) it shall be liable to a default fine:

Provided that in the case of an appeal under subsection (4) the period of default shall not commence until six weeks after the decision of the Court.

(6) Section 10(1), (3) and (4) shall apply to a change of name under this section as they apply to a change of name under that section.

[Section 8 amended by 1994:22 effective 13 July 1994]

Power to dispense with "limited" in name of charitable and other companies

9 (1) Where it is proved to the satisfaction of the Minister that—

(a) an association about to be formed as a limited company is to be formed for promoting art, science, religion, charity, sport or any other useful object; and

(b) the association has complied with subsection (2A),

the Minister may by licence direct that the association may be registered as a company, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) Where it is proved to the satisfaction of the Minister that—

(a) the objects of an existing company are restricted to those specified in paragraph (1)(a) and to objects incidental or conducive thereto; and

(b) the company has complied with subsection (2A),

the Minister may by licence, subject to such conditions as the Minister thinks fit to impose, authorize the company to change by resolution its name by the omission of the word "Limited", and sections 10(3) and (4) shall apply to a change of name under this subsection as they apply to a change of name under section 10.

(2A) For the purposes of subsections (1) and (2), a company shall include, and maintain, in its memorandum or bye-laws provisions that—

(a) require it to apply its profits, if any, or other income in promoting its objects;

(b) prohibit it from paying any dividend, distribution or return of capital or other assets to its members; and

(c) require all of its assets that would otherwise be available to its members generally to be transferred on its winding up either to another body with objects similar to its own or objects specified in subsection (1)(a).

(2B) A company may not make any amendment to its memorandum or bye-laws in contravention of the provisions referred to in subsection (2A).

(3) A licence under this section may at any time be revoked by the Minister and thereupon the Registrar shall enter the word "Limited" at the end of the name of the company in the register:

Provided that before a licence is revoked the Minister shall give the company an opportunity of being heard.

[section 9 subsections (1) and (2) repealed and replaced by (1) to (2B) amended by 2006:40 s.7 effective 29 December 2006]

Change of name of a company

10 (1) Subject to section 8(1) and (2), a company may by resolution change its name if the Registrar has approved the proposed name.

(2) *[deleted by 1994:22]*

(3) The Registrar shall, on receipt of a certified copy of the resolution referred to in subsection (1) together with such fee as may be prescribed—

(a) enter the new name on the register in place of the former name;

(b) enter on the register the effective date of the change of name which shall be the date of entry of the new name on the register; and

(c) issue a certificate of change of name.

(4) The change of name of a company shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it, and any legal proceedings that might have been continued or commenced against it in its former name may be continued or commenced against it in its new name.

(5) Section 8(3) and (4) shall apply *mutatis mutandis* to any name adopted by a company under this section.

[section 10 amended by 1994:22 effective 13 July 1994; and by 1998:35 effective 5 October 1998]

Secondary name

10A (1) For the purposes of this section, "primary name" means the name of a company stated in its memorandum under section 7(1)(a) or the changed name of the company approved by the Registrar under section 10; and "secondary name" means the name of a company that is in a script other than roman script and is in addition to the primary name of the company.

(2) A company may apply to the Registrar for registration of a secondary name.

(3) An application for registration of a secondary name shall be in the manner and form determined by the Registrar and shall be accompanied by—

(a) a certificate signed by a person authorized to administer oaths certifying the accuracy of the English translation of the secondary name and certifying that the person is fluent in the language and script used to express the secondary name; and

(b) a copy of the text of the secondary name in electronic form suitable for it being reproduced in a certificate of secondary name.

(4) Subject to subsections 8(1) and (2), and upon the Registrar being satisfied as to the matters referred to in subsection (3), the Registrar shall—

(a) enter the secondary name on the register, together with the primary name;

(b) enter on the register the effective date of registration of the secondary name, which shall be the date of entry of the secondary name on the register; and

(c) issue a certificate of secondary name.

(5) Subsections (2), (3) and (4) apply, with any modifications that the circumstances require, to a change of the secondary name of a company.

(6) Subsections 8(3) and (4) apply, with any modifications that the circumstances require, to a secondary name.

(7) Except for the certificate of secondary name, the Registrar is not required to use the secondary name of a company in certifying any documents in the register and the Registrar does not warrant the accuracy or validity of the secondary name.

(8) A company may only use its secondary name on a document if its primary name is also shown on the document in close proximity to the secondary name.

(9) The registration of a secondary name of a company or the use by a company of a secondary name does not affect the rights and obligations of the company or render defective any legal proceedings that are continued or commenced by or against the company in its primary name.

[section 10A inserted by 2006:40 s.8 effective 29 December 2006]

Objects and powers of a company

11 (1) Subject to any provision of law, including a provision in this or any other Act, and any provision in its memorandum—

(a) the objects of a company are unrestricted; and

(b) a company has the capacity, rights, powers and privileges of a natural person.

(2) *[repealed]*

(3) *[repealed]*

(4) *[repealed]*

(5) The objects set out in the different paragraphs of the objects clause in the memorandum of a company or included therein by reference shall not, unless otherwise stated, be limited or restricted in any way by reference to or inference from the terms of any other paragraph in the memorandum and such objects may be carried out in as full and ample a manner and construed in such a manner as if each paragraph defined the objects of a separate and independent company and each is construed as a primary object.

[Section 11 amended by 1994:22 effective 13 July 1994; subsection (1) substituted, and (2)-(4) repealed, by 2006:40 s.9 effective 29 December 2006]

Procedure for alteration of memorandum

12 (1) Subject to the provisions of this section, a company may, by resolution passed at a general meeting of members of which due notice has been given, alter the provisions of its memorandum.

(2) Section 6 shall apply to a company wishing to change its memorandum as if the company were applying to be registered save that the advertisement provided for in section 6(2) shall detail the proposed changes to the memorandum rather than the matters set out in section 6(2).

(3) An application may be made to the Court for an alteration to the memorandum of a company passed in accordance with subsection (1) to be annulled and

where such an application is made the alteration shall not have effect except in so far as it is confirmed by the Court.

(4) An application under subsection (3) may only be made—

(a) by the holders of not less in the aggregate than twenty per centum in par value of the company's issued share capital or any class thereof; or

(b) by the holders of not less in the aggregate than twenty per centum of the company's debentures entitled to object to alterations to its memorandum; or

(c) in the case of a company limited by guarantee by not less than twenty per centum of the members:

Provided that an application shall not be made by any person who has voted in favour of the alteration or has given to the company a statement in writing duly signed that he, having had notice, consents to the alteration.

(5) An application under subsection (3) shall be made within twenty-one days after the date on which the resolution altering the company's memorandum was passed, and may be made on behalf of the persons entitled to make the application by one or more of their number as they may appoint in writing for the purpose.

(6) On an application under subsection (3) the Court may make an order annulling or confirming the alteration, either wholly or in part, and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it 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 the purchase of the interests of dissentient members.

(7) Where a company passes a resolution altering the provisions of its memorandum—

(a) if no application is made to the Court with respect thereto under this section, it shall within 30 days after the end of the period for making such an application deliver to the Registrar a copy of its memorandum as altered; and

(b) if such application is made it shall—

(i) forthwith give notice of that fact to the Registrar; and

(ii) within 30 days after the date of any order annulling or confirming the alteration, either wholly or in part, deliver to the Registrar an office copy of the order and, in the case of an order confirming the alteration, a copy of its memorandum as altered.

(7A) On receipt of the copy of the memorandum altered pursuant to this section, the Registrar shall, subject to section 4A, forthwith register it and the amendment shall be effective from the date of such registration.

(8) If a company makes default in giving notice or delivering any document to the Registrar as required by subsection (7), the company and every officer of the company who is in default shall be liable to a fine of one hundred dollars for every day during which the default continues.

(9) Notwithstanding anything in this section, if within 21 days of the passing of a resolution a company delivers to the Registrar a copy of the memorandum as altered and an affidavit sworn by a director of the company stating that the company does not know of any person who could make an application to the court under subsection (3), the Registrar shall register the memorandum and the amendment shall be effective from the date of such registration.

(10) A company shall give the same notice to the holders of debentures who are entitled to object to alterations to the company's memorandum under subsection (3) as it is required under subsection (1) to give to members of the company.

(11) This section shall not apply to any alteration of the memorandum of a company authorized by section 45 or 46.

[Section 12 amended by 1998:35 effective 5 October 1998; subsection (9) amended by 2011 : 43 s. 3 effective 18 December 2011]

Bye-laws

13 (1) The administration of every company shall be regulated by bye-laws; and—

(a) a company limited by shares, or other company having a share capital, shall in its bye-laws make provision for all the matters set out in subsection (2);

(b) a company limited by guarantee shall in its bye-laws make provision for the matters set out in subsection (2) (c), (d) and (f).

(2) A company limited by shares, or other company having a share capital, shall in its bye-laws make provision for—

(a) the transfer of shares and the registration of estate representatives of deceased shareholders;

(b) *[repealed by 2011 : 43 s. 4]*

(c) the keeping of its accounts and making available the financial statements to the members;

(d) an audit of the accounts of the company once at least in every year by an independent representative of the shareholders;

(e) the duties of the secretary to the company; and

(f) the number of members required to constitute a quorum at any general meeting of the members of the company.

(g) *[repealed by 2018 : 19 s. 2]*

(2A) Every company to which subsection (2) applies shall file with the Registrar the information that the company is required to include in its bye-laws as prescribed by subsection (2)(a),(e) and (f), and shall file with the Registrar any amendments to such information within 30 days of the amendment.

(2B) Information obtained for the purposes of subsection (2A) shall not be made available to the public.

(3) In addition any company may at the time of registration or from time to time make bye-laws if appropriate to regulate—

(i) and to restrict the entry into and the transfer of membership in the company;

(ii) the allotment of shares;

(iii) the making of calls on shares;

(iv) the payment for shares;

(v) the issue and registration of certificates of shares;

(vi) the forfeiture of shares for non-payment of calls;

(vii) the disposal of forfeited shares, and of the proceeds thereof:

(viii) the transfer of shares;

(ix) the declaration and payment of dividends;

(x) the duties and responsibilities of its president and vice presidents and of any other officers with special responsibilities or duties;

(xi) the appointment, functions, duties, remuneration and removal of all agents, officers, and servants of the company, and the security, if any, to be given by them to the company;

(xii) *[repealed by 2011 : 43 s. 4]*

(xiii) the calling of meetings of the company, and of the board of directors, the requirements as to proxies and requisite majorities in voting on any particular matter or class of matters and the procedure at such meetings;

(xiv) the quorum at meetings of directors;

(xv) the voting rights and restrictions relating to any class of shares in companies limited by shares, or other company having a share capital, and the voting rights and restrictions of members of companies limited by guarantee including mutual companies;

(xvi) the imposition and recovery of all penalties and forfeitures admitting of regulation by bye-laws;

(xvii) the conduct in all other particulars of the affairs of the company, as well as for the application of its funds and profits; and

(xviii) the use of its common seal and any duplicate common seal.

(4) The persons subscribing their names to the memorandum of association of a company may likewise subscribe their names to bye-laws which shall become operative if approved at the statutory meeting.

(5) The directors of a company may after its registration amend the bye-laws but any such amendment shall be submitted to a general meeting of the company, and shall become operative only to such extent as they are approved at such meeting.

(6) If default is made in complying with subsection (2A), the company and every officer of the company who is in default shall be liable to a default fine.

[Section 13 amended by 1992:51 effective 1 July 1992; by 1993:37 effective 13 July 1993; by 1994:22 effective 13 July 1994; subsection (2)(f) amended by 2000:29 s.2 effective 11 August 2000; section 13 amended by 2011 : 43 s. 4 effective 18 December 2011; Section 13 amended by 2018 : 5 s. 9 effective 21 March 2018; Section 13 amended by 2018 : 19 s. 2 effective 21 March 2018; Section 13 subsection (2A) amended, and subsection (6) inserted by 2018 : 51 s. 9 effective 10 August 2018]

Registration of companies

14 (1) Subject to subsection (4), the Registrar shall maintain a register of companies in such form as he shall determine.

(2) The memorandum shall be delivered to the Registrar together with an application for the Registrar's consent for incorporation in such form and accompanied by such documents as the Registrar may require.

(2A) If the Registrar is satisfied that the company will be in compliance with this Act and gives his consent to its incorporation, the Registrar shall register the memorandum and issue a certificate of incorporation showing the date of registration.

(2B) If the Registrar refuses his consent to the incorporation of a company, the Registrar shall not be bound to give any reason for such refusal and the refusal shall not be subject to appeal or review in any court.

(3) From the date of the registration of a company the subscribers of the memorandum, 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, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and power to adopt 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 mentioned in this Act.

(4) The Registrar shall, in respect of each company registered under this section, enter in the register—

(a) the name of the company;

(b) the certificate of incorporation of the company;

(c) the Memorandum of Association of the company; and

(d) the address of the registered office of the company.

(5) The register of companies, containing the information entered under subsection (4) and such other information as the Registrar may determine, shall be open to public inspection at the office of the Registrar during normal business hours.

[Section 14 amended by 1998:35 effective 5 October 1998; Section 14 subsection (2)(b) amended by 2012 : 32 s. 2 effective 27 July 2012; Section 14 subsection (1) amended, and subsections (4) and (5) inserted by 2018 : 51 s. 9 effective 10 August 2018; Section 14 subsection (2)(b) repealed and substituted by BR 100 / 2025 para. 2 effective 3 November 2025; Section 14 subsection (2) deleted and substituted by 2026 : 28 s. 15 effective 14 September 2026; Section 14 subsections (2A) and (2B) inserted by 2026 : 28 s. 15 effective 14 September 2026]

Re-registration of limited liability company as unlimited liability company

14A (1) Subject to the provisions of this section, a company which is registered as a company limited by shares may be re-registered as an unlimited liability company in accordance with the requirements of this section.

(2) No application to re-register a company limited by shares as an unlimited liability company shall be lodged with the Registrar unless such application has been agreed by all the members of the company.

(3) For the purposes of subsection (2) all the members of a company shall be deemed to have agreed at a general meeting if either—

(a) all the members are present in person or by proxy at the meeting and agree; or

(b) if some of the members are not present in person or by proxy at the meeting, then, if the members present in person or by proxy at the meeting agree and there are produced at the meeting statements in writing from the members not present in person or by proxy stating that they agree.

(4) *[Deleted by 1998:35]*

(5) The application shall set out such alterations in the company's memorandum as are requisite in order to conform with the memorandum of a company to be formed as an unlimited liability company and be accompanied by the documents specified in subsection (6).

(6) The documents referred to in subsection (5) are—

(a) a certified copy of the agreement referred to in subsection (3)(a), or certified copies of the agreement and the written statements referred to in subsection (3)(b); and

(b) a statutory declaration made by a director of the company that the persons who have signified their agreement pursuant to subsection (3) constitute the whole membership of the company.

(c) *[deleted by 1998:35]*

(7) Sections 6 and 12(7A) shall apply, with the necessary changes, to a re-registration under this section as they apply to the registration of a company and the registration of a company's memorandum that has been altered.

[Section 14A inserted by 1994:22 effective 13 July 1994; and amended by 1998:35 effective 5 October 1998; Section 14A subsection (6)(b) amended by 2011 : 43 s. 5 effective 18 December 2011]

Re-registration of unlimited liability company as company limited by shares or by guarantee

14B (1) Subject to the provisions of this section, a company which is registered as an unlimited liability company may, by resolution passed at a general meeting of members of the company, be re-registered as a company limited by shares or by guarantee in accordance with the requirements of this section.

(2) No application to re-register an unlimited liability company as a company limited by shares or by guarantee shall be lodged with the Registrar unless such application is accompanied by a certified copy of a resolution that it should be so re-registered passed at a general meeting of the company.

(3) The resolution must state whether the company is to be limited by shares or by guarantee and—

(a) if it is to be limited by shares, must state what the share capital is to be and provide for; or

(b) if it is to be limited by guarantee, must provide for,

the making of such alterations to its memorandum and bye-laws as are necessary to bring them (in substance and in form) into conformity with the requirements of this Act with respect to the memorandum and bye-laws of a company so limited.

(4) The application shall be accompanied by a written copy of the memorandum of the company as altered by the resolution.

(5) Sections 6 and 12(7A) shall apply, with the necessary changes, to a re-registration under this section as they apply to the registration of a company and the registration of a company's memorandum that has been altered.

[Section 14B inserted by 2000:29 s.3 effective 11 August 2000]

Certificate of incorporation to be conclusive evidence

15 No defect in the formalities leading up to the incorporation of a company shall affect the validity of its incorporation and the certificate of incorporation shall be conclusive evidence of the due incorporation of the company and the date of its incorporation.

Effect of memorandum and bye-laws

16 (1) Subject to this Act the memorandum of association when registered and the bye-laws when approved shall bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained

covenants on the part of each member to observe all the provisions of the memorandum and of the bye-laws.

(2) All money payable by any member to the company under the memorandum or bye-laws shall be a debt due from him to the company.

(3) *[Deleted by 1994:22]*

[Section 16 amended by 1994:22 effective 13 July 1994]

Alterations in memorandum or bye-laws increasing liability to contribute to share capital not to bind existing members without consent

17 Notwithstanding anything in the memorandum or bye-laws of a company, no member of the company shall be bound by an alteration made in the memorandum or bye-laws after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:

Provided that this section shall not apply where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

Copies of memorandum and bye-laws to be given to members

18 (1) A company shall, on being so required by a member send him a copy including all alterations of the memorandum of the company, the Act establishing the company or its bye-laws subject to the payment by the member of the cost thereof.

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable to a fine of fifty dollars.

Definition of member

19 (1) The subscribers to the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members but in the case of a company limited by shares, or other company having a share capital, only if shares have been allotted to them.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

(3) In this section "register of members" includes any branch register kept under section 65.

[Section 19 amended by 1994:22 effective 13 July 1994; subsection (3) added by 1999:25 s.2 effective 23 July 1999]

20 *[Repealed by 1993:37]*

Form of contracts

21 (1) Contracts on behalf of a company may be made as follows:—

(a) a contract, which if made between private persons would by law be required to be under seal, may be made on behalf of the company in writing—

(i) signed by any person acting under the express or implied authority of the company,

(ii) executed under the common seal of the company, or

(iii) signed or executed in such other manner as the bye-laws of the company may provide.

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

(c) a 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 its authority, express or implied.

(2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.

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

(4) 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 yet been formed, then subject to any agreement to the contrary, the contract shall have effect as a contract entered into by the person purporting to act for the company or as agent for it and he shall be personally liable on the contract accordingly.

(5) Any contract purported to be made in the manner set out in subsection (4) may subsequently be unilaterally adopted by the company and the company shall thereupon become a party thereto to the same extent as if the contract had been made after the incorporation and in substitution for and discharge of the agent or person purporting to act on its behalf.

[section 21 amended by 1993:37 effective July 13 1993; subsection (1)(a) substituted by 2006:40 s.10 effective 29 December 2006]

Bills of exchange and promissory notes

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

Execution of documents

23 (1) A company may, in writing, authorize any person, either generally or in respect of any specified matter, as its agent, to sign or execute deeds, instruments or other documents on its behalf in any place inside or outside Bermuda.

(2) A deed, instrument or document signed or executed by an authorized agent on behalf of the company binds the company.

(3) A company may, but need not, have a common seal and one or more duplicate common seals for use in any place inside or outside Bermuda.

(4) If a common seal or duplicate common seal is to be affixed to a deed, instrument or document, the affixing of the seal shall be attested to by the signature of at least one person who is a director or the secretary of the company or a person expressly authorized to sign, or in such other manner as the bye-laws of the company may provide.

(5) A deed, instrument or document to which the common seal, or duplicate common seal, of the company is duly affixed binds the company.

[section 23 amended by 1992:51 effective 1 July 1992; and repealed and replaced by 2006:40 s.11 effective 29 December 2006]

Authentication of documents

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

Agreement not to exercise powers

24A Notwithstanding anything in this Act or in any rule of law, and subject to its memorandum and bye-laws, a company may agree that any of the powers in section 10, 10A, 12, 13, 45, 46, 93, 106, 161 or 201 that are reserved to members of the company shall, in whole or in part, not be exercised.

[section 24A inserted by 2006:40 s.12 effective 29 December 2006]

Correction of filed documents

24B (1) Whenever any document required to be filed with the Registrar under any provision of this Act has been so filed and is found to contain inaccuracies, or was defectively or erroneously executed, such document may be corrected by filing with the Registrar a request to correct the document in such form as the Registrar shall determine.

(2) A document corrected in accordance with this section shall be effective as of the date the original document was filed, except as to those persons who are substantially and adversely affected by the correction, and as to those persons the document as corrected shall be effective from the filing date.

[Section 24B inserted by 2020 : 52 s. 2(3) effective 31 May 2021]

PART III

PROSPECTUSES AND PUBLIC OFFERS

Interpretation of Part III

25 (1) In this Part unless the context otherwise requires—

"company" includes any association of persons seeking to be registered as such a company;

"expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him;

"promoter" means a promoter who was party to the preparation of the prospectus, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company;

"share" includes debentures, units or sub-units of a unit trust or a warrant conferring an option to acquire shares;

(1A) This Part shall not apply to any exempted company, and in this Part "company" shall be construed accordingly.

(2) Any reference in this Act to offering shares to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, and references in this Act or in a company's bye-laws to invitations to the public to subscribe for shares shall, subject as aforesaid, be similarly construed.

(3) For the purposes of this Part—

(a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(4) Subsection (2) shall not be taken as requiring any offer or invitation to be treated as made to the public if it is—

(a) an offer to existing holders of shares in the company of the same class as the shares comprised in the offer without any right of renunciation; or

(b) an offer without any right of renunciation to the holders of convertible debentures or debentures having subscription rights in respect of shares into or in respect of which the right of conversion or subscription exists; or

(c) an offer certified in writing by an officer of the company on behalf of the board of directors to be an offer which the board considers as not being

calculated to result, directly or indirectly, in the shares becoming available—

(i) in the case of a local company, to more than 20 persons; and

(ii) in the case of an exempted company, or a permit company to more that 35 persons; or

(d) an offer having a private character; or

(e) an offer certified in writing by an officer of the company on behalf of the board of directors to be an offer which the board considers as not being calculated to result, directly or indirectly, in shares becoming available to persons other than persons whose ordinary business involves the acquisition, disposal or holding of shares, whether as principal or agent.

(4A) For the purposes of subsection 4(d), an offer that is made in consideration of or in connection with the provision of services to a company by employees, independent contractors, directors or officers of a company, or of any affiliate or subsidiary of a company (wherever incorporated or established), including an offer made to any person pursuant to an employees' share scheme or other employees' incentive plan, is of a private character.

(4B) For the purposes of subsection (4)(d), an offer does not have a private character solely by reason that the offer is made to members or debenture holders of the company.

(5) The Minister may, on the application by or on behalf of a company, direct that the provisions of Part III or any provision of that Part and section 35 shall not apply to a proposed offer of shares.

(6) A direction of the Minister given under subsection (5) may be subject to conditions and may at any time be revoked by the Minister.

(7) A direction of the Minister given under subsection (5) is not a statutory instrument having legislative effect.

[Section 25 amended by 1992:51 effective 1 July 1992; by 1997:21 effective 2 September 1997; by 1998:35 effective 5 October 1998; subsection (1) amended by 2003:1 s.4 effective 14 February 2003; subsections (2) and (4)(d) amended, and (4A) and (4B) inserted, by 2006:40 s.13 effective 29 December 2006; Section 25 subsection (1A) inserted by 2020 : 52 s. 2 effective 5 February 2021]

Company offering shares to public shall publish a prospectus

26 (1) Subject to subsection (1A) and to any other enactment, no company shall offer shares to the public unless prior to such offer it publishes in writing a prospectus, and prior to or as soon as reasonably practicable after publication of such a prospectus, the company shall file with the Registrar, a copy signed by or on behalf of all of the directors or provisional directors of the company.

(1A) It is not necessary to publish and file a prospectus under subsection (1), at any time or in any circumstances, where—

(a) the shares are listed on an appointed stock exchange, or an application has been made for the shares to be so listed, and the rules of the appointed stock exchange do not require the company to publish and file a prospectus at such time or in such circumstances;

(b) the company is subject to the rules or regulations of a competent regulatory authority and such rules or regulations do not require the company to publish and file a prospectus at such time or in such circumstances, except where exemption from publication and filing of a prospectus is given by reason of the offer being made only to persons who are resident outside the jurisdiction of the authority; or

(c) an appointed stock exchange or any competent regulatory authority has received or otherwise accepted a prospectus or other document in connection with the offer of shares to the public.

(2) The Registrar shall not accept for filing a copy of a prospectus unless it is accompanied by a certificate signed by an attorney certifying that the prospectus contains the particulars required by section 27(1) and is accompanied by a written statement from the auditor of the company, dated within seven days prior to the date of such filing, which confirms—

(a) the auditor's consent to the inclusion of his name in the prospectus to be issued by the company as having accepted the appointment as auditor of the company; or

(b) the auditor's consent to the inclusion in that prospectus of any or all reports prepared by him.

(3) The directors, provisional directors and promoters of any company that fails to comply with this section shall each be liable to a fine of one thousand dollars.

[Section 26 amended by 1992:51 effective 1 July 1992; by 1995:33 effective 7 July 1995; by 1999:25 s.3 effective 23 July 1999; subsections (1) and (1A) substituted by 2003:1 s.5 effective 14 February 2003; subsections (1A)(a) and (2)(b) amended by 2006:40 s.14 effective 29 December 2006; Section 26 subsections (1A)(a) and (b) amended and subsection (1A)(c) inserted by 2013 : 16 s. 2 effective 24 June 2013; Section 26 subsection (1A)(c) inserted by 2013 : 16 s. 2 effective 24 June 2013Section 26 amended by 1992:51 effective 1 July 1992; by 1995:33 effective 7 July 1995; by 1999:25 s.3 effective 23 July 1999; subsections (1) and (1A) substituted by 2003:1 s.5 effective 14 February 2003; subsections (1A)(a) and (2)(b) amended by 2006:40 s.14 effective 29 December 2006; Section 26 subsections (1A)(a) and (b) amended, subsection (1A)(c) inserted and subsection (2) repealed and substituted by 2013 : 16 s. 2 effective 24 June 2013]

Contents of a prospectus

27 (1) Every prospectus shall contain or there shall be attached thereto documents showing—

(a) the names, descriptions and addresses of the promoters, officers or proposed officers;

(b) the business or proposed business of the company;

(c) the minimum subscription which, in the opinion of the promoters, directors or provisional directors must be raised under section 28;

(d) any rights or restrictions on the shares that are being offered;

(e) all commissions payable on the sale of the shares referred to in the prospectus and the net amount receivable by the company in respect of the sale;

(f) the name and address of any person who owns five percent or more of the shares of the company:

Provided that this paragraph shall not apply to an exempted company or a permit company;

(g) any shareholding in the company of an officer of the company;

(h) financial statements of the company prepared in such manner and containing such information as may be required by rules made under section 34;

(i) a report or statement by the auditor of the company prepared in such manner and containing such information as shall be required by rules made under section 34;

(j) the date and time of the opening and closing of subscription lists.

(2) Where a company is not required by this Part to publish and file a prospectus then subsection (1) shall not apply.

[Section 27 amended by 1992:51 effective 1 July 1992; by 1995:33 effective 7 July 1995; and by 1997:21 effective 2 September 1997; Section 27 subsection (2) repealed and substituted by 2013 : 16 s. 3 effective 24 June 2013]

Minimum amount required to be raised to be stated in prospectus

28 (1) Every prospectus shall contain the following particulars—

(a) the minimum subscription which must be raised by the issue of 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 assets purchased or to be purchased which is to be 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.

(2) Where a company is not required by this Part to publish and file a prospectus then subsection (1) shall not apply.

[Section 28(2) added by 2000:29 s.4 effective 11 August 2000; subsection (2) repealed and substituted by 2013 : 16 s. 4 effective 24 June 2013]

Companies continuously offering shares to the public

29 (1) Where—

(a) any company continuously over a period offers shares to the public; and

(b) any of the particulars in a prospectus issued by that company ceases to be accurate in a material respect,

the company, as soon as reasonably practicable after becoming aware of that fact, shall—

(c) publish supplementary particulars disclosing the material changes; and

(d) file a copy of the supplementary particulars with the Registrar.

(e) *[Deleted by 2001:30]*

(2) Each of the directors of any company that fails to comply with this section shall be liable to a fine of one thousand dollars.

[Section 29 amended by 1992:51 effective 1 July 1992; subsection (1) substituted by 2000:29 s.5 effective 11 August 2000; subsection (1)(e) deleted by 2001:30 s.3 effective 14 August 2001]

Offences relating to the issue of a prospectus

30 Any person who makes or authorizes the making of an untrue statement in a prospectus unless he proves either that the statement was immaterial or that at the time he made the statement he had reasonable grounds to believe it was true shall be liable—

(a) on conviction on indictment, to imprisonment for period of five years or to a fine of five thousand dollars or to both such imprisonment and fine; or

(b) on summary conviction to imprisonment for a period of one year or to a fine of two thousand dollars or to both such imprisonment and fine.

Civil liability for mis-statements in prospectus

31 (1) Where a prospectus invites persons to subscribe for shares in a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included therein that is to say—

(a) every person who is an officer of the company a the time of the issue of the prospectus;

(b) every person who has authorized himself to be named and is named in the prospectus as an officer or a having agreed to become an officer either immediately or after an interval of time;

(c) every person being a promoter of the company; and

(d) every person who has authorized the issue to the public of the prospectus.

(2) No person shall be liable under subsection (1) if he proves—

(a) that, having consented to become an officer of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of an untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or

(d) that—

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares believe, that the statement was true; and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and had not withdrawn or altered it; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(3) Where the prospectus contains—

(a) the name of a person as an officer of the company or as having agreed to become an officer of the company thereof, and he has not consented to become an officer, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof; or

(b) a statement by an expert or contains what purports to be a copy of or extract from a report or valuation of an expert, which the expert has withdrawn or altered,

the officers of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorized the issue of a prospectus by reason only of the inclusion therein of a statement purporting to be made by him as an expert.

When experts are not liable

32 A person referred to as an expert in a prospectus shall not be liable under section 30 or 31 if any untrue statement was not made by him or that as regards any untrue statement made by him he was competent to make the statement and had reasonable grounds to believe and did believe up to the date of the issue of the prospectus that it was true or on becoming aware that the statement was untrue before the issue of the prospectus he had given reasonable public notice of his disassociation from the prospectus and the reasons therefor.

Restriction on alteration of terms mentioned in prospectus

33 A company limited by shares , or other company having a share capital, shall not prior to the statutory meeting vary the terms of a contract referred to in a prospectus.

[Section 33 amended by 1994:22 effective 13 July 1994]

Rules

34 The Minister after consultation with the Chartered Professional Accountants of Bermuda may make rules providing for—

(a) the information that shall be contained in, and the copies of documents that shall be attached to, any financial statement required to be attached to a prospectus by section 27(1)(h); and

(b) the information that shall be contained in any report or statement of an auditor required to be attached to a prospectus by section 27(1)(i).

[Section 34 replaced by 1995:33 effective 7 July 1995; amended by 2014 : 8 s. 16 effective 11 April 2014]

PART IIIA

INITIAL COIN OFFERING

[Repealed by 2020 : 18 s. 84]

[Part IIIA repealed by 2020 : 18 s. 84 effective 6 May 2020]

Interpretation of Part IIIA

34A *[Repealed by 2020 : 18 s. 84]*

[Section 34A repealed by 2020 : 18 s. 84 effective 6 May 2020]

Restriction on issuing Initial Coin Offering

34B *[Repealed by 2020 : 18 s. 84]*

[Section 34B repealed by 2020 : 18 s. 84 effective 6 May 2020]

Company offering digital assets to public shall publish an ICO offer document

34C *[Repealed by 2020 : 18 s. 84]*

[Section 34C repealed by 2020 : 18 s. 84 effective 6 May 2020]

Contents of an ICO offer document

34D *[Repealed by 2020 : 18 s. 84]*

[Section 34D repealed by 2020 : 18 s. 84 effective 6 May 2020]

Companies offering digital assets to the public

34E *[Repealed by 2020 : 18 s. 84]*

[Section 34E repealed by 2020 : 18 s. 84 effective 6 May 2020]

Providing a communication facility; cooling-off rights

34F *[Repealed by 2020 : 18 s. 84]*

[Section 34F repealed by 2020 : 18 s. 84 effective 6 May 2020]

General Initial Coin Offering risk warning

34G *[Repealed by 2020 : 18 s. 84]*

[Section 34G repealed by 2020 : 18 s. 84 effective 6 May 2020]

Identification of persons in relation to ICO offer document

34H *[Repealed by 2020 : 18 s. 84]*

[Section 34H repealed by 2020 : 18 s. 84 effective 6 May 2020]

Security of digital assets, confidentiality, disclosure of information

34I *[Repealed by 2020 : 18 s. 84]*

[Section 34I repealed by 2020 : 18 s. 84 effective 6 May 2020]

Offences relating to the issue of an Initial Coin Offering

34J *[Repealed by 2020 : 18 s. 84]*

[Section 34J repealed by 2020 : 18 s. 84 effective 6 May 2020]

Civil liability for mis-statements in ICO offer document

34K *[Repealed by 2020 : 18 s. 84]*

[Section 34K repealed by 2020 : 18 s. 84 effective 6 May 2020]

When experts are not liable

34L *[Repealed by 2020 : 18 s. 84]*

[Section 34L repealed by 2020 : 18 s. 84 effective 6 May 2020]

Regulations

34M *[Repealed by 2020 : 18 s. 84]*

[Section 34M repealed by 2020 : 18 s. 84 effective 6 May 2020]

Code of Conduct

34N *[Repealed by 2020 : 18 s. 84]*

[Section 34N repealed by 2020 : 18 s. 84 effective 6 May 2020]

Power to obtain information and reports

34O *[Repealed by 2020 : 18 s. 84]*

[Section 34O repealed by 2020 :18 s. 84 effective 6 May 2020]

Application of Public Access to Information Act 2010

34P *[Repealed by 2020 : 18 s. 84]*

[Section 34P repealed by 2020 : 18 s. 84 effective 6 May 2020]

PART IV

SHARE CAPITAL DEBENTURES AND DIVIDENDS

Prohibition of allotment unless minimum subscription received

35 (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the minimum subscription to be raised under section 28(a) has been paid to and received by the company.

For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque or other draft for that sum has been received in good faith by the company and the officers of the company have no reason for suspecting that the cheque or other draft will not be paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash.

(3) If the conditions aforesaid have not been complied with on the expiration of 120 days after the first publication of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within 128 days after the issue of the prospectus the directors, provisional directors as the case may be and promoters of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent per annum from the expiration of the 128th day:

Provided that such a person shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(4) Any condition requiring or binding any application for shares to waive compliance with any requirement of this section shall be void.

(5) This section shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(6) This section shall not apply to any allotment of shares by an exempted company.

[Section 35 subsection (6) inserted by 2020 : 52 s. 2 effective 5 February 2021]

Effect of irregular allotment

36 An allotment made by a company to an applicant in contravention of section 35 shall be violable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

Penalty for the contravention of section 36

37 If any officer, provisional director, or promoter of a company knowingly contravenes, or permits or authorizes the contravention of, any of the provisions relating to the allotment of shares, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

Payment of commissions

38 (1) It shall be lawful for a company to pay a reasonable commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally for any shares in the company, or processing or agreeing to process subscriptions, whether absolute or conditional for any shares in the company.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

(4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

Financial assistance generally prohibited

39 *[Repealed by 2011 : 43 s. 6]*

[Section 39 repealed by 2011 : 43 s. 6 effective 18 December 2011]

Exclusion from prohibition on financial assistance

39A *[Repealed by 2011 : 43 s. 6]*

[Section 39A repealed by 2011 : 43 s. 6 effective 18 December 2011]

Circumstances where financial assistance is permitted

39B *[Repealed by 2011 : 43 s. 6]*

[Section 39B repealed by 2011 : 43 s. 6 effective 18 December 2011]

Conditions applicable to giving of financial assistance under section 39B

39C *[Repealed by 2011 : 43 s. 6]*

[Section 39C repealed by 2011 : 43 s. 6 effective 18 December 2011]

Application of premiums received on issue of shares

40 (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 premiums on those shares shall be transferred to an account, to be called "the share premium account", and the provisions of this Act 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:

Provided that in the case of an exchange of shares the excess value of the shares acquired over the nominal value of the shares being issued may be credited to a contributed surplus account of the issuing company.

(2) Subject to subsection (2A), the share premium account may, notwithstanding anything in subsection (1) be applied by the company—

(a) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares;

(b) in writing off—

(i) the preliminary expenses of the company; or

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

(c) in providing for the premiums payable on redemption of any shares or of any debentures of the company.

(2A) *[Deleted by 2003:1]*

(3) Where a company has before 1 July 1983 issued any shares at a premium this section shall apply to the premiums received in respect of such shares as if the shares had been issued after such day:

Provided that any part of such premiums which does not on 1 July 1983 form an identifiable part of the company's reserves shall be disregarded in determining the sum to be included in the share premium account.

(4) *[Deleted by 1992:51]*

(5) *[Deleted by 1992:51]*

[Section 40 amended by 1992:51 effective 1 July 1992; subsection (2A) deleted by 2003:1 s.6 effective 14 February 2003]

Meaning of "reserve"

41 For the purpose of section 40 "reserve" shall not include any amount written off or retained by way of providing for depreciation, renewals or diminution in the value of assets or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy.

Power to issue redeemable preference shares

42 (1) Subject to this section, a company limited by shares, or other company having a share capital, may issue preference shares which—

(i) if so authorized by its bye-laws, are, or at the option of the company are to be liable, to be redeemed;

(ii) if so authorized by its memorandum at the option of the holder are to be liable to be redeemed:

Provided that—

(a) no such shares shall be redeemed except out of the capital paid up thereon or out of the funds of the company which would otherwise be available for dividend or distribution or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and

(b) the premium, if any, payable on redemption, is provided for out of funds of the company which would otherwise be available for dividend or distribution or out of the company's share premium account before the shares are redeemed.

(2) Subject to this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by or determined in accordance with the bye-laws of the company; however, no redemption of preference shares may be effected if, on the date on which the redemption is to be effected, there are reasonable grounds for believing that the company is, or after the redemption would be, unable to pay its liabilities as they become due.

(2A) *[Repealed by 2000:29]*

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

(4) On the redemption of preference shares under this section, any amount due to a shareholder may –

(a) be paid in cash;

(b) be satisfied by the transfer of any part of the undertaking or property of the company having the same value; or

(c) be satisfied partly under paragraph (a) and partly under paragraph (b).

[Section 42 amended by 1992:51 effective 1 July 1992; by 1994:22 effective 13 July 1994; subsection (4) added by 1999:25 s.4 effective 23 July 1999; subsection (2) amended, and (2A) repealed, by 2000:29 s.7 effective 11 August 2000; subsection (2) substituted by 2003:1 s.7 effective 14 February 2003]

Purchase by a company of its own shares

42A (1) Subject to this section, a company limited by shares, or other company having a share capital, may, if authorized to do so by its memorandum or bye-laws, purchase its own shares.

(2) Section 42 shall apply in relation to the purchase by a company under this section of its own shares as it applies in relation to the redemption of redeemable preference shares by a company under section 42, except that the terms and manner of the purchase need not be provided by, or determined in accordance with, the bye-laws as provided in section 42(2).

(3) *[repealed]*

(4) A purchase by a company of its own shares may be authorized by its board of directors or otherwise by or in accordance with its bye-laws.

(5) No purchase by a company of its own shares may be effected if, on the date on which the purchase is to be effected, there are reasonable grounds for believing that the company is, or after the purchase would be, unable to pay its liabilities as they become due.

(6) Shares purchased under this section shall be treated as cancelled and the amount of the company's issued capital shall be diminished by the nominal value of those shares accordingly; but the purchase of shares under this section shall not be taken as reducing the amount of the company's authorized share capital.

(6A) On the purchase of its own shares under this section, any amount due to a shareholder may –

(a) be paid in cash;

(b) be satisfied by the transfer of any part of the undertaking or property of the company having the same value; or

(c) be satisfied partly under paragraph (a) and partly under paragraph (b).

(7) Where a company agrees, or is obliged, to purchase any of its shares then—

(a) the company shall not be liable in damages in respect of any failure to purchase any of the shares;

(b) the court shall not grant an order for specific performance of the purchase if the company shows that to do so would render it insolvent or cause it to breach the provisions of any Act, regulation or licence;

(c) on a liquidation, other shares which carry rights whether as to capital or income which arc preferred to the rights attaching to the shares agreed to be purchased, shall be paid in priority to the purchase price.

[Section 42A amended by 1992:51 effective 1 July 1992; by 1994:22 effective 13 July 1994; subsection (6A) added by 1999:25 s.5 effective 23 July 1999; subsection (5) substituted by 2000:29 s.8 effective 11 August 2000; subsection (2) substituted by 2003:1 s.8 effective 14 February 2003; subsection (3) repealed by 2006:40 s.15 effective 29 December 2006]

Treasury shares

42B (1) In this Act, references to a company holding shares as treasury shares are references to the company holding shares that—

(a) were, or are treated as having been, acquired by the company in accordance with this section; and

(b) have not been cancelled but have been held by the company continuously since they were acquired.

(2) Subject to this section, a company limited by shares, or other company having a share capital, may, if authorized to do so by its memorandum or bye-laws, acquire its own shares, to be held as treasury shares, for cash or any other consideration.

(3) Section 42 shall apply in relation to the acquisition by a company under this section of its own shares to be held as treasury shares as it applies in relation to the redemption of redeemable preference shares by a company under section 42, except that the terms and manner of the acquisition need not be provided by or determined in accordance with the bye-laws as required by section 42(2).

(4) A company may not acquire its own shares to be held as treasury shares if, as a result of the acquisition, all of the company's issued shares, other than the shares to be held as treasury shares, would be non-voting shares.

(5) An acquisition by a company of its own shares to be held as treasury shares may be authorized by its board of directors or otherwise by or in accordance with its bye-laws.

(6) No acquisition by a company of its own shares to be held as treasury shares may be effected if, on the date on which the acquisition is to be effected, there are reasonable grounds for believing that the company is, or after the acquisition would be, unable to pay its liabilities as they become due.

(7) A company that acquires its own shares to be held as treasury shares may—

(a) hold all or any of the shares;

(b) dispose of or transfer all or any of the shares for cash or other consideration; or

(c) cancel all or any of the shares.

(8) If shares are cancelled under this section, the amount of the company's issued share capital shall be diminished by the nominal value of those shares, but the cancellation of shares shall not be taken as reducing the amount of the company's authorized share capital.

(9) If a company holds shares as treasury shares, the company shall be entered in the register of members under section 65 as the member holding the shares.

(10) A company that holds shares as treasury shares shall not exercise any rights in respect of those shares, including any right to attend and vote at meetings, including a meeting under section 99, and any purported exercise of such a right is void.

(11) No dividend shall be paid to the company in respect of shares held by the company as treasury shares; and no other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up) shall be made to the company in respect of shares held by the company as treasury shares.

(12) Nothing in this section shall prevent a company from—

(a) making an allotment of shares as fully paid bonus shares in respect of shares held by the company as treasury shares; or

(b) paying any amount payable on the redemption of shares held by the company as treasury shares (if they are redeemable shares).

(13) Any shares allotted by a company as fully paid bonus shares in respect of shares held by the company as treasury shares shall be treated for the purposes of this Act as if they had been acquired by the company at the time they were allotted.

(14) Where a company agrees or is obliged to acquire any of its shares to be held as treasury shares—

(a) the company shall not be liable in damages in respect of any failure to acquire any of the shares;

(b) the Court shall not grant an order for specific performance of the acquisition if the company shows that to do so would render it insolvent or cause it to breach the provisions of any Act, regulation or licence; and

(c) on a liquidation, other shares that carry rights, whether as to capital or income, that are preferred to the rights attaching to the shares agreed or obliged to be acquired, shall be paid in priority to the cash or other consideration to be paid for the shares agreed or obliged to be acquired.

(15) Shares held by a company as treasury shares shall be excluded from the calculation, under sections 12(4), 47(1), 47(7), 89(5), 96(1), 99(2), 102, 103 and 113(1)(c), of any percentage or fraction of the share capital, or shares, of the company or of any class of share capital, or shares, of the company.

(16) For the purposes of section 79(2)(b), a company that holds shares as treasury shares is not a member of the company.

[section 42B inserted by 2006:40 s.16 effective 29 December 2006]

Power to convert preference shares into redeemable preference shares

43 A company limited by shares, or other company having a share capital, may by resolution at a general meeting convert any preference shares into redeemable preference shares:

Provided that—

(a) the consent in writing has first been obtained of the holders of three-fourths of such shares that have been issued;

(b) at a date not more than thirty days and not less than fifteen days before the date it is proposed to convert the shares the company shall cause a notice to be published in an appointed newspaper stating the intention to convert the shares and the date on which the conversion is to take place;

(c) on the date on which the conversion is to take place an affidavit shall be sworn by a director of the company declaring either that on that date the company is solvent or that all the creditors of the company on that date have expressed in writing their concurrence in the conversion; and

(d) section 42(1) shall apply to such shares.

[Section 43 amended by 1994:22 effective 13 July 1994; Section 43(c) amended by 2011 : 43 s. 7 effective 18 December 2011]

Power of company to arrange for different amounts being paid on shares

44 A company limited by shares, or other company having a share capital, if so authorized by its byelaws, may do any one or more of the following things—

(a) make arrangements on the issue of shares for a difference between the members in the amounts and times of payment of calls on their shares;

(b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;

(c) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others;

(d) issue its shares in fractional denominations and deal with such fractions to the same extent as its whole shares and shares in fractional denominations shall have in proportion to the respective fractions represented thereby all of the rights of the whole shares including (but without limiting the generality of the foregoing) the right to vote, to receive dividends and distributions and to participate in a winding up.

[Section 44 amended by 1994:22 effective 13 July 1994]

Power of company limited by shares to alter its share capital

45 (1) A company limited by shares or other company having a share capital may alter the conditions of its memorandum—

(a) where it is authorized by a general meeting, in order to—

(i) increase its share capital by new shares of such amount as it thinks expedient;

(ii) change the currency denomination of its share capital; or

(iii) cancel 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, and diminish the amount of its share capital by the amount of the shares so cancelled; and

(b) where it is authorized by a general meeting or by its bye-laws, in order to—

(i) divide its shares into several classes and attach thereto respectively any preferential, deferred, qualified or special rights, privileges or conditions;

(ii) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(iii) subdivide its shares, or any of them, into shares of smaller amount than is 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; or

(iv) make provision for the issue and allotment of shares which do not carry any voting rights.

(2) 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 Act.

(3) Whenever a company alters the conditions of its memorandum under subsection (1)(a), then within thirty days thereafter the company shall file a memorandum with the Registrar setting out the altered conditions.

(4) If any company fails to file a memorandum in accordance with subsection (3) it shall be liable to a default fine.

[Section 45 amended by 1992:51 effective 1 July 1992; by 1993:37 effective 13 July 1993; by1994:22 effective 13 July 1994; subsection (1) repealed and substituted and subsection (3) amended by 2014 : 17 s. 2 effective 24 June 2014]

Reduction of share capital

46 (1) A company having share capital if authorized in a general meeting may subject to any order made by the Minister under section 6(3) and to its memorandum and bye-laws on such terms as it may decide reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, by—

(a) extinguishing or reducing the liability on any of it shares in respect of capital not paid up; or

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

(c) either with or without extinguishing or reducing liability of any of its shares and either with or with out reducing the number of such shares pay off any paid up capital that is in excess of the requirements of the company.

(2) No company shall reduce the amount of its share capital if, on the date the reduction is to be effected, there are reasonable grounds for believing that the company is, or after the reduction would be, unable to pay its liabilities as they become due.

(3) Unless the bye-laws otherwise provide where the capital of a company is reduced by the cancellation of shares and part only of a class of shares is to be cancelled, the shares to be cancelled shall be selected—

(a) by lot in such manner as the directors shall determine; or

(b) as nearly as may be in proportion to the number of shares of the class registered in the name of each shareholder; or

(c) in such other manner as the directors determine with the consent of the majority of the holders of the shares of the class to be cancelled.

(4) Where shares are to be cancelled in order to reduce the capital of a company the shares shall be acquired at the lowest price at which, in the opinion of the directors, the shares are obtainable, but not exceeding an amount, if any, stated in or determined by the bye-laws.

(5) Where a company having share capital reduces the amount of its share capital, then within thirty days after the date as from which the reduction has effect the company shall file a memorandum, with a copy of the notice referred to in subsection (2) (a), in the office of the Registrar stating that this section has been duly complied with.

(6) If any company fails to comply with subsection (2), (3) or (4) every officer of the company shall be liable to a fine of five thousand dollars and if the company fails to comply with subsection (5) the company shall be liable to a default fine.

[Section 46(2) substituted, and subsection (5) amended, by 2000:29 s.9 effective 11 August 2000; subsection (2)(b) amended by 2001:30 s.4 effective 14 August 2001; Section 46 subsection (2) repealed and substituted by 2023 : 17 s. 2 effective 24 May 2023]

Rights of holders of special classes of shares

47 (1) If in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or bye-laws for authorizing the variation of rights attached to any class of shares in the company, subject to the consent of any specified proportions of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than ten percent of the issued shares of that class, may apply to the Court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court.

(2) An application under this section must be made within twenty-eight days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the Court on any such application shall be final.

(5) The company shall within twenty-one days after the making of an order by the Court on any such application forward a copy of the order to the Registrar, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a default fine.

(6) Nothing in this section shall be deemed to modify the rights of any member of a company under section 111.

(7) If the memorandum or bye-laws of a company with share capital which is divided into different classes of shares makes no provision for varying the rights attached to any class of share and nothing in the memorandum or bye-laws precludes a variation of such rights, the rights attached to any class, unless otherwise provided by the terms of issue of the shares of that class may, whether or not the company is being wound up, 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 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 the byelaws or other rules of the company relating to general meetings shall 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; however, in the case of a company having only one member, one member present in person or by proxy constitutes the necessary quorum.

(8) In this section "variation" includes abrogation and "varied" shall be construed accordingly.

[Section 47 amended by 1993:37 effective 13 July 1993]

Nature and transfer of shares

48 (1) Subject to any other enactment the shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the bye-laws of the company.

(2) Notwithstanding anything in the bye-laws of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(3) Subsection (2) shall not apply to the shares in or debentures of a company whose shares, or debentures, as applicable, are listed or admitted to trading on an appointed stock exchange.

(4) Nothing in this Act or any rule of law shall operate to prevent shares in or debentures of a company from being transferred in accordance with the rules or regulations of an appointed stock exchange on which the shares or debentures are listed or admitted to trading.

[Section 48 subsections (3) and (4) inserted by 2011 : 43 s. 8 effective 18 December 2011]

Transfer by estate representative

49 A transfer of the share or other interest of a deceased member of a company made by his estate representative shall, although the estate representative is not himself a

member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

Notice of refusal to register transfer

50 (1) If a company refuses to register a transfer of any shares or debentures, the company shall, within three months after the date on which the transfer was lodged with the company, send to the transferor and transferee notice of the refusal.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Duties of company with respect to the issue of certificates

51 (1) Every company shall, so soon as practicable after the allotment of any of its shares, or debentures and in any case within two months after a demand for a certificate of such shares or debentures has been made by the person to whom they have been allotted, complete and have ready for delivery such certificates unless the conditions of issue of the shares or debentures otherwise provide.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(3) If any company on whom a notice has been served requiring the company to make good any default in complying with subsection (1) fails to make good the default within ten days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

Certificate to be evidence of title and evidence of grant of probate

52 (1) A certificate specifying any shares or debentures held by any member shall be prima facie evidence of the title of the member to the shares or debentures. The certificate may be—

(a) under the common seal of the company;

(b) signed by at least one person who is a director or the secretary of the company or a person expressly authorized to sign; or

(c) given in such manner as the bye-laws may provide.

(2) The production to a company of any document which is by law sufficient evidence of probate of the will, or the grant of letters of administration of the estate, or confirmation as executor of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its bye-laws, as sufficient evidence of the grant.

(3) "law" in subsection (2) includes the law of Bermuda and of any country in the Commonwealth and the law in any part of the United States of America.

[section 52 subsection (1) substituted by 2006:40 s.17 effective 29 December 2006]

Bearer shares prohibited

53 It shall not be lawful for any company to issue bearer shares.

Issue and transfer of bearer shares prohibited

53A (1) Notwithstanding any provision in this Act, a company incorporated under this Act shall, no later than 90 days after the coming into operation of this section, cause any bearer shares issued by the company to be converted to registered shares.

(2) A company incorporated under this Act before the coming into operation of this section shall notify the beneficial owner of a bearer share of the requirements of subsection (1).

(3) A company notifying a beneficial owner pursuant to subsection (2) shall obtain confirmation from the beneficial owner of a name in which a share converted pursuant to subsection (1) is to be registered.

(4) A company shall, no later than 90 days after the coming into operation of this section, enter the name provided under subsection (3) into the register of members as the registered shareholder.

(5) In relation to a company which has been struck off the companies register, subsections (1) to (4) apply to that company if the company is reinstated.

(6) No order of the Court shall permit a company which has been struck off the companies register to be reinstated with bearer shares in issue.

(7) A company for which shares were converted pursuant to subsection (1) shall, no later than 90 days after the coming into operation of this section, file a declaration in the manner designated by the Registrar with the Registrar confirming that any bearers shares issued by that company have been registered in the form required by this section.

(8) Bearer shares which have not been converted pursuant to subsection (1) shall be null and void and be without effect for all purposes of this Act.

[Section 53A inserted by 2025 : 27 s. 2 effective 10 December 2025]

Dividends and other distributions

54 (1) A company shall not declare or pay a dividend, or make a distribution out of contributed surplus, if there are reasonable grounds for believing that—

(a) the company is, or would after the payment be, unable to pay its liabilities as they become due; or

(b) the realizable value of the company's assets would thereby be less than its liabilities.

(2) For the purposes of this section, "contributed surplus" includes proceeds arising from donated shares, credits resulting from the redemption or conversion of shares at less than the amount set up as nominal capital and donations of cash and other assets to the company.

[Section 54 repealed and replaced by 1992:51 effective 1 July 1992; amended by 1993:37 effective July 13 1993; subsection (1)(b) amended by 2011 : 43 s. 9 effective 18 December 2011]

Right to claim damages

54A A person is not debarred from obtaining damages or other compensation from a company by reason only of his holding or having held shares in the company or any right to apply or subscribe for shares or to be included in the company's register of members in respect of shares.

[Section 54A inserted by 1999:25 effective 23 July 1999]

PART V

THE REGISTRATION OF CHARGES

Register of charges; registration; priorities

55 (1) The Registrar shall keep with respect to each company a register of charges on the assets of the company and any person, including the company, interested in a charge on the assets of the company may apply to have that charge registered, and the Registrar shall register the charge in such form as may be prescribed.

(2) Any charge registered shall have priority based on the date that it is registered and not on the date of its creation and shall have such priority over any unregistered charge.

(3) Subsection (2) shall not apply to charges created before 1 July 1983. Such charges shall continue to have the priority they had prior to that date:

Provided that any person interested in a charge on the assets on a company created before 1 July 1983 may register that charge but the charge shall continue to have the priority it had prior to registration.

(4) Where a charge is created by a company but is a charge on assets outside Bermuda, the instrument creating or purporting to create the charge may be registered under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Notwithstanding anything in this section, a charge on—

(a) land in Bermuda to which paragraph (aa) does not apply shall be registered under the Mortgage Registration Act 1786 or any Act replacing it and not under this Act and the priority of such charge shall be determined in accordance with the Mortgage Registration Act 1786 or any Act replacing it;

(aa) registered land within the meaning of the Land Title Registration Act 2011 or an estate which is required to be registered under that Act by virtue of sections 24 and 25 of that Act—

(i) shall be registered or otherwise protected under the Land Title Registration Act 2011 and not under this Act; and

(ii) the priority of such charge shall be determined in accordance with the Land Title Registration Act 2011;

(b) any ship registered in Bermuda or any interest therein registrable under the Merchant Shipping Act 1894 or any Act replacing it shall be registered thereunder, and not under this Act and the priority of such charge shall be determined in accordance with the Merchant Shipping Act 1894 or any Act replacing it;

(c) any aircraft, aircraft engine, or any interest therein registrable under the Mortgaging of Aircraft and Aircraft Engines Act 1999 or any Act replacing it shall be registered thereunder, and not under this Act and the priority of such charge shall be determined in accordance with the Mortgaging of Aircraft and Aircraft Engines Act 1999 or any Act replacing it; and

(d) any assignment of a contract of life insurance to which the Life Insurance Act 1978 applies, shall be subject to the procedures set out in the Life Insurance Act 1978 and not under this Act and the priority of such a charge shall be determined in accordance with the Life Insurance Act 1978 and not under this Act, irrespective of whether any such charge may have been registered under this Act prior to the coming into operation of this paragraph.

(6) *[Deleted by 1984:36]*

(7) The register of charges shall be available for inspection by members of the public during normal working hours.

(8) In this Part, "charge" includes any interest created in property by way of security, including any mortgage, assignment, pledge, lien or hypothecation.

[Section 55 subsection (8) substituted by 2004:36 s.2 effective 17 December 2004; subsection (5)(c) substituted by 2006:40 s.18 effective 29 December 2006; subsection (5)(c) amended by 2013 : 24 s. 4 effective 23 July 2013; subsection (5) amended by 2014 : 18 s. 3 effective 24 June 2014; Section 55 subsection (5) amended by 2011 : 51 Sch. 9 effective 2 July 2018]

Amendment of register

55A (1) Where a registered charge is amended by adding or removing one or more persons entitled to the charge or where the interest of one or more persons entitled to the charge is assigned or transferred, any person, including the company, interested in the charge may apply to have such amendment, assignment or transfer registered, and the Registrar shall register the amendment, assignment or transfer in such form as may be prescribed.

(2) The registration of an amendment or an assignment or transfer of an interest in a registered charge under subsection (1) shall not affect the priority of the charge, and the charge shall continue to have priority based on the date that it was registered and not the date that any document effecting the amendment, assignment or transfer was executed or that the amendment, assignment or transfer was registered.

[Section 55A inserted by 2004:36 s.3 effective 17 December 2004]

Correction of register

56 (1) The Registrar on being satisfied that an omission or misstatement of any particulars with respect to any registered charge on the assets of a company was accidental, or due to inadvertence or to some other sufficient cause, and is not of a nature to prejudice the position of creditors or shareholders of the company, may, on the application of the company or any person interested rectify the register; and any such rectification shall have effect from the date of the first entry of the charge in the register.

(2) Any creditor or member of the company aggrieved by a decision of the Registrar either to rectify or not rectify the register may within six months of the decision of the Registrar appeal to the Court which shall have the same powers as the Registrar. No appeal shall lie from a decision of the Court.

[Section 56 amended by 1992:51 effective 1 July 1992]

Registration of series of debentures

57 Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit which the debenture holders of that series are entitled pari passu is created by a company, it shall, for the purposes of the registration of the series under section 55, be sufficient if the following particulars are registered with the Registrar—

(a) the total amount secured by the whole series; and

(b) the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and

(c) a general description of the property charged; and

(d) the names of the trustees, if any, for the debenture holders,

together with a copy of the deed containing the charge, or, if there is no such deed, a copy of one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

Registration of particulars of commission paid

58 Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or

agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars sent for registration shall include particulars as to the amount or rate per cent of the commission, discount or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued.

Entry of satisfaction; release of property from charge

59 The Registrar, on evidence being given to his satisfaction with respect to any registered charge—

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or

(b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,

shall enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and where he enters a memorandum of satisfaction in whole he shall, if required, furnish the company with a copy thereof.

Registration of enforcement of security

60 (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers give notice of the fact to the Registrar, and the Registrar shall, on payment of such fee as may be specified by rules made by the Minister, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall on so ceasing, give the Registrar notice to that effect, and the Registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section, he shall be liable to a default fine.

(4) Rules made under this section shall be subject to affirmative resolution procedure.

Application of Part V to charges created and acquired by company incorporated outside Bermuda

61 This Part shall extend to charges on property in Bermuda which are created, and to charges on property in Bermuda which is acquired, by a company incorporated outside Bermuda.

[Section 61 amended by 1992:51 effective 1 July 1992; and by 2004:36 s.4 effective 17 December 2004]

PART VI

MANAGEMENT AND ADMINISTRATION

Registered office of company

62 (1) A company shall at all times have a registered office in Bermuda which shall not be a post office box to which all communications and notices may be addressed.

(1A) For the purposes of subsection (1), the address of the registered office of a company shall include—

(a) in the case of a corporate service provider, the name of the corporate service provider; and

(b) the building name and floor number, where applicable.

(2) On incorporation the situation of the company's registered office is that specified in a notice in the prescribed form given to the Registrar under section 69(2)(e).

(3) The company may change the situation of its registered office from time to time by giving notice in the prescribed form to the Registrar and such change takes effect upon the notice being registered by the Registrar.

(4) If default is made in complying with this section the company or every officer of the company who is in default shall be liable to a default fine.

[Section 62(2) to (4) substituted for subsections (2) and (3) by 2000:29 s.10 effective 11 August 2000; Section 62 subsection (1A) inserted by 2018 : 5 s. 9 effective 21 March 2018]

Service of documents

62A A document may be served on a company by leaving it at the registered office of the company or, in the case of a non-resident insurance undertaking the principal office in Bermuda, or in the case of a permit company, the principal place of business in Bermuda from which the company engages in or carries on its trade or business in Bermuda.

[Section 62A inserted by 1992:51 effective 1 July 1992]

Publication of name of company

63 (1) Every company shall have its name mentioned in legible characters in all business letters of the company and in all notices and other official publications of the 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 the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a fine of five hundred dollars.

Restriction on commencement of business

64 (1) No company shall commence or carry on business or exercise any borrowing powers unless and until the minimum capital as stated in its memorandum in accordance with section 7 has been subscribed.

(2) If any company commences or continues business or exercises borrowing powers in contravention of this section every person who is responsible for the contravention shall without prejudice to any other liability, be liable to a fine of one hundred dollars for every day during which the contravention continues.

Register of members

65 (1) Every company shall keep a register of its members and enter therein in respect of every member becoming a member after the appointed day the following particulars—

(a) the names and addresses of the members, and in the case of a company having a share capital—

(i) a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number;

(ii) in respect of any shares that are not fully paid, a statement specifying the amount paid or agreed to be considered as paid on such shares; and

(iii) the categories of shares, including the nature of the associated voting rights; and

(b) in respect of any company that does not keep a branch register pursuant to subsection (3), the date at which each person was entered in the register as a member.

(2) The register of members shall be kept at the registered office of the company or after giving written notice to the Registrar of the place at such other place in Bermuda convenient for inspection by members of the company and other persons entitled to inspect it.

(3) A company the shares of which are listed on an appointed stock exchange or have been offered to the public pursuant to a prospectus filed under section 26 or which is subject to the rules or regulations of a competent regulatory authority, may keep in any place outside Bermuda, one or more branch registers after giving written notice to the Registrar of the place where each such register is to be kept.

(4) A branch register shall be kept in the same manner in which the register of members is by subsection (1) required to be kept.

(5) Every company shall, as soon as reasonably practicable, after the date on which any entry or alteration is made in a branch register, make any necessary alteration in the register of members.

(6) If the register of members or any branch register is not made easily available for inspection by members the company and every officer of the company shall be liable to a fine of five hundred dollars and the court convicting the company or the officers, as the case may be, may order the company to make the register immediately available for inspection.

(7) A company shall not be bound to see to the execution of any trust, whether express, implied or constructive, to which any of its shares are subject and whether or not the company had notice of such trust; and the receipt of the person, firm or corporation in whose name any share stands shall be sufficient discharge to the company for any money paid by the company in respect of such share notwithstanding any trust to which it may be subject.

[Section 65 subsection (6) amended by 1999:25 s.7 effective 23 July 1999; subsections (1) and (3) substituted by 2003:1 s.9 effective 14 February 2003; subsection (1)(a) repealed and substituted by 2018 : 51 s. 9 effective 10 August 2018]

Inspection of register

66 (1) Except when the register of members is closed under this Act, the register of the members of a company shall during business hours (subject to such reasonable restrictions as the company may impose, so that not less than two hours in each day be allowed for inspection) be open for inspection by members of the public without charge.

(2) Any member of the public may require a copy of the register, or of any part thereof, on payment of the appropriate fee prescribed in the Eighth Schedule.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within fourteen days from the receipt of a written request, the company and every officer of the company who is in default shall be liable in respect of each offence to a default fine.

(4) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the persons requiring them.

(5) A company may on giving notice by advertisement in an appointed newspaper close the register of members for any time or times not exceeding in the whole thirty days in a year.

(6) This section applies to a branch register kept under section 65 except that in relation to a branch register subsection (5) shall have effect as if for reference to an appointed newspaper there were substituted reference to a national newspaper in the jurisdiction in which the branch register is kept.

[Section 66 amended by 1992:51 effective 1 July 1992; by 1998:35 effective 5 October 1998; subsection (6) added 1999:25 s.8 effective 23 July 1999; subsections (1) and (2) amended by 2006:40 s.19 effective 29 December 2006]

Offences relating to the register of members

66A A company and any officer of the company who knowingly contravenes, permits or authorizes the contravention of the requirements of sections 65(1) and 66(1) shall be liable on summary conviction to a fine of seventy five dollars per day for every day that the company fails to comply as required.

[Section 66A inserted by 2011 : 20 s. 2 effective 28 June 2011]

Power of Court to rectify register

67 (1) If—

(a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

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

(2) Where an application is made under this section, the Court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

Register to be evidence

68 The register of members shall be prima facie evidence of any matters by this Act directed or authorized to be inserted therein.

Provisional directors and their powers

69 (1) The persons whose names are subscribed to the memorandum of association shall be the provisional directors of the company to which the memorandum of association relates and shall have power to add to their number.

(2) The provisional directors of a company shall hold office as such until the first board of directors is elected, as hereinafter provided, and subject to subsection (1) shall have the following powers only that is to say,—

(a) power to cause books to be opened for the purpose of recording the subscriptions of such persons as may desire to become members of the company, and power to keep open such books for so long as the provisional directions may consider necessary;

(b) power, at any time after the minimum subscription has been subscribed to allot to any subscriber such number of shares, not exceeding the number subscribed for by him, as the provisional directors may deem expedient;

(c) power to appoint any person to be secretary of the company to hold office until the election of the first board of directors of the company;

(d) power by resolution to make such calls upon any subscriber in respect of shares allotted to him as the provisional directors may consider necessary; and in case any subscriber fails to satisfy any such call in the time limited by the provisional directors, to recover the amount of the call as a debt due by the subscriber;

(e) power to give notice of the registered office under subsection 62(2) but, if the provisional directors fail to do so, an officer of the company shall give the notice; and

(f) power to complete and execute all documentation necessary and incidental to incorporating a company.

(3) Any power vested in the provisional directors or any act authorized to be done by them may be exercised by a majority of them.

[Section 69(2)(e) and (f) added by 2000:29 effective 11 August 2000]

First general meeting of members to elect directors

70 (1) As soon as convenient after any of the share capital of a company has been subscribed, the provisional directors shall convene the statutory meeting which shall be a general meeting of the members of the company for the purpose of electing the first board of directors.

(2) At least five days' notice in writing of the statutory meeting shall be given to each member of the company unless the members unanimously agree to waive such notice; the notice shall specify the place, date and hour at which the meeting is intended to be held, and shall state that at the meeting the members present or represented by proxy will elect the first board of directors.

(3) For the purposes of this section "member" shall not include any member who has failed to satisfy any call made upon him which came due to be satisfied before the date on which the general meeting under this section is held.

(4) The procedure at a meeting called under this section shall be the same as that for an annual general meeting called under section 71.

(5) The quorum for a meeting called under this section shall be a majority of the members of the company present in person or by proxy.

(6) A meeting called under subsection (1) shall be deemed to be the annual general meeting for the year in which it is convened.

[Section 70 amended by 1992:51 effective 1 July 1992; subsection (1) amended by 2006:40 s.20 effective 29 December 2006]

General meetings

71 (1) Subject to section 71A, a meeting of members of a company shall be convened at least once in every calendar year; this meeting shall be referred to as the annual general meeting.

(2) The directors may, whenever they think fit, convene a general meeting; all meetings other than annual general meetings shall be called special general meetings.

(3) Notice of all general meetings shall specify the place, the day and hour of the meeting, and, in case of special general meetings, the general nature of the business to be considered.

(4) The accidental omission to give notice of a meeting to, or the non-receipt of a notice of a meeting by any persons entitled to receive notice shall not invalidate the proceedings of the meeting.

(5) Where the bye-laws so provide, a general meeting of the members of a company may be held with only one individual present if the requirement for a quorum is satisfied and, where a company has only one shareholder or only one holder of any class of shares, the shareholder present in person or by proxy constitutes a general meeting.

[Section 71(5) added by 2000:29 s.12 effective 11 August 2000; Section 71 subsection (1) amended by 2011 : 43 s. 10 effective 18 December 2011]

Election to dispense with annual general meetings

71A (1) A company may, by resolution of the company in general meeting, elect to dispense with the holding of annual general meetings.

(2) An election made under subsection (1) may be made to have effect—

(a) for the year in which it is made and any subsequent year or years;

(b) for a specified number of years; or

(c) indefinitely:

Provided that any liability already incurred by reason of the default in holding an annual general meeting will continue to have effect.

(3) Where a company makes an election as provided under subsection (1) the provisions of sections 72 and 73 shall not apply to that company for the period or periods in which such election is in effect.

(4) In any year in which an annual general meeting would be required to be held but for an election under subsection (1), and in which no general meeting has been held, any member or members of the company may, by notice to the company not later than three months before the end of the year, require the holding of an annual general meeting in that year.

(5) Where a notice, referred to in subsection (4), is given, sections 71(3), (4) and (5), 72 and 75 shall apply.

(6) If an election under subsection (1) ceases to have effect the company is not obliged to hold an annual general meeting in that year if, when the election ceases to have effect, less than three months of the year remains.

[Section 71A inserted by 2011 : 43 s. 11 effective 18 December 2011]

Failure to hold annual general meeting or to elect directors

72 (1) If default is made in calling or holding a general meeting in accordance with section 71(1) the directors shall use their best endeavours to call or hold the meeting at the earliest practicable date.

(2) If an annual general meeting is not held within three months of the date it should have been held or the required number of directors required to be elected, if any have not been elected at such a meeting the company may apply to the Registrar to sanction the holding of a general meeting to put the affairs of the company in order. Upon receipt of such an application the Registrar may in his discretion make an order allowing the application under such conditions as he thinks fit to impose including ordering the date by which the affairs of the company shall be put in order.

(3) Subject to subsection (2) if default is made in calling an annual general meeting in accordance with section 71 or to elect the required number of directors at such meeting the Registrar, any creditors or member of the company may apply to the Court for the winding up of the company and the Court on such application may order the company to be wound up or make any order that the Registrar might have made under subsection (2).

(4) Where an application is made to the Registrar for an order under subsection (2) a fee of two hundred and fifty dollars shall be paid to the Registrar if there has been a failure to hold one annual general meeting and if there has been failure to hold more than one meeting a further fee shall be payable of one hundred dollars in respect of each such meeting.

[Section 72(2) amended by 1999:25 s.9 effective 23 July 1999]

Position when election of directors does not take place

73 If the annual general meeting or the election of any directors, if such election is required by the bye-laws of the company, does not take place at the proper time, it shall be lawful for the company to continue its business and for the existing directors to continue in office.

[Section 73 amended by 1999:25 s.10 effective 23 July 1999]

Convening of special general meeting on requisition

74 (1) The directors of a company, notwithstanding anything in its bye-laws 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 as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having

at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene a special general meeting of the company.

(2) The requisition must state the purposes of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

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

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such directors as were in default.

Length of notice for calling meetings

75 (1) Notwithstanding any provision in the bye-laws of a company at least five days notice shall be given of a meeting of a company, other than an adjourned meeting.

(2) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in subsection (1) be deemed to have been duly called if it is so agreed—

(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent in nominal value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent of the total voting rights at that meeting of all the members.

Telephonic, etc. meeting

75A Unless the bye-laws otherwise provide, a meeting of directors or of a committee of directors or of the members or any class thereof may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and participation in such a meeting shall constitute presence in person at such meeting.

[Section 75A inserted by 1992:51 effective 1 July 1992]

Power of Court to order meeting

76 (1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the bye-laws or this Act, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient.

(2) Any meeting called, held and conducted in accordance with an order under subsection (1) shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

Voting at meetings

77 (1) Subject to the provisions of this section, the bye-laws of the company and to any rights or restrictions lawfully attached to any class of shares, at any general meeting each member of the company shall be entitled in the case of a company limited by shares, or other company having a share capital, to one vote for each share held by him and in the case of a company limited by guarantee one vote; such votes may be given in person or by proxy.

(2) At any general meeting of a company any question proposed for consideration shall be decided on a simple majority of votes or by such majority as the bye-laws of the company may prescribe, and such majority shall be ascertained in accordance with this section.

(3) Subject to subsection (5), it shall be lawful for any question proposed for consideration at a general meeting of a company to be decided on a show of hands or by a count of votes received in the form of electronic records and in any such case, and subject to any rights or restrictions for the time being lawfully attached to any class of shares, every member present in person or by proxy at such meeting shall be entitled to one vote and shall cast such vote by raising his hand or by communicating their vote in the form of an electronic record.

(4) At any general meeting of a company a declaration by the chairman that a question proposed for consideration has, on a show of hands or by a count of votes received in the form of electronic records, 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 subsection (5), be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such question.

(5) Notwithstanding subsection (3), at any general meeting of a 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 or of a count of votes received in the form of electronic records as provided for in subsection (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 meeting; or

(d) a member or members present in person or represented by proxy holding shares in such company conferring the right to vote at such meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all such shares conferring such right.

(6) Where, in accordance with subsection (5), 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 or by proxy at such meeting shall have one vote for each share of which he is the holder or for which he holds a proxy or in the case of a company limited by guarantee he shall have one vote for himself and one vote for each member for whom he holds a proxy and such votes shall be counted in such manner as the bye-laws of the company may provide or, in default of such provision, 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.

(7) A poll demanded, in accordance with subsection (5), 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 time at such meeting as the chairman may direct.

(8) In the case of an equality of votes, whether on a show of hands or by a count of votes received in the form of electronic records or on a poll, the chairman of the meeting at which such show of hands or count of votes takes place, or at which such poll is demanded, shall unless the bye-laws of the company otherwise provide, be entitled to a second or casting vote.

(9) Nothing contained in this section shall be construed as prohibiting a member who is the holder of two or more shares from appointing more than one proxy to represent him and vote on his behalf, whether on a show of hands or by a count of votes received in the form of electronic records or on a poll, at a general meeting of the company or at a class meeting.

[Section 77 amended by 1992:51 effective 1 July 1992; by 1994:22 effective 13 July 1994; subsections (3)-(5), (8) and (9) amended by 2006:40 s.21 effective 29 December 2006]

Resolution in writing

77A (1) Subject to subsection (6) and the bye-laws of the company, anything which may be done by resolution of a company in general meeting or by resolution of a meeting of any class of the members of a company, may be done by resolution in writing.

(1A) Subject to the bye-laws of the company, notice of any resolution to be made under subsection (1) shall be given, and a copy of the resolution shall be circulated, to all members who would be entitled to attend a meeting and vote on the resolution in the same manner as that required for a notice of a meeting of members at which the resolution could have been considered, except that any requirement in this Act or in the bye-laws as to the length of the period of notice shall not apply.

(1B) Subject to subsection (1C), a resolution in writing is passed when it is signed by, or, in the case of a member that is a corporation whether or not a company within the meaning of this Act, on behalf of—

(a) the members of the company who at the date of the notice represent such majority of votes as would be required if the resolution had been voted on at a meeting of members; or

(b) all the members of the company or such other majority of members as may be provided by the bye-laws of the company.

(1C) The accidental omission to give notice to, or the non-receipt of a notice by, any person entitled to receive notice of a resolution does not invalidate the passing of a resolution.

(2) A resolution in writing may be signed by, or, in the case of a member that is a corporation whether or not a company within the meaning of this Act, on behalf of, the members of a company, or any class thereof, in as many counterparts as may be necessary.

(3) For the purposes of this section, the date of the resolution is the date when the resolution is signed by, or, in the case of a member that is a corporation whether or not a company within the meaning of this Act, on behalf of, the last member to sign and any reference in any enactment to the date of passing of a resolution is, in relation to a resolution made in accordance with this section, a reference to such date.

(4) A resolution in writing made in accordance with this section is as valid as if it had been passed by the company in general meeting or by a meeting of the relevant class of members of the company, as the case may be; and any reference in any enactment to a meeting at which a resolution is passed or to members voting in favour of a resolution shall be construed accordingly.

(4A) A resolution in writing made in accordance with this section shall constitute the holding of a meeting where so required by this Act and the date of such meeting shall be the date of the resolution determined in accordance with subsection (3).

(4B) A resolution in writing made in accordance with this section receiving, accepting, adopting or approving financial statements or any other document shall be deemed to be the laying of such statements or other documents before the company in general meeting.

(5) A resolution in writing made in accordance with this section shall constitute minutes for the purposes of sections 81 and 82.

(6) This section shall not apply to—

(a) a resolution passed pursuant to section 89(5); or

(b) a resolution passed for the purpose of removing a director before the expiration of his term of office under section 93.

[Section 77A inserted by 1993:37 effective 13 July 1993; subsections (4A) and (4B) inserted by 2001:30 s.5 effective 14 August 2001; subsections (1) and (2) amended, (1A)-(1C) inserted, by 2006:40 s.22 effective 29 December 2006]

Representation of corporations at meetings

78 (1) A corporation, whether a company within the meaning of this Act or not, may—

(a) if it is a member of another corporation, being a company within the meaning of this Act, authorise such person or, to the extent expressly permitted by the bye-laws of that company, such persons as it thinks fit to act as its representative or representatives, as the case may be, at any meeting of the company or at any meeting of any class of members of the company, provided that, if more than one person is authorised, the authority shall specify the number and class of shares held by the relevant member in respect of which each such person is authorised to act as such representative;

(b) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, authorise such person or persons as it thinks fit to act as its representative or representatives, as the case may be, at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture, trust deed or warrant agreement, as the case may be.

(2) The number of persons a member or creditor of a company may authorise to act as its representative or representatives pursuant to the authorities set out in subsection (1) shall not exceed the number of shares or securities held by that member or creditor, being shares or securities in respect of which there is an entitlement to attend and vote at the relevant meeting.

(3) Each representative authorised pursuant to subsection (1) shall be entitled to exercise the same powers on behalf of the corporation or its nominee which he represents as that corporation or its nominee could exercise as if it were an individual member, creditor or holder of debentures of that other company and, in addition, the right to vote individually.

[Section 78 repealed and replaced by 1999:25 s.11 effective 23 July 1999; subsection (1)(a) amended by 2000:29 s.13 effective 11 August 2000; subsection (3) amended by 2006:40 s.23 effective 29 December 2006]

Circulation of members' resolution, etc.

79 (1) Subject to this section it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified, at the expense of the requisitionists unless the company otherwise resolves—

(a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;

(b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (1) shall be—

(a) either any number of members representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(b) not less than one hundred members.

(3) Notice of any such intended resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting, and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company:

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

Conditions to be met before company bound to give notice of resolution

80 A company shall not be bound under section 79 to give notice of any resolution or to circulate any statement unless—

(a) a copy of the requisition signed by the requisitionists, or two or more copies which between them contain the signatures of all the requisitionists, is deposited at the registered office of the company—

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting; and

(ii) in the case of any other requisition, not less than one week before the meeting; and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of the requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

Minutes of proceedings to be kept

81 (1) Every company shall cause minutes of all proceedings of general meetings and of all proceedings of meetings of its directors to be entered in books kept for that purpose and such minutes shall be signed by the person presiding over the proceedings or over the proceedings at which the minutes are approved.

(2) Minutes prepared in accordance with subsection (1) shall be kept by the secretary at the registered office of the company and shall be evidence of the proceedings and until the contrary is proved, the proceedings shall be deemed to have been duly held and convened and the business conducted thereat shall be deemed to be valid.

(3) If a company fails to comply with subsection (1) the company and every officer of the company who is in default shall be liable to a default fine.

[Section 81 amended by 1996:21 effective 24 July 1996; and subsection (1) by 1999:25 s.12 effective 23 July 1999]

Inspection of minute books

82 (1) Minutes of general meetings of a company shall be open for inspection by any member or director of the company without charge for not less than two hours during business hours each day subject to such reasonable restrictions as the company may impose.

(2) Any member or director shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes on the payment of a reasonable charge.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable to a fine of ten dollars and further to a fine of ten dollars for each day there is a default.

(4) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the minutes or direct that the copies required shall be sent to the persons properly requiring them.

[Section 82 amended by 1995:33 effective 7 July 1995; and by 1996:21 effective 24 July 1996]

Keeping of books of account

83 (1) Every company shall cause to be kept proper records of account with respect to—

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

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

(c) the assets and liabilities of the company.

(2) The records of account shall be kept at the registered office of the company or at such other place as the directors think fit and shall at all times be open to inspection by the directors or a resident representative referred to in section 130(1)(c):

Provided that if the records of account are kept at some place outside Bermuda, there shall be kept at the office of the company in Bermuda such records as will enable the directors or a resident representative referred to in section 130(1)(c) to ascertain with reasonable accuracy the financial position of the company at the end of each three month period, except that where the company is listed on an appointed stock exchange, there shall be kept such records as will enable the directors or a resident representative to ascertain with reasonable accuracy the financial position of the company at the end of each six month period.

(3) If a company fails to comply with subsection (1) the company and every officer of the company shall be liable to a fine of five hundred dollars.

(4) In the case of records of account not being made available for inspection by the directors or a resident representative referred to in section 130(1)(c) the Court may by order compel immediate inspection of such records.

(5) Every company shall keep, for a period of five years from the date on which they were prepared, records of account referred to in subsection (1) and, if applicable, subsection (2).

(6) A company and any officer of the company who knowingly contravenes, permits or authorizes the contravention of the requirements of subsection (5) shall be liable on summary conviction to a fine of seven thousand five hundred dollars.

[Section 83 subsection (2) substituted and subsection (4) amended by 1999:25 s.13 effective 23 July 1999; section 83 amended by 2009:38 s.3 effective 19 July 2009; subsection (5) and (6) inserted by 2011 : 20 s. 2 effective 28 June 2011]

Financial statements to be laid before general meeting

84 (1) The directors of every company shall, in accordance with section 87 and subject to section 88, at such intervals and for such period as this Act and the bye-laws of the company provide lay before the company in general meeting—

(a) financial statements for the period which shall include—

(i) a statement of the results of operations for the period;

(ii) a statement of retained earnings or deficit;

(iii) a balance sheet at the end of such period;

(iiiA) a statement of changes in financial position or cash flows for the period;

(iv) notes to the financial statements and the notes thereto shall be in accordance with subsection (1A);

(v) such further information as required by this Act and the company's own Act of incorporation or its memorandum, and its bye-laws; and

(b) the report of the auditor as set out in section 90(2), in respect of the financial statements described in paragraph (a).

(1A) The notes mentioned in subsection (1)(a)(iv) shall include a description of the generally accepted accounting principles used in the preparation of the financial statements which principles may be—

(a) those of Bermuda or a country or jurisdiction other than Bermuda; or

(b) such other generally accepted accounting principles as may be appointed by the Minister under subsection (5) for the purpose of this subsection,

and, where the generally accepted accounting principles used are other than those of Bermuda, the notes shall identify the generally accepted accounting principles so used.

(2) Financial statements shall before being laid before a general meeting of a company be signed on the balance sheet page by a director of the company.

(3) Notwithstanding subsection (1) if at a general meeting at which financial statements should be laid the statements have not been so laid, it shall be lawful for the Chairman to adjourn the meeting for a period of up to ninety days or such longer period as the members may agree.

(4) Subject to subsection (3) if any director of a company fails to take all reasonable steps to comply with subsection (1) he shall be liable to a fine of one thousand dollars:

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that this section was complied with and was in a position to discharge that duty.

(5) The Minister may, after consultation with the Chartered Professional Accountants of Bermuda, appoint generally accepted accounting principles promulgated by an accounting standard setting body and shall cause the appointment to be published in an appointed newspaper.

[Section 84 amended by 1992:51 effective 1 July 1992; by 1993:37 effective 13 July 1993; by 1995:33 effective 7 July 1995; subsection (1)(a)(iiiA) substituted by 2003:1 effective 14 February 2003; section 84 amended by 2011 : 43 s. 12 effective 18 December 2011; amended by 2014 : 8 s. 16 effective 11 April 2014]

85 *[Repealed by 1984:36]*

Definition of subsidiary and holding companies

86 (1) For the purposes of this Act except in Part VIA, a company is a subsidiary of another company only if—

(a) it is controlled by—

(i) that other company; or

(ii) that other company and one or more companies each of which is controlled by that other company; or

(iii) two or more companies each of which is controlled by that other company; or

(b) it is a subsidiary of a subsidiary of that other company.

(2) For the purposes of this Act, a company is the holding company of another only if that other company is its subsidiary.

(3) For the purposes of this Act, one company is affiliated with another company only if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person.

(4) For the purposes of this section, a company is controlled by another company or person or by two or more companies only if—

(a) shares of the first-mentioned company carrying more than fifty per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of that other company or person or by or for the benefit of those other companies; and

(b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned company.

[Section 86 subsection (1) amended by 2017 : 41 s. 3 effective 23 March 2018]

Right to receive copies of balance sheet etc.

87 (1) Subject to subsection (3) and sections 87A and 87B, a copy of the financial statements of a company, including every document required by law or the bye-laws of the company shall be made available to every member of the company and if such financial statements and other documents are not sent to each member five days before the general meeting any member may move a resolution at the general meeting that it be adjourned for five days:

Provided that this subsection shall not require the making available of the financial statements and other documents to—

(a) any person not entitled to receive notices of general meetings;

(b) more than one of the joint holders of any shares or debentures;

(c) any person whose address is not known to the company.

(2) If default is made in complying with subsection (1) the company and every officer of the company who is in default shall be liable to a fine of one hundred dollars, and if, when any person makes a demand for any document with which he is by virtue of subsection (1) entitled to be furnished, default is made in complying with the demand within seven days after the making thereof, the company and every officer of the company

who is in default shall be liable to a default fine, unless it is proved that that person has already made a demand for and been furnished with a copy of the document:

Provided that it shall be a defence to any prosecution for the company or any officer to show that it was not possible to comply with subsection (1) owing to circumstances beyond the control of the company or the officer, as the case may be.

(3) Where a company does not convene an annual general meeting in any one financial year following an election under section 71A—

(a) financial statements as described in section 84(1) in respect of that year shall be made available to every member of the company within 12 months of the end of the year in which an annual general meeting was not held, and the making available of such financial statements to members shall be deemed to be the laying of such statements before the company;

(b) any member or members of the company may, where requirements under paragraph (a) have not been complied with, by notice to the company require the convening of a general meeting to be held within 6 months of the failure to make available financial statements for the purpose of the laying before the company of such financial statements and with respect to such financial statements, section 84(2), (3) and (4) shall apply.

[Section 87 amended by 1992:51 effective 1 July 1992; by 1993:37 effective 13 July 1993; subsection (1) substituted by 2003:1 s.11 effective 14 February 2003; subsection (1) amended and subsection (3) inserted by 2011 : 43 s. 13 effective 18 December 2011]

Provision of summarised financial statements to shareholders

87A (1) A company, the shares of which are listed on an appointed stock exchange need not send financial statements as required by section 87(1) to members, but may instead send them summarised financial statements.

(2) The company shall make a copy of the summarised financial statements available for inspection by the public at the company's registered office in Bermuda.

(3) The summarised financial statements—

(a) shall be derived from the company's financial statements for the relevant period; and

(b) shall include, in respect of that period—

(i) a summarised report of the statements referred to in section 84(1)(a)(i), (ii), (iii), and (iiiA);

(ii) such further information extracted from the financial statements as the board of directors considers appropriate; and

(iii) a statement in a prominent position that it is only a summarised version of the company's financial statements and does not contain sufficient information to allow as full an understanding of the

financial position, results of operations or changes in financial position or cash flows of the company as would be provided by financial statements.

(4) The summarised financial statements sent to the company's members shall be accompanied by—

(a) the auditor's report on the summarised financial statements prepared in accordance with the generally accepted auditing standards referred to in section 90(2) in respect of the financial statements; and

(b) a notice informing the member to whom the summarised financial statements are sent how to notify the company that he elects to receive financial statements for the period referred to under section 84 for which the statements are to be prepared or for subsequent periods or both.

(5) In this section, "relevant period" means such period, referred to in section 84, for which financial statements are required to be presented to members in compliance with this Act or the company's bye-laws.

[Section 87A inserted by 2003:1 s.12 effective 14 February 2003]

Ascertainment of shareholders' election

87B (1) Where a company sends out summarised financial statements, these statements, together with the auditor's report and the notice specified in section 87A(4) shall be sent out not less than twenty-one days before the general meeting referred to in section 87(1).

(2) A company shall, subject to section 88, send copies of the financial statements to any member who would otherwise be entitled to receive such statements under section 87(1) within seven days of receipt of the member's election.

[Section 87B inserted by 2003:1 s.12 effective 14 February 2003]

Provision of full financial statements for inspection

87C A company, the shares of which are listed on an appointed stock exchange, that sends summarised financial statements to its members under section 87A(1), shall make a copy of the full financial statements of the company available for inspection by the public at the company's registered office.

[Section 87C inserted by 2004:36 s.5 effective 17 December 2004]

Power to waive laying of accounts and appointment of auditor

88 (1) Notwithstanding sections 13(2)(c) and (d), 84, 87 and 89, if all members and directors of a company, either in writing or at a general meeting, agree that in respect of a particular interval no financial statements or auditor's report thereon need be laid before a general meeting or that no auditor shall be appointed then there shall be no obligation to lay financial statements for such period or to appoint an auditor, as the case may be:

Provided that if a general meeting of the company does not take place within 18 months of the agreement reached, any member or members of the company may, by

notice to the company, require the holding of a general meeting within 6 months of the notice for the purpose of terminating the agreement.

(2) For the purposes of subsection (1) all the members of a company shall be deemed to have agreed at a general meeting if either—

(a) all the members are present in person at the meeting and agree; or

(b) if some of the members are not present in person at the meeting then if the members present in person at the meeting agree and there are produced at the meeting statements in writing from the members not present in person stating that they agree.

[Section 88 amended by 1993:37 effective 13 July 1993; subsection (1) repealed and substituted by 2011 : 43 s. 14 effective 18 December 2011]

Appointment and disqualification of auditor

89 (1) The members of a company at the statutory meeting shall subject to section 88 appoint one or more auditors to hold office until the close of the next annual general meeting, and, if the members fail to do so, the directors shall forthwith make such appointment or appointments.

(2) An auditor appointed under subsection (1), and subsequent auditors, shall hold office until a successor is appointed by the members of the company or, if the members fail to do so, until the directors appoint a successor.

(3) A person, other than an incumbent auditor, shall not be capable of being appointed auditor at a general meeting unless notice in writing of an intention to nominate that person to the office of auditor has been given not less than twenty-one days before a general meeting; and the company shall send a copy of any such notice to the incumbent auditor, and shall give notice thereof to the members, either by advertisement in an appointed newspaper or in any other mode provided by the bye-laws of the company, not less than seven days before a general meeting:

Provided that an incumbent auditor may by notice in writing to the secretary of the company waive the requirements of this subsection which shall then not have effect.

(3A) No person shall accept appointment or consent to be appointed as auditor of a company if he is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire, or who has vacated office, until he has requested and received from that auditor a written statement of the circumstances and the reasons why, in that auditor's opinion, he is to be replaced.

(3B) Notwithstanding subsection (3A), a person may accept appointment or consent to be appointed as auditor of a company if, within fifteen days after making the request referred to in that subsection, he does not receive a written statement as requested.

(3C) No auditor of a company is in breach of any duty to which he is subject as auditor of that company by reason of his communicating in good faith to the person making the request referred to in subsection (3A) any information or opinion in response to such request.

(4) The directors may fill any casual vacancy in the office of auditor, but while the vacancy continues the surviving or continuing auditor, if any, may act.

(5) The members, by a resolution passed by at least two-thirds of the votes cast at a general meeting of which notice specifying the intention to pass such resolution was given, may remove any auditor before the expiration of his term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in his stead for the remainder of his term:

Provided that, not less than twenty-one days before the date of the meeting, notice in writing of the proposed resolution is given to the incumbent auditor and to the auditor proposed to be appointed.

(5A) An auditor of a company who has resigned, been removed, or whose term of office has expired or is about to expire, or who has vacated office, shall be entitled—

(a) to attend the general meeting of the company at which he is to be removed or his successor is to be appointed;

(b) to receive all notices of, and other communications relating to, that meeting which a member is entitled to receive; and

(c) to be heard at that meeting on any part of the business of the meeting that relates to his duties as auditor or former auditor;

(6) The remuneration of an auditor appointed by the members shall be fixed by the members or by the directors, if they are authorized to do so by the members, and the remuneration of an auditor appointed by the directors shall be fixed by the directors.

(7) Subject to section 88 where for any reason no auditor is appointed, the Registrar may, on the application of any member, appoint one or more auditors to hold office for such term as he sees fit and fix the remuneration to be paid by the company for his or their services.

(8) Except as provided in subsection (9), no person shall be appointed as auditor of a company who is an officer or employee of that company or of an affiliated company or who is a partner, employer or employee of any such officer or employee.

(9) Upon the unanimous vote of the members of a company limited by guarantee, other than a mutual company present or represented at the meeting at which the auditor is appointed, an officer or employee of that company or an affiliated company, or a partner, employer or employee of an officer or employee may be appointed as auditor of that company, if he has no personal responsibility for the care of the funds of the company and is not concerned in the day to day management or recording of its finances.

(10) A person appointed as auditor under subsection (9) shall indicate in his report to the members that he is an officer or employee of the company or an affiliated company or a partner, employer or employee of an officer or employee, as the case may be.

(11) Any oral or written statement made under subsection (3A) or (5A) by an auditor or former auditor enjoys qualified privilege.

(12) An appointment as auditor of a person who has not requested a written statement from the former auditor under subsection (3A) is voidable by a resolution of the shareholders at a general meeting.

[Section 89 amended by 1998:35 effective 5 October 1998; Section 89 amended by 2011 : 43 s. 15 effective 18 December 2011]

Annual audit

90 (1) The auditor shall audit any financial statements to be laid pursuant to section 84 as will enable him to report to the members.

(2) Based on the results of his audit under subsection (1) which audit shall be made in accordance with generally accepted auditing standards, the auditor shall make a report to the members.

(3) The generally accepted auditing standards referred to in subsection (2) may be those of Bermuda or a country or jurisdiction other than Bermuda or such other generally accepted auditing standards as may be appointed by the Minister under subsection (4) for the purpose of this subsection; and where the generally accepted auditing standards used are other than those of Bermuda, the report of the auditor shall identify the generally accepted auditing standards used.

(3A) No action shall lie against an auditor in the performance of any function as an auditor contemplated by this Act except in the instance of—

(a) the company who engaged the auditor to perform such function; or

(b) any other person expressly authorized by the auditor to rely on his work.

(4) The Minister may, after consultation with the Chartered Professional Accountants of Bermuda, appoint generally accepted auditing standards promulgated by an audit standard setting body and shall cause the appointment to be published in an appointed newspaper.

[Section 90 replaced by 1992:51 effective 1 July 1992; and amended by 1995:33 effective 7 July 1995; and by 1996:21 effective 24 July 1996; amended by 2014 : 8 s. 16 effective 11 April 2014]

Election of directors

91 (1) The affairs of the company shall be managed by at least one director who shall be a person elected in the first place at the statutory meeting and thereafter elected or appointed by the members at each annual general meeting of the company or in such other manner and for such term as may be provided in the bye-laws.

(1A) A maximum number of directors may be determined by the members at a general meeting of the company or in such other manner as may be provided in the bye-laws.

(2) Where a maximum number of directors has been determined in accordance with subsection (1A), a general meeting of a company may authorise the directors of the company to elect or appoint on their behalf a person or persons to act as additional directors up to such maximum.

(2A) Any person may be appointed an alternate director by or in accordance with a resolution of the members or by a director in such manner as may be provided in the bye-laws, and the person so appointed shall have all the rights and powers of the director for whom he is appointed in the alternative, except that he shall not be entitled to attend and vote at any meeting of the directors otherwise than in the absence of such director.

(2B) An alternate director shall only be a director for the purposes of this Act and shall only be subject to the provisions of this Act insofar as they relate to the duties and obligations of a director when performing the functions of the director for whom he is appointed in the alternative.

(3) So long as a quorum of directors remains in office, unless the bye-laws of a company otherwise provide, any vacancy occurring in the board of directors may be filled by such directors as remain in office. If no quorum of directors remains the vacancy shall be filled by a general meeting of members.

(4) A company may appoint as officers of the company persons who may or may not be directors and who shall be appointed in the manner, and for the period, provided for in the bye-laws of the company.

(5) The directors may, subject to the bye-laws of the company, exercise all the powers of the company except those powers that are required by this Act or the bye-laws to be exercised by the members of the company.

[Section 91 amended by 1992:51 effective 1 July 1992; by 1993:37 effective 13 July 1993; by 1994:22 effective 13 July 1994; subsections (1A) and (2) substituted for subsection (2) by 1999:25 s.14 effective 23 July 1999; subsection (4) substituted, and (5) inserted, by 2006:40 s.24 effective 29 December 2006; subsection (1) repealed and substituted, and subsections (2) and (2A) amended by 2011 : 43 s. 16 effective 18 December 2011]

Representation of director by another director

91A (1) Subject to any express provision to the contrary in the bye-laws of the company, a director of the company may appoint another director of the company to represent him and to vote on his behalf at any meeting of the directors of the company:

Provided that a director so appointed—

(a) shall not be entitled to vote at any such meeting on behalf of the director who appointed him if the director who appointed him is himself present at that meeting; and

(b) may, subject to paragraph (a), vote at any such meeting on his own behalf as well as on behalf of the director who appointed him.

(2) An appointment made under subsection (1)—

(a) shall not have effect unless notice thereof is given in writing to the secretary of the company by the director making the appointment;

(b) may be either general or in respect of a particular meeting or meetings specified in the notice of appointment; and

(c) may be revoked at any time by notice in writing given to the secretary of the company by the director making the appointment.

Directors entitled to receive notice of meetings, etc.

91B (1) The directors of a company shall upon written request deposited at the registered office of the company be entitled to receive notice of, and to attend and be heard at, any or all general meetings.

(2) Notwithstanding section 75 (length of notice for calling meetings) a notice given under subsection (1) shall be valid if in all the circumstances, such notice is reasonable.

[Section 91B inserted by 1992:51 effective 1 July 1992; and replaced by 1995:33 effective 7 July 1995]

Appointment of secretary

92 (1) The directors of a company shall appoint a secretary to the company who shall hold office in accordance with the bye-laws.

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

Register of directors and officers

92A (1) Subject to subsection (8), every company shall keep at its registered office a register of its directors and officers and the register shall, with respect to the particulars to be contained in it of those persons, comply with subsection (6).

(2) The company shall, within the period of fourteen days from the occurrence of—

(a) any change among its directors or in its officers; or

(b) any change in the particulars contained in the register, enter on its register the particulars of the change.

(3) The register shall during business hours (subject to such reasonable restrictions as the company may impose, so that not less than two hours in each day be allowed for inspection) be open for inspection by members of the public without charge.

(3A) Any member of the public may require a copy of the register, or any part of it, on payment of the appropriate fee prescribed in the Eighth Schedule.

(4) If an inspection required under this section is refused, or if default is made in complying with subsection (1) or (2) the company which is in default shall be liable in respect of each offence to a default fine.

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

(6) The register shall contain the following particulars with respect to each director and officer—

(a) in the case of an individual, his present first name, surname and address;

(b) in the case of a company, its name and registered office; and

(c) whether the director holds the position as an alternate and, if so, the particulars of the existing director for whom such alternate director is appointed.

(6A) The register of a local company shall state whether any individual possesses Bermudian status within the meaning of the Bermuda Immigration and Protection Act 1956.[*title 5 item 16*]

(7) For the purposes of this section "officer" means—

(a) a person appointed as an officer in accordance with section 91(4) if that person is a director; and

(b) a secretary appointed under section 92(1).

(8) Any company whose objects are wholly and exclusively charitable and which does not solicit funds from the public shall, on filing a copy of its memorandum of association and of its register of directors and officers with the Registrar and on obtaining from the Registrar a confirmation of the filing, be exempt from the provisions of this section.

(9) Notwithstanding any other statutory provision the documents filed for the purposes of subsection (8) shall be treated as confidential by the Minister and any public officer having access to them.

[Section 92A inserted by 1992 : 51 effective 1 July 1992; amended by 1993 : 37 effective 13 July 1993; amended by 1996 : 21 effective 24 July 1996; Subsection (3A) inserted and subsection (7) amended by 2006 : 40 s. 25 effective 29 December 2006; Section 92A subsection (6) amended by 2025 : 27 s. 2 effective 10 December 2025]

Register of Directors

92B (1) Every company shall file with the Registrar a list of its directors, in such form and together with such fee as prescribed in accordance with this section, and shall notify the Registrar of any change in such directors within thirty days of any such change.

(2) The list of directors must contain the following particulars with respect to each director—

(a) in the case of an individual, his present first name, surname and address;

(b) in the case of a company, its name and the address of its registered office; and

(c) whether the director holds the position as an alternate and, if so, the particulars of the existing director for whom such alternate director is appointed.

(3) The Registrar shall keep a register in accordance with section 273 containing the information on directors filed in accordance with subsection (1), and such register shall be available for public inspection subject to such conditions as the Registrar may impose and on payment of such fee as may be prescribed.

(4) If default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default shall be liable to a default fine.

[Section 92B inserted by 2016 : 19 s. 2 effective 1 April 2016; Section 92B subsection (2) amended by 2025 : 27 s. 2 effective 10 December 2025]

Removal of directors

93 (1) Subject to its bye-laws the members of a company may at a special general meeting called for that purpose remove a director:

Provided that notice of any such meeting shall be served on the director concerned not less than fourteen days before the meeting and he shall be entitled to be heard at such meeting:

Provided further that nothing in this section shall have effect to deprive any person of any compensation or damages which may be payable to him in respect of the termination of his appointment as a director or of any other appointment with the company.

(2) A vacancy created by the removal of a director at a special general meeting may be filled at that meeting by the election of another director in his place or in the absence of any such election by the other directors.

Undischarged bankrupt not to take part in management of a company

94 (1) If any person being an undischarged bankrupt in any country acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the Court, he shall be liable on conviction on indictment to imprisonment for a term of two years, or on summary conviction to imprisonment for a term of six months or to a fine of five hundred dollars or to both such imprisonment and fine:

Provided that a person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of, a company, if he was on 1 July 1983 acting as a director of that company or taking part or being concerned in its management.

(2) The leave of the Court for the purposes of this section shall not be given unless notice of intention to apply therefor has been served on the Official Receiver, and it shall be the duty of the Official Receiver, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

Court may order that a convicted person shall not take part in the management of the affairs of a company

95 (1) Where any court convicts any person of an offence relating to the affairs of a company which, in the opinion of such court, involves dishonesty it may order that such person shall not directly or indirectly take part in or be concerned in the management of any company without leave of the Supreme Court.

(2) Section 94(2) shall apply to any application for leave under subsection (1).

(3) The same right of appeal shall lie in respect of an order made under subsection (1) as it does from a sentence of imprisonment.

(4) Any person who contravenes an order of a court made under subsection (1) shall be liable to the punishments set out in section 94(1).

Prohibition of loans to directors without consent of members

96 (1) Without the consent of any member or members holding in the aggregate not less than nine-tenths of the total voting rights of all the members having the right to vote at any meeting of the members it shall not be lawful for a company to make a loan to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security in connection with a loan made to such person as aforesaid by any other person:

Provided that nothing in this section shall apply—

(a) subject to subsection (2), to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company;

(b) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business; or

(c) to any advance of moneys by a company to an officer or auditor under section 98(2)(c).

(2) Proviso (a) to subsection (1) shall not authorize the making of any loan, or the entering into any guarantee, or the provision of any security, except either—

(a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or

(b) on condition that, if the approval of the company is not given as aforesaid either—

(i) at or before the next following annual general meeting; or

(ii) in the case of a company that has made an election under section 71A, at or before the next following general meeting, which shall be

convened within 12 months of the authorisation of the making of the loan, or the entering into of the guarantee, or the provision of the security,

the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by any such condition, the directors authorizing the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(4) A loan shall be deemed to be a loan to a director if it is made to—

(a) the spouse or children of a director; or

(b) a company (other than a company which is a holding company or a subsidiary (wherever incorporated) of the company making the loan or, as the case may be, the company entering into guarantee or providing security in connection with a loan made to such person by any other person) which a director, his spouse or children own or control directly or indirectly more than twenty per cent of the capital or loan debt.

(5) For the purposes of this section a loan shall not be deemed to have been made in the ordinary course of business of a company if it has not been made on normal commercial terms in respect of interest rates, repayment terms and security.

(6) This section applies to a mutual company.

[Section 96 amended by 1992:51 effective 1 July 1992; subsection (1)(c) inserted by 2006:40 s.26 effective 29 December 2006; subsections (2)(b) and (4)(b) repealed and substituted by 2011 : 43 s. 17 effective 18 December 2011]

Duty of care of officers

97 (1) Every officer of a company in exercising his powers and discharging his duties shall—

(a) act honestly and in good faith with a view to the best interests of the company; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Every officer of a company shall comply with this Act, the regulations, and the bye-laws of the company.

(3) *[Deleted by 1995:33]*

(4) Without in any way limiting the generality of subsection (1) an officer of a company shall be deemed not to be acting honestly and in good faith if—

(a) he fails on request to make known to the auditors of the company full details of—

(i) any emolument, pension or other benefit that he has received or it is agreed that he should receive from the company or any of the company's subsidiaries; or

(ii) any loan he has received or is to receive from the company or any of its subsidiaries;

(b) he fails to disclose at the first opportunity at a meeting of directors or by writing to the directors—

(i) his interest in any material contract or proposed material contract with the company or any of its subsidiaries;

(ii) his material interest in any person that is a party to a material contract or proposed material contract with the company or any of its subsidiaries.

(5) For the purposes of this section—

(a) a general notice to the directors of a company by an officer of the company declaring that he is an officer of or has a material interest in a person and is to be regarded as interested in any contract with that person is a sufficient declaration of interest in relation to any such contract;

(b) the word "material" in relation to a contract or proposed contract shall be construed as relating to the materiality of that contract or proposed contract in relation to the business of the company to which disclosure must be made;

(c) an interest occurring by reason of the ownership or direct or indirect control of not more than 10% of the capital of a person shall not be deemed material.

(5A) An officer is not liable under subsection (1) if he relies in good faith upon—

(a) financial statements of the company represented to him by another officer of the company; or

(b) a report of an attorney, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him.

(6) Any officer of a company who fails to make known a matter he is required to make known under subsection (4) shall be liable to a fine of one thousand dollars.

(7) Nothing in this section shall be taken to prejudice any rule of law or any bye-law restricting officers of a company from having any interest in contracts with the company.

[Section 97 amended by 1995:33 effective 7 July 1995]

Exemption, indemnification and liability of officers, etc.

98 (1) Subject to subsection (2), a company may in its bye-laws or in any contract or arrangement between the company and any officer, or any person employed by the company as auditor, exempt such officer or person from, or indemnify him in respect of, any loss arising or liability attaching to him by virtue of any rule of law in respect of any negligence, default, breach of duty or breach of trust of which the officer or person may be guilty in relation to the company or any subsidiary thereof.

(2) Any provision, whether contained in the bye-laws of a company or in any contract or arrangement between the company and any officer, or any person employed by the company as auditor, exempting such officer or person from, or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any fraud or dishonesty of which he may be guilty in relation to the company shall be void:

Provided that—

(a) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force;

(b) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal in which judgment is given in his favour or in which he is acquitted or when relief is granted to him by the Court under section 281; and

(c) notwithstanding anything in this section, a company may advance moneys to an officer or auditor for the costs, charges and expenses incurred by the officer or auditor in defending any civil or criminal proceedings against them, on condition that the officer or auditor shall repay the advance if any allegation of fraud or dishonesty is proved against them.

[Section 98 amended by 1995:33 effective 7 July 1995, and by 1996:21 effective 24 July 1996; subsection (2)(c) inserted by 2006:40 s.27 effective 29 December 2006]

Insurance of officers

98A A company may purchase and maintain insurance for the benefit of any officer of the company against any liability incurred by him under section 97(1)(b) in his capacity as an officer of the company or indemnifying such an officer in respect of any loss arising or liability attaching to him by virtue of any rule of law in respect of any negligence, default, breach of duty or breach of trust of which the officer may be guilty in relation to the company or any subsidiary thereof and nothing in this Act shall make void or voidable any such policy.

[Section 98A amended by 1995:33 effective 7 July 1995]

Liability of auditor or officer

98(B) (1) Where an auditor or an officer is found liable to any person for damages arising out of the performance of any function as such auditor or officer as contemplated by this Act, then the following provisions of this section shall apply.

(2) An auditor or officer may be liable jointly and severally only if it is proved that he knowingly engaged in fraud or dishonesty.

(3) In any case other than that contemplated by subsection (2) hereof, the liability of the auditor or officer, as the case may be, shall be determined as follows—

(a) the Court shall determine the percentage of responsibility of the plaintiff, of each of the defendants, and of each of the other persons alleged by the parties to have caused or contributed to the loss of the plaintiff. In considering the percentages of responsibility, the Court shall consider both the nature of the conduct of each person and the nature and extent of the causal relationship between the conduct and the loss claimed by the plaintiff;

(b) the liability of the auditor or officer, as the case may be, shall be equal to the total loss suffered by the plaintiff multiplied by the auditor's or officer's, as the case may be, percentage of responsibility as determined under paragraph (a) hereof.

(4) No auditor or officer whose liability is determined under subsection (3) hereof shall have any liability in respect of any judgement entered against any other party to the action.

(5) Except where agreed in writing between the parties, where the liability of an auditor or officer has been determined in accordance with subsection (3) no other person shall have any right to recover from such auditor or officer any portion of any judgment entered against such other person in respect of the action.

[Section 98B inserted by 1996:21 effective 24 July 1996]

PART VIA

BENEFICIAL OWNERSHIP

Interpretation of this Part

98C *[Repealed by BR 100 / 2025 para. 2]*

[Section 98C inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98C definition "closed-ended investment vehicle" repealed by 2019 : 46 s. 33(2) effective 1 January 2020; Section 98C repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Application of this Part

98D *[Repealed by BR 100 / 2025 para. 2]*

[Section 98D inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98D subsection (2)(b) repealed by 2019 : 46 s. 33(2) effective 1 January 2020; Section 98D repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Company to identify beneficial owners

Meaning of beneficial owner

98E *[Repealed by BR 100 / 2025 para. 2]*

[Section 98E inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98E repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Companies to obtain information regarding beneficial owners

98F *[Repealed by BR 100 / 2025 para. 2]*

[Section 98F inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98F repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Company to issue notice to beneficial owners

98G *[Repealed by BR 100 / 2025 para. 2]*

[Section 98G inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98G repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Beneficial ownership register

Duty to keep beneficial ownership register

98H *[Repealed by BR 100 / 2025 para. 2]*

[Section 98H inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98H repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Company to keep beneficial ownership register up-to-date and current

98I *[Repealed by BR 100 / 2025 para. 2]*

[Section 98I inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98I repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Disputes regarding beneficial ownership

98J *[Repealed by BR 100 / 2025 para. 2]*

[Section 98J inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98J repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Power of Court to rectify beneficial ownership register

98K *[Repealed by BR 100 / 2025 para. 2]*

[Section 98K inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98K repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Beneficial ownership information to be filed with Bermuda Monetary Authority; compliance measures

Filing of beneficial ownership information with Bermuda Monetary Authority

98L *[Repealed by BR 100 / 2025 para. 2]*

[Section 98L inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98L repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Compliance measures

Notice by company imposing restrictions

98M *[Repealed by BR 100 / 2025 para. 2]*

[Section 98M inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98M repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Power to obtain information and reports

98N *[Repealed by BR 100 / 2025 para. 2]*

[Section 98N inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98N repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Offences

98O *[Repealed by BR 100 / 2025 para. 2]*

[Section 98O inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98O repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Miscellaneous

Confidentiality

98P *[Repealed by BR 100 / 2025 para. 2]*

[Section 98P inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98P repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Privileged information

98Q *[Repealed by BR 100 / 2025 para. 2]*

[Section 98Q inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98Q repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Application of Public Access to Information Act 2010

98R *[Repealed by BR 100 / 2025 para. 2]*

[Section 98R inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98R repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Application of Personal Information Protection Act 2016

98S *[Repealed by BR 100 / 2025 para. 2]*

[Section 98S inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98S repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Other provisions concerning beneficial ownership or registers etc. not affected

98T *[Repealed by BR 100 / 2025 para. 2]*

[Section 98T inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98T repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Notices

98U *[Repealed by BR 100 / 2025 para. 2]*

[Section 98U inserted by 2017 : 41 s. 4 effective 23 March 2018; Section 98U repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

PART VII

ARRANGEMENTS, RECONSTRUCTIONS, AMALGAMATIONS AND MERGERS

[Heading amended by 2011 : 43]

Power to compromise with creditors and members

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

(2) If a majority in number representing three-fourths 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 the 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, in the case of a company 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.

(4) If a company makes default in complying with subsection (3), the company and every officer of the company who knowingly or wilfully authorizes or permits the default shall be liable to a fine of ten dollars for each copy in respect of which default is made.

Information as to compromise with creditors and members

100 (1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 99 there shall—

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

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

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

(4) Where a company makes default in complying with any requirement of this section, the company and every officer of the company who knowingly or wilfully authorizes or permits the default shall be liable to a fine of one thousand dollars, and for the purpose of this subsection any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be liable under this subsection if that person shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

(5) It shall be the duty of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this subsection shall be liable to a fine of two hundred dollars.

Reconstruction of companies

101 (1) Where an application is made to the Court under section 99 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or 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, subject to subsection (2), 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 allocation 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 persons, who within such time and in such manner as the Court directs dissent from the compromise or arrangement;

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction shall be fully and effectively carried out.

(2) No order shall be made under subsection (1) for the transfer to the transferee company of the whole or any part of the undertaking or of the property or liabilities of any transferor company unless notice of the application for the sanctioning of the compromise or arrangement of which the order is to form a part is given in writing to the Minister and an affidavit signifying the consent of the Minister to the making of the order has been lodged with the Court.

(3) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue 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 in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(4) Where an order is made under this section, every company in relation to which the order is made shall cause 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 officer of the company who

knowingly or wilfully authorizes or permits the default shall be liable to a fine of two hundred dollars.

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

[Section 101 subsection (1)(f) amended by 2011 : 43 s. 19 effective 18 December 2011]

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

102 (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 subject company") to another company, whether a company within the meaning of this Act 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 nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary, the transferee company may, at any time within two months beginning with the date on which such approval is obtained, give notice to any dissenting shareholder that it desires to acquire his shares, and when 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:

Provided that where shares in the subject company of the same class or classes as the shares whose transfer is involved are already held as aforesaid to a value greater than one-tenth of the aggregate of their value and that of the shares, other than those already held as aforesaid, whose transfer is involved, the foregoing provisions of this subsection shall not apply unless—

(a) the transferee company offers the same terms to all holders of the shares, other than those already held as aforesaid, whose transfer is involved, or, where those shares include shares of different classes, of each class of them; and

(b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares, other than those already held as aforesaid, whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine-tenths in value of the shares in the first-mentioned company or of any class of those shares, then—

(a) the transferee company shall within one month from the date of the transfer, unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement, give notice of that fact to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

(b) any such holder may within three months from the giving of the notice to him, himself give notice requiring the transferee company to acquire the shares in question,

and where a shareholder gives notice under paragraph (b) with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the Court on the application of either the transferee company or the shareholder thinks fit to order.

(3) Where a notice has been given by the transferee company under subsection (1) 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 subject company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the subject 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, the subject company shall thereupon register the transferee company as the holder of those shares.

(4) Any sums received by the subject 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.

(5) In this section "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.

[Section 102 amended by 1998:35 effective 5 October 1998; subsection (1) amended by 2000:29 s.14 effective 11 August 2000]

Holders of 95% of shares may acquire remainder

103 (1) The holders of not less than ninety-five per cent of the shares or any class of shares in a company (hereinafter in this section referred to as the "purchasers") may give notice to the remaining shareholders or class of shareholders of the intention to acquire their shares on the terms set out in the notice. When such a notice is given the purchasers shall be entitled and bound to acquire the shares of the remaining

shareholders on the terms set out in the notice unless a remaining shareholder applies to the Court for an appraisal under subsection (2):

Provided that the foregoing provisions of this subsection shall not apply unless the purchasers offer the same terms to all holders of the shares whose acquisition is involved.

(2) Any shareholder to whom a notice has been given under subsection (1) may within one month of receiving the notice apply to the Court to appraise the value of the shares to be purchased from him and the purchasers shall be entitled to acquire the shares at the price so fixed by the Court.

(3) Within one month of the Court appraising the value of any shares under subsection (2) the purchasers shall be entitled either—

(a) to acquire all the shares involved at the price fixed by the Court; or

(b) cancel the notice given under subsection (1).

(4) Where the Court has appraised any shares under subsection (2) and the purchasers have prior to the appraisal acquired any shares by virtue of a notice under subsection (1) then within one month of the Court appraising the value of the shares if the price of the shares they have paid to any shareholder is less than that appraised by the Court they shall either—

(a) pay to such shareholder the difference in the price they have paid to him and the price appraised by the Court; or

(b) cancel the notice given under subsection (1) and return to the shareholder any shares they have acquired and the shareholder shall repay the purchasers the purchase price.

(5) No appeal shall lie from an appraisal by the Court under this section.

(6) The costs of any application to the Court under this section shall be in the discretion of the Court.

(6A) Where the purchaser is entitled and bound to acquire shares pursuant to subsection (1) or has determined in accordance with subsection (3)(a) to proceed to acquire all the shares involved at the price fixed by the Court, on the expiration of one month from the date on which the notice was given, or, if an application to the Court to appraise the value of the shares to be purchased is then pending, from the date that application has been disposed of, the purchaser may—

(a) transmit a copy of the notice to the subject company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the purchaser and on its own behalf by the purchaser; and

(b) pay or transfer to the subject company the amount or other consideration representing the price payable by the purchaser for the shares which by virtue of this section the purchaser is entitled to acquire,

whereupon the subject company shall register the purchaser as the holder of those shares.

(6B) Any sums received by the subject 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 sums or other consideration were respectively received.

(7) In this section "price" shall include not only monetary price but also the monetary value of any shares or other securities offered by the purchasers in exchange for the shares to be acquired.

[Section 103 subsections (6A) and (6B) inserted by 2011 : 43 s. 20 effective 18 December 2011]

Amalgamation of companies

104 (1) Two or more companies which are registered in Bermuda, may subject to section 4A amalgamate and continue as one company:

Provided that if the amalgamated company is to be a local company it shall comply with the Third Schedule.

(2) *[Deleted by 1998:35]*

[Section 104 amended by 1992:51 effective 1 July 1992; and by 1998:35 effective 5 October 1998]

Amalgamation or merger of exempted company and foreign corporation and continuation as an exempted company

104A (1) One or more exempted companies and one or more bodies incorporated outside Bermuda (each such body hereinafter in this section and in sections 104B and 104D referred to as a "foreign corporation") may—

(a) amalgamate and continue as an exempted company registered in Bermuda; or

(b) merge, and the surviving company continue as an exempted company registered in Bermuda,

to which the provisions of this Act and any other relevant laws of Bermuda shall apply.

(2) A foreign corporation shall obtain all necessary authorizations, if any, required under the laws of the jurisdiction in which it was incorporated or is presently registered in order to enable it to amalgamate and continue as an exempted company registered in Bermuda, and shall file with the Registrar documentary proof of such authorizations.

(2A) In respect of a merger, a foreign corporation shall obtain all necessary authorizations, if any, required under the laws of the jurisdiction in which it was incorporated or is presently registered in order to enable it to merge and for the surviving company to continue as an exempted company registered in Bermuda, and shall file with the Registrar documentary proof of such authorizations.

(3) *[Deleted by 1998:35]*

(4) The provisions of sections 105 to 109, mutatis mutandis, apply to—

(a) an amalgamation under this section in the same way as they apply to an amalgamation under section 104; or

(b) a merger under this section in the same way as they apply to a merger under section 104H.

(5) *[Deleted by 1998:35]*

[Section 104A inserted by 1994:22 effective 13 July 1994; amended by 1996:21 effective 24 July 1996; amended by 1998 : 35 effective 5 October 1998; amended by 2011 : 43 s. 21 effective 18 December 2011]

Amalgamation or merger of exempted company and foreign corporation and continuation as a foreign corporation

104B (1) One or more exempted companies and one or more foreign corporations may—

(a) amalgamate and continue as a foreign corporation (in this section and section 104C referred to as "the amalgamated corporation"); or

(b) merge and the surviving company continue as a foreign corporation (in this section and section 104C referred to as "the surviving corporation"),

to which the laws of the jurisdiction in which it is proposed that the amalgamated corporation or surviving corporation will continue (in this section and section 104C referred to as "the foreign jurisdiction") shall apply.

(2) An exempted company shall not amalgamate or merge pursuant to subsection (1) unless—

(a) an officer of such company has made a statutory declaration to the effect that there are reasonable grounds for believing that—

(i) such company is, and the amalgamated corporation or surviving corporation will be, able to pay its liabilities as they fall due;

(ii) the realizable value of the amalgamated corporation's assets or surviving corporation's assets will not be less than the aggregate of its liabilities and issued share capital and share premium account of all classes; and

(iii) either no creditor of such company will be prejudiced by the amalgamation or merger, or adequate notice has been given in accordance with section 104D(4) to all known creditors of such company and no creditor objects to the amalgamation or merger otherwise than on grounds that are frivolous or vexatious;

(b) an irrevocable deed poll is executed by such company and its directors, pursuant to which—

(i) such company and each of its directors may be served with legal process in Bermuda in any proceeding arising out of actions or

omissions of such company occurring prior to the amalgamation or merger, and provision is made for the appointment of a person within Bermuda as agent for such company for the service of process for a period of not less than three years from the effective date of the amalgamation or merger and for a signed acceptance of the appointment; or

(ii) such company and each of its directors may be served with legal process at a specified address in the United Kingdom, the United States of America or any appointed jurisdiction, and whereby such company and such directors submit to the non-exclusive jurisdiction of the courts of that country or jurisdiction;

(c) each foreign corporation which is amalgamating or merging has obtained all necessary authorizations, if any, required under the laws of the jurisdiction in which it was incorporated or is presently registered to enable it to so amalgamate or merge;

(d) the foreign jurisdiction is –

(i) an appointed jurisdiction; or

(ii) approved by the Minister, upon application by the company for the purpose of the amalgamation of the company with a foreign corporation and continuance as a foreign corporation; or

(iii) in respect of a merger, approved by the Minister, upon application by the company for the purpose of the merger of the company with a foreign corporation and the continuance of the surviving corporation as a foreign corporation;

(e) not more than three months prior to the effective date of the amalgamation or merger—

(i) each exempted company which is amalgamating or merging shall advertise in an appointed newspaper; and

(ii) each foreign corporation which is amalgamating or merging shall advertise in a national newspaper in the jurisdiction in which it was incorporated or is presently registered,

its intention to amalgamate and continue as a company in the foreign jurisdiction or merge and the surviving corporation to continue as a company in the foreign jurisdiction.

[Section 104B inserted by 1996:21 effective 24 July 1996; replaced by 1998:35 effective 5 October 1998; subsection (2)(d) substituted by 1999:25 effective 23 July 1999; section 104B amended by 2011 : 43 s. 22 effective 18 December 2011]

Documents to be filed on amalgamation or merger and continuation as a foreign corporation

104C (1) An exempted company shall not amalgamate or merge pursuant to section 104B unless on or before the effective date of the amalgamation or merger such company files with the Registrar a notice of the amalgamation or merger which shall contain or have attached thereto the following information:

(a) the effective date of the amalgamation or merger;

(b) the name of the foreign jurisdiction;

(c) the address of the registered office or the principal business address of the amalgamated corporation or surviving corporation in the foreign jurisdiction;

(d) a copy of the statutory declaration required pursuant to section 104B(2)(a);

(e) a copy of the irrevocable deed poll required pursuant to section 104B(2)(b); and

(f) a statement as to whether the company intends to amalgamate or merge.

(2) Within thirty days after the date of the issue thereof, the amalgamated corporation or surviving corporation continuing as a result of an amalgamation or merger pursuant to section 104B shall file with the Registrar a copy of the certificate of amalgamation or merger issued by the appropriate authority of the foreign jurisdiction, or, if no such certificate of amalgamation or merger is issued, such other documentary evidence of the amalgamation or merger as shall be issued by such authority.

(3) The documents filed with the Registrar pursuant to subsections (1) and (2) shall be open to public inspection.

[Section 104C inserted by 1996:21 effective 24 July 1996; replaced by 1998:35 effective 5 October 1998; section 104C amended by 2011 : 43 s. 23 effective 18 December 2011]

Provisions applicable to amalgamation or merger and continuation as a foreign corporation

104D (1) The provisions of sections 105 to 107 shall apply, with the necessary changes, to an amalgamation or merger pursuant to section 104B in the same way as they apply to an amalgamation pursuant to section 104 or a merger pursuant to section 104H, except that the provisions of section 106 shall apply only to amalgamating or merging exempted companies.

(2) The effect of an amalgamation or merger pursuant to section 104B shall be the same as in the case of an amalgamation pursuant to section 104A or a merger pursuant to section 104H, except insofar as the laws of the foreign jurisdiction otherwise provide.

(3) The effective date of an amalgamation or merger pursuant to section 104B shall be the date that the amalgamation or merger is effective pursuant to the laws of the foreign jurisdiction.

(4) For the purposes of section 104B(2)(a), adequate notice is given if—

(a) a notice in writing is sent to each known creditor having a claim against the company that exceeds $1,000; and

(b) notice is published in an appointed newspaper stating that such company intends to amalgamate or merge with any specified exempted companies or one or more specified foreign corporations, or both, and that a creditor of such company may object to the amalgamation or merger within thirty days from the date of the notice.

[Section 104D inserted by 1996:21 effective 24 July 1996; and replaced by 1998:35 effective 5 October 1998; Section 104D amended by 2011 : 43 s. 24 effective 18 December 2011]

Effect of amalgamation of company under section 104B

104E *[Repealed]*

[Section 104E inserted by 1996:21 effective 24 July 1996; and repealed by 1998:35 effective 5 October 1998]

Minister's refusal to grant consent

104F *[Repealed]*

[Section 104F inserted by 1996:21 effective 24 July 1996; and repealed by 1998:35 effective 5 October 1998]

Regulations

104G *[Repealed]*

[Section 104G inserted by 1996:21 effective 24 July 1996; and repealed by 1998:35 effective 5 October 1998]

Merger of companies

104H Two or more companies which are registered in Bermuda may merge and their undertaking, property and liabilities shall vest in one of such companies as the surviving company (the "surviving company"):

Provided that if the surviving company is to be a local company it shall comply with the Third Schedule.

[Section 104H inserted by 2011 : 43 s. 25 effective 18 December 2011]

Amalgamation agreement or merger agreement

105 (1) Each company proposing to amalgamate or merge shall enter into an agreement setting out the terms and means of effecting the amalgamation or merger and, in particular, setting out —

(a) in respect of an amalgamation, the provisions that are required to be included in the memorandum of the amalgamated company;

(b) in respect of a merger, any proposed amendments to the memorandum of the surviving company, or if none are proposed, a statement that the memorandum of the surviving company immediately prior to the merger shall be its memorandum after the merger;

(c) the name and address of each proposed director of the amalgamated or surviving company;

(d) the manner in which the shares of each amalgamating or merging company are to be converted into shares or other securities of the amalgamated or surviving company;

(e) if any shares of an amalgamating or merging company are not to be converted into securities of the amalgamated or surviving company, the amount of money or securities that the holders of such shares are to receive in addition to or instead of securities of the amalgamated or surviving company;

(f) the manner of payment of money instead of the issue of fractional shares of the amalgamated or surviving company or of any other securities which are to be received in the amalgamation or merger;

(g) in respect of an amalgamation, whether the bye-laws of the amalgamated company are to be those of one of the amalgamating companies and, if not, a copy of the proposed bye-laws;

(h) in respect of a merger, any proposed amendments to the bye-laws of the surviving company or, if none are proposed, a statement that the bye-laws of the surviving company immediately prior to the merger shall be its bye-laws after the merger; and

(i) details of any arrangements necessary to perfect the amalgamation or merger and to provide for the subsequent management and operation of the amalgamated or surviving company.

(2) If shares of one of the amalgamating or merging companies are held by or on behalf of another of the amalgamating or merging companies, the amalgamation or merger agreement shall provide for the cancellation of such shares when the amalgamation or merger becomes effective without any repayment of capital in respect thereof, and no provision shall be made in the agreement for the conversion of such into shares of the amalgamated or surviving company.

[Section 105 repealed and replaced by 2011 : 43 s. 26 effective 18 December 2011]

Shareholder approval

106 (1) The directors of each amalgamating or merging company shall submit the amalgamation agreement or merger agreement for approval to a meeting of the holders of shares of the amalgamating or merging company of which they are directors and, subject to subsection (4), to the holders of each class of such shares.

(2) A notice of a meeting of shareholders complying with section 75 shall be sent in accordance with that section to each shareholder of each amalgamating or merging company, and shall—

(a) include or be accompanied by a copy or summary of the amalgamation agreement or merger agreement; and

(b) subject to subsection (2A), state—

(i) the fair value of the shares as determined by each amalgamating or merging company; and

(ii) that a dissenting shareholder is entitled to be paid the fair value of his shares.

(2A) Notwithstanding subsection (2)(b)(ii), failure to state the matter referred to in that subsection does not invalidate an amalgamation or merger.

(3) Each share of an amalgamating or merging company carries the right to vote in respect of an amalgamation or merger whether or not it otherwise carries the right to vote.

(4) The holders of shares of a class of shares of an amalgamating or merging company are entitled to vote separately as a class in respect of an amalgamation or merger if the amalgamation agreement or merger agreement contains a provision which would constitute a variation of the rights attaching to any such class of shares for the purposes of section 47.

(4A) The provisions of the bye-laws of the company relating to the holding of general meetings shall apply to general meetings and class meetings required by this section provided that, unless the bye-laws otherwise provide, the resolution of the shareholders or class must be approved by a majority vote of three-fourths of those voting at such meeting and the quorum necessary for such meeting shall be two persons at least holding or representing by proxy more than one-third of the issued shares of the company or the class, as the case may be, and that any holder of shares present in person or by proxy may demand a poll.

(5) An amalgamation or merger agreement shall be deemed to have been adopted when it has been approved by the shareholders as provided in this section.

(6) Any shareholder who did not vote in favour of the amalgamation or merger and who is not satisfied that he has been offered fair value for his shares may within one month of the giving of the notice referred to in subsection (2) apply to the Court to appraise the fair value of his shares.

(6A) Subject to subsection (6B), within one month of the Court appraising the fair value of any shares under subsection (6) the company shall be entitled either—

(a) to pay to the dissenting shareholder an amount equal to the value of his shares as appraised by the Court; or

(b) to terminate the amalgamation or merger in accordance with subsection (7).

(6B) Where the Court has appraised any shares under subsection (6) and the amalgamation or merger has proceeded prior to the appraisal then, within one month of the Court appraising the value of the shares, if the amount paid to the dissenting shareholder for his shares is less than that appraised by the Court the amalgamated or surviving company shall pay to such shareholder the difference between the amount paid to him and the value appraised by the Court.

(6C) No appeal shall lie from an appraisal by the Court under this section.

(6D) The costs of any application to the Court under this section shall be in the discretion of the Court.

(7) An amalgamation agreement or merger agreement may provide that at any time before the issue of a certificate of amalgamation or merger the agreement may be terminated by the directors of an amalgamating or merging company, notwithstanding approval of the agreement by the shareholders of all or any of the amalgamating or merging companies.

[Section 106 amended by 1994:22 effective 13 July 1994; amended by 2011 : 43 s. 27 effective 18 December 2011]

Short form amalgamation or merger

107 (1) A holding company and one or more of its wholly-owned subsidiary companies may amalgamate and continue as one company or merge and the holding company continue as the surviving company without complying with sections 105 and 106 if—

(a) the amalgamation or merger is approved by a resolution of the directors of each amalgamating or merging company; and

(b) the resolutions provide that —

(i) the shares of each amalgamating or merging subsidiary company shall be cancelled without any repayment of capital in respect thereof;

(ii) the memorandum and bye-laws of the amalgamated or surviving company shall be the same as the memorandum and bye-laws of the amalgamating or merging holding company; and

(iii) no securities shall be issued by the amalgamated or surviving company in connection with the amalgamation or merger.

(2) Two or more wholly-owned subsidiary companies of the same holding company may amalgamate and continue as one company or merge and one of the wholly-owned subsidiary companies may continue as the surviving company without complying with sections 105 and 106 if —

(a) the amalgamation or merger is approved by a resolution of the directors of each amalgamating or merging company; and

(b) in respect of an amalgamation, the resolutions provide that —

(i) the shares of all but one of the amalgamating subsidiary companies shall be cancelled without any repayment of capital in respect of such shares;

(ii) the memorandum and bye-laws of the amalgamated company shall be the same as the memorandum and bye-laws of the amalgamating subsidiary company whose shares are not cancelled; and

(c) in respect of a merger, the resolutions provide that –

(i) one of the merging wholly-owned subsidiary companies is the surviving company;

(ii) the shares of all but the surviving company shall be cancelled without any repayment of capital in respect of such shares; and

(iii) the memorandum and bye-laws shall be the same as the memorandum and bye-laws of the surviving company.

(3) The amalgamating or merging companies may elect to combine their respective authorised share capitals and in the resolutions approving the amalgamation or merger they shall state whether or not they so elect.

(4) In this section where it is intended that there be a continuation of a foreign corporation after the amalgamation or merger event, the term "surviving company" shall be deemed to include "surviving corporation".

[Section 107 amended by 1992:51 effective 1 July 1992; amended by 1996:21 effective 24 July 1996; amended by 1998:35 effective 5 October 1998; repealed and replaced by 2011 : 43 s. 28 effective 18 December 2011]

Registration of amalgamated or surviving companies

108 (1) Subject to subsections (2) and (3) after the amalgamation or merger of companies has been adopted, the amalgamated or surviving company shall on application be registered by the Registrar and a certificate of amalgamation or certificate of merger issued to the company.

(2) Any application for the registration of an amalgamated or surviving company shall be accompanied by—

(a) a certified copy of the resolution or other authority, if any, of each amalgamating or merging company;

(b) the registered address of the amalgamated or surviving company;

(c) the memorandum of the amalgamated or surviving company; and

(d) the documents referred to in subsection (3); and

(e) a statement confirming that the company is to be registered as an amalgamated company pursuant to an amalgamation or to be registered as a surviving company pursuant to a merger.

(3) An application for registration of an amalgamated or surviving company shall have attached to it a statutory declaration by an officer of each amalgamating or merging company that establishes to the satisfaction of the Registrar that there are reasonable grounds for believing that—

(a) each amalgamating or merging company is and the amalgamated or surviving company will be able to pay its liabilities as they become due;

(b) the realizable value of the amalgamated or surviving company's assets will not be less than the aggregate of its liabilities and issued capital of all classes; and either

(c) no creditor will be prejudiced by the amalgamation or merger; or

(d) adequate notice has been given to all known creditors of the amalgamating or merging companies and no creditor objects to the amalgamation or merger otherwise than on grounds that are frivolous or vexatious.

(4) For the purposes of subsection (3)(d), adequate notice is given if—

(a) a notice in writing is sent to each known creditor having a claim against the company that exceeds one thousand dollars; and

(b) a notice is published in an appointed newspaper stating that the company intends to amalgamate or merge with one or more specified companies in accordance with this Act and that a creditor of the company may object to the amalgamation or merger within thirty days from the date of the notice.

[Section 108 amended by 1994:22 effective 13 July 1994; amended by 1998:35 effective 5 October 1998; amended by 2011 : 43 s. 29 effective 18 December 2011]

Effect of certificate of amalgamated or surviving companies

109 (1) On the date shown in a certificate of amalgamation—

(a) the amalgamation of the amalgamating companies and their continuance as one company shall become effective;

(b) the property of each amalgamating company shall become the property of the amalgamated company;

(c) the amalgamated company shall continue to be liable for the obligations of each amalgamating company;

(d) an existing cause of action, claim or liability to prosecution shall be unaffected;

(e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating company may be continued to be prosecuted by or against the amalgamated company;

(f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating company may be enforced by or against the amalgamated company; and

(g) the certificate of amalgamation shall be deemed to be the certificate of incorporation of the amalgamated company; however, the date of incorporation of a company is its original date of incorporation and its amalgamation with another company does not alter its original date of incorporation.

(2) On the date shown in a certificate of merger –

(a) the merger of the merging companies and the vesting of their undertaking, property and liabilities in the surviving company shall become effective;

(b) the surviving company shall continue to be liable for the obligations of each merging company;

(c) an existing cause of action, claim or liability to prosecution shall be unaffected;

(d) a civil, criminal or administrative action or proceeding pending by or against a merging company may be continued to be prosecuted by or against the surviving company;

(e) a conviction against, or ruling, order or judgement in favour of or against, a merging company may be enforced by or against the surviving company;

(f) the certificate of merger shall be deemed to be the certificate of incorporation of the surviving company; however, the date of incorporation of a company is its original date of incorporation and its merger with another company does not alter its original date of incorporation;

(g) the Registrar shall strike off the register each Bermuda registered merging company that is not the surviving company; and

(h) the cessation of a merging company that is not the surviving company in a merger shall not be a winding up within Part XIII.

[Section 109 amended by 1992:51 effective 1 July 1992; amended by 1998:35 effective 5 October 1998; amended by 2011 : 43 s. 30 effective 18 December 2011]

PART VIII

THE INVESTIGATION OF THE AFFAIRS OF A COMPANY AND THE PROTECTION OF MINORITIES

Investigation of the affairs of a company

110 (1) Subject to subsection (10) the Minister may at any time of his own volition or on the application of that proportion of the members of a company, as in his opinion warrants the application, based in respect of a company limited by shares, or other company having a share capital, on their shareholding, appoint one or more inspectors to investigate the affairs of the company and to report thereon in such manner as he may direct.

(2) The application by the members of a company shall be supported by such evidence as the Minister may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring the investigation; and the Minister may, before appointing an inspector require the applicants to give security for payment of the costs of the inquiry.

(3) All officers and agents of the company shall produce to the inspector all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(5) Where any officer or agent refuses to produce any book or document that under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a default fine and the court convicting him may order him to produce to the inspector the books or documents in respect of which he was convicted.

(6) Any person who fails to obey an order of a court made under subsection (5) requiring the production of any books or documents shall be guilty of contempt of Court and may be punished accordingly.

(7) On the conclusion of the investigation the inspector shall report his opinion to the Minister, and a copy of the report shall be forwarded by the Minister to the company and a further copy may in his discretion, at the request of the applicants for the investigation, be delivered to them.

(8) All expense of and incidental to the investigation shall be defrayed by the applicants, unless the Minister directs that they be paid by the company.

(9) A copy of a report made under this section shall be admissible in any legal proceeding as evidence of the opinion of the inspector in relation to any matter contained in the report.

(10) The Minister shall not have the power under this section to appoint an inspector to investigate the affairs of an exempted company or a permit company.

[Section 110 amended by 1994:22 effective 13 July 1994]

Alternative remedy to winding up in cases of oppressive or prejudicial conduct

111 (1) Any member of a company who complains that the affairs of the company are being conducted or have been conducted in a manner oppressive or prejudicial to the interests of some part of the members, including himself, or where a report has been made to the Minister under section 110, the Registrar on behalf of the Minister, may make an application to the Court by petition for an order under this section.

(2) If on any such petition the Court is of opinion—

(a) that the company's affairs are being conducted or have been conducted as aforesaid; and

(b) that to wind up the company would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up,

the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

(3) Where an order under this section makes an alteration in or addition to any company's memorandum or bye-laws, then, notwithstanding anything in any other provision but subject to the provisions of the order, the company concerned shall not have power without the leave of the Court to make further alteration in or addition to the memorandum or, bye-laws as so altered or added to accordingly.

(4) An office copy of any order under this section altering or adding to, or giving leave to alter or add to, a company's memorandum or bye-laws shall, within fourteen days after the making thereof, be delivered by the company to the Registrar for registration; and if a company makes default in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

Preservation of the books and assets of a company

112 (1) The Registrar where the Minister has made an order under section 110(1) or where he has made an application under section 111(1) may apply to the Court ex parte for an order that the assets, books and papers of the company be preserved and not moved, modified, destroyed or deleted.

(2) If on any such application the Court is satisfied that there is a likelihood that the assets of the company will be transferred or that the books and papers of the company may be moved, modified, destroyed or deleted it shall make an order that the assets of the company shall not be transferred to any other person, removed from Bermuda or otherwise dealt with and that the books and papers of the company shall not be moved, modified, destroyed or deleted until a further order is made by the Court.

(3) Where an order under subsection (1) is served on a company the company may apply to the Court for the order to be discharged and the Court may—

(a) confirm the order;

(b) vary the order in such manner as it considers just; or

(c) discharge the order,

and in any case make such orders as it thinks desirable for the preservation of the assets of the company and the custody, inspection and copying of the books and papers of the company.

(4) The company and any officer or employee of the company who acts in contravention of an order of the Court made under subsection (2) or (3) shall be guilty of contempt of Court.

[Section 112 subsections (1) and (2) amended by 2006:40 s.28 effective 29 December 2006]

PART IX

LOCAL COMPANIES

Interpretation of Part IX and Third Schedule

113 (1) In this Part and in the Third Schedule the following shall be deemed to be "Bermudian"—

(a) the Government or any corporation of which the majority of the directors, managers, or trustees are subject to appointment by the Governor or a Minister;

(b) any person who has Bermudian status by virtue of the law relating to immigration from time to time in force;

(c) a local company in which the percentage of shares beneficially owned by Bermudians is not less than 80% of the total issued share capital of that company;

(cc) a local statutory corporation;

(cd) a local company—

(i) the shares of which are, at the relevant time, listed on a designated stock exchange and which is engaged as a business in a material way in a prescribed industry; or

(ii) licensed under section 114B;

(d) an institution licensed under section 14 of the Banks and Deposit Companies Act 1999;

(e) a wholly owned subsidiary of a local company where such subsidiary was incorporated on or prior to 31 July 1996 so far, and for so long as, that local company is complying with the Third Schedule and for so long as it

abides by all the obligations of its parent company and does nothing in Bermuda that its parent company is unable lawfully to do; and

(f) a trust of which the majority of the trustees are persons with Bermudian status by virtue of the law relating to immigration from time to time in force and the trust is established for the benefit of Bermuda, Bermudians or things Bermudian.

(2) For the purposes of subsection (1), a company shall be deemed to be a wholly owned subsidiary of another company if the latter company enjoys the beneficial interest in all the shares of the former company through beneficial ownership or as beneficiary under a trust, express or implied, or through a nominee shareholder, to the exclusion of any other person, and control in the former company cannot, by means of any arrangement, artifice or device, be exercised either directly or indirectly by persons who are not Bermudians.

(3) No share shall be deemed to be beneficially owned by a Bermudian if—

(a) that Bermudian is in any way under any obligation to exercise any right attaching to that share at the instance of, or for the benefit of, any person who is not Bermudian; or

(b) that share is held jointly or severally with any person who is not Bermudian; or

(c) that share is owned by a subsidiary company of the company concerned.

(4) For the purposes of this Part, "local statutory corporation" means a corporation sole or a corporation aggregate, other than a company, incorporated by an Act, the principal functions of which relate to operations and affairs in Bermuda.

(5) For purposes of this Part—

"designated stock exchange" means the Bermuda Stock Exchange or such other stock exchange as the Minister may designate by order;

"prescribed industry" means telecommunications, energy, insurance, hotel operations, banking, or international transportation services (by ship or aircraft).

(6) The Minister may, for the purpose of revising the categories of industry under the definition of "prescribed industry" in subsection (5), by order amend the definition.

(7) An order under subsection (5) or (6) shall be subject to the negative resolution procedure.

(8) A company shall, 15 days prior to carrying out an intention to rely on the provisions of subsection (1)(cd)(i) or to carrying on business in reliance upon the provisions of section 114(1)(e), notify the Minister of the designated stock exchange on which its shares are listed and the prescribed industry in which it is engaged as a

business in a material way, and on expiry of such notice the company shall be entitled to rely on the foregoing sections.

[Section 113 amended by 1996:21 effective 24 July 1996; by 1998:35 effective 5 October 1998; by BR 81/1999 effective 1 January 2000; subsection (1)(d) inserted by 2000:29 s.15(1), deemed to have come into operation 1 January 2000 by s.15(2); subsections (1)(cd) and (5) - (8) inserted by 2012 : 32 s. 3 effective 27 July 2012; subsection (1)(d) amended by 2018 : 52 s. 4 effective 17 August 2018]

Circumstances in which local company may carry on business

114 (1) No local company shall carry on business of any sort in Bermuda unless—

(a) it is a company which, at the relevant time, complies with Part I of the Third Schedule or is a wholly-owned subsidiary of such a company; or

(b) it is a company mentioned in Part II of the Third Schedule; or

(c) it is licensed under section 114B and, at the relevant time is carrying on such business in accordance with the terms and conditions imposed in such licence, and not otherwise; or

(d) it is a wholly-owned subsidiary of a company referred to in paragraph (c); or

(e) it is a company the shares of which are, at the relevant time, listed on a designated stock exchange and which is engaged as a business in a material way in a prescribed industry, or is a wholly-owned subsidiary of such a company.

(1A) Section 118 shall not apply to a company referred to in subsection (1)(e).

(2) Any local company that carries on business in contravention of subsection (1) shall be liable to a fine of one hundred dollars in respect of each day that it carries on business in contravention of the subsection.

(3) The Minister may by regulations amend Part I of the Third Schedule, and any such regulations shall be subject to affirmative resolution procedure.

(4) Section 132 shall apply *mutatis mutandis* to any company mentioned in Part II of the Third Schedule as if it were an exempted company.

[Section 114 amended by 1996:21 effective 24 July 1996; subsection (1) amended and subsections (1)(d), (1)(e) and (1A) inserted by 2012 : 32 s. 4 effective 27 July 2012]

Application for licence

114A (1) Any local company may apply to the Minister for a licence to carry on business in Bermuda.

(2) An application for a licence under this section shall be made to the Minister in such form and accompanied by such documents as the Minister may determine.

(3) Before an application is made, the local company shall not less than seven days prior to the date of application advertise its intention to apply for a licence under this section in an appointed newspaper.

[Section 114A amended by 1992:51 effective 1 July 1992; subsection (1) amended by 2000:29 s.16 effective 11 August 2000]

Granting and revocation of licence

114B (1) Subject to this section, the Minister may, in his discretion, grant a licence in respect of which application has been made under section 114A, but if the Minister is of opinion that it would not be in the public interest to grant a licence, he may refuse to grant one without giving any reason for so refusing.

(2) A licence issued under this section shall be for such duration and may be subject to such terms and conditions as the Minister may see fit to specify therein.

(3) The Minister shall, in deciding whether or not to grant a licence to a local company to carry on business in Bermuda, have regard to—

(a) the economic situation in Bermuda and the due protection of persons already engaged in business in Bermuda;

(b) the nature and previous conduct of the company and the persons having an interest in the company whether as directors, shareholders or otherwise;

(c) any advantage or disadvantage which may result from the company carrying on business in Bermuda; and

(d) the desirability of retaining in the control of Bermudians the economic resources of Bermuda.

(4) The Minister may at any time revoke a licence—

(a) for a contravention of any condition subject to which the licence is granted;

(b) if the company concerned is carrying on business in a manner detrimental to the public interest;

(c) if the company concerned ceases to carry on business in Bermuda;

(d) if the company concerned goes into liquidation or is wound up or otherwise dissolved; or

(e) if the company concerned fails to comply with any directive or requirement issued by the Minister under this Act.

(5) Before revoking a licence under subsection (4) the Minister shall give the company concerned notice in writing of his intention to do so specifying therein the grounds on which he proposes to revoke the licence and shall afford the company concerned an opportunity of submitting to him a written statement of objections to the

revocation of the licence; and thereafter the Minister shall advise the company concerned of his decision in the matter.

(6) The Minister shall lodge with the Registrar a copy of every licence granted under this section and the licence shall be available for public inspection by members of the public at the office of the Registrar during normal business hours and by electronic means at times determined by the Registrar.

[Section 114B amended by 1998:35 effective 5 October 1998; subsection (6) amended by 2006:40 s.29 effective 29 December 2006; 31 January 2018: It has come to the attention of the Attorney-General that the reference to "subsection (4)" in section 114B(5) of the Companies Act 1981 was mistakenly changed to "subsection (4)(e)", probably during the preparation of the 1989 Revision when it appeared for the first time in the Act. Section 114B of the Companies Act 1981 was inserted by section 30 of the Companies Amendment Act 1982 with the reference to "subsection (4)" and there has been no statutory amendment to insert "(e)" since that date.]

Fees payable by local licensed company

114C (1) Every local company to which a licence is granted under this Act shall, upon the issue of such licence, pay to the Government a fee of $1,050.

(2) On or before the 31st day of January of every year after the year in which a licence has been granted to a local company, that company shall, during the subsistence of such licence, pay to the Government a fee of $1,050.

(3) Any licensed local company which fails to pay the fee provided by this section shall be guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding one hundred dollars for each month during which such fee remains unpaid.

(4) The Minister shall publish annually in the Gazette the name of every licensed local company that has paid the fee provided by this section.

[Section 114C amended by 2023 : 12 s. 2 effective 1 April 2023]

Hotel companies

115 (1) In relation to any hotel company the Minister shall exercise his powers under section 114B after consultation with the Minister responsible for tourism.

(2) Notwithstanding any provision of a private Act restricting the transfer of shares in any hotel company, the Minister may, without prejudice to his powers under section 114B(2) impose conditions on the grant of a licence to a hotel company restricting the transfer of shares in the company without the consent of such authority as the Minister may specify.

(3) Where a hotel company is a subsidiary of a corporation incorporated outside Bermuda the Minister may without prejudice to his powers under section 114B, revoke a licence in the event of the transfer of effective control of the corporation to persons who are not Bermudians.

(3a) Section 114B(5) shall apply to the revocation of a licence under subsection (3) as it applies to the revocation of a licence under section 114B(4).

(4) In this section—

"hotel" has the meaning given in section 1 of the Hotels (Licensing and Control) Act 1969 ;

"hotel company" means a company whose principal business in Bermuda is the ownership or the operation of a hotel in Bermuda.

Penalty for improper exercise of voting rights

116 (1) Any person who, after a notice has been served upon him under sub-paragraph (2) of paragraph 2 of Part 1 of the Third Schedule, exercises any voting rights or fails to divest himself of his shares within three years, or within such further period as the Minister may allow under the proviso to that sub-paragraph shall be liable to a fine of one thousand dollars.

(2) A court when convicting any person under subsection (1) of failing to divest himself of any shares shall, if the person convicted still holds the shares, fix a date by which he shall divest himself of the shares and if he fails so to do by such date he shall be guilty of a further offence and shall be liable to a fine of one hundred dollars for each day he has held the shares since the date the Court ordered him to divest himself of them.

(3) If any person fails to divest himself of any shares after having been found guilty of a further offence under subsection (2) he shall be guilty of contempt of court and the Court may summarily deal with him for such contempt until such time as he does divest himself of the shares.

(4) It shall be a good defence to a prosecution under subsection (2) for the owner to show that the company had at the relevant time ceased to carry on business in Bermuda or that the shares were valueless and that he was, therefore, unable to divest himself of them.

Return of shareholdings

117 (1) Before any local company limited by shares, or other company having a share capital, first commences business the company shall forward to the Registrar a return of shareholdings in the company as at the date of making the return signed by a director of the company.

(2) Every local company limited by shares, or other company having a share capital, shall, not later than the 31st March each year after the year in which the company first commenced business, forward to the Registrar a return of shareholdings in the company as at the 31st day of December of the immediately preceding year signed by a director:

Provided that the Registrar may in any particular case grant an extension of time for compliance with this subsection if he is satisfied that non-compliance is not wilful or is due to circumstances beyond the control of the director of the company.

(3) A return of shareholdings under this section—

(a) shall contain the following particulars—

(i) the number and par value of each class of shares issued by the company;

(ii) the voting and other rights attached to each class of shares;

(iii) a statement of the number and par value of each class of shares beneficially owned by Bermudians; and

(iv) a statement of the number and par value of each class of shares held by other persons; and

(v) a statement of—

(A) whether or not the company is carrying on a relevant activity;

(B) the type of relevant activity carried on by the company; and

(C) the date of the company's financial year end;

(vi) a statement of whether or not the company is (or will be upon the commencement of the CIT Act) a Bermuda Constituent Entity and, if a Bermuda Constituent Entity, details of its representative entity in Bermuda for these purposes; and

(vii) a statement of whether or not the local company is compliant with its beneficial ownership obligations under the Beneficial Ownership Act 2025 and the information filed with the Registrar pursuant to that Act is adequate, accurate and current;

(viii) a statement of whether or not the local company is listed on the Bermuda Stock Exchange or an appointed stock exchange, or is a subsidiary of a company so listed, and details of the name and jurisdiction of the stock exchange on which the local company is listed; and

(ix) a statement of whether or not the local company continues to qualify for exemption and is in compliance with the conditions of its exemption under the Beneficial Ownership Act 2025 and regulations made thereunder.

(b) may be combined with a return made for the purpose of the payment of annual tax.

(4) Any local company which fails to comply with this section shall be liable to a default fine.

(5) Any person who knowingly signs a return made for the purposes of this section which is false in a material particular shall be liable on conviction by a court of summary jurisdiction to a fine of one thousand dollars and on conviction on indictment to a fine of two thousand dollars.

(6) Information submitted pursuant to subsection (3)(a)(vi) shall be shared by the Registrar with the CIT Agency but shall not be publicly available.

(7) Where the Registrar has received a return of shareholdings that does not contain the information required pursuant to subsection (3)(a), he may require the re-submission of an additional return of shareholdings that shall include the omitted information, notwithstanding the original return of shareholdings was filed prior to the date of commencement of this subsection but provided that where such original return of shareholdings was submitted prior to the date of commencement of this subsection, such omission shall not constitute an offence.

[Section 117 amended by 1994:22 effective 13 July 1994; amended by 2011 : 43 s. 31 effective 18 December 2011; Section 117 subsection (3)(a)(v) inserted by 2019 : 50 s. 5 effective 24 December 2019; Section 117 subsection (3)(a)(v) repealed and substituted by 2020 : 52 s. 2 effective 5 February 2021; Section 117 subsection (3)(a)(vi) inserted by 2024 : 41 s. 2 effective 28 December 2024; Section 117 subsections (6) and (7) inserted by 2024 : 41 s. 2 effective 28 December 2024; Section 117 subsection (3) amended by BR 100 / 2025 para. 2 effective 3 November 2025]

Allotment and transfer of shares

118 (1) No allotment of shares in a local company shall be made by the officers of the company if such allotment will, to the knowledge or belief of them, or any of them, result in the number of shares beneficially owned by persons who are not Bermudians exceeding the amount such persons are entitled to own by virtue of the Third Schedule unless the prior written consent of the Minister is obtained.

(2) The officers of a local company shall decline to register any transfer of shares in the company if such transfer will, to the knowledge or belief of the officers, or any of them, result in the number of shares beneficially owned by persons who are not Bermudian exceeding the amount such persons are entitled to own by virtue of the Third Schedule unless the prior written consent of the Minister is obtained.

(3) No allotment of shares in a local company shall be made to any person unless the application for those shares sets out whether or not the applicant is Bermudian.

(4) No transfer of shares in a local company shall be registered unless the instrument of transfer of those shares sets out with respect to both the transferor and transferee whether or not they are Bermudian.

(5) Any officer of a local company who is knowingly a party to any allotment of shares contrary to subsection (1) or subsection (3) or who is knowingly a party to authorizing or permitting any transfer, or registration of a transfer, of shares contrary to subsection (2) or subsection (4), shall be liable on conviction by a court of summary jurisdiction to a fine of one thousand dollars and on conviction on indictment to a fine of two thousand dollars.

(6) Where it is stated in an application for allotment, or in an instrument of transfer, of shares in a local company that an applicant, transferor or transferee is Bermudian the officers of the company may request that person to furnish such proof of the correctness of such statement as the officers consider necessary; and, in the absence of such proof, the officers may decline to allot any shares or register the transfer.

(7) The officers of a local company may at any time enquire in writing of any person who owns a share in the company—

(a) whether or not he is Bermudian;

(b) whether or not he is the beneficial owner of the shares;

(c) whether or not he is in any way under any obligation to exercise any right attaching to that share at the instance of, or for the benefit of, another person, and, if so, the name of that other person and whether or not that other person is Bermudian; and

(d) whether he owns that share jointly or severally with another person and, if so, the name of the other person who has such an interest and whether or not that other person is Bermudian,

and, if it is stated in any reply made to an enquiry under this subsection that any person is Bermudian, the officers may further require the person making that statement to furnish such proof of the correctness of that statement as the directors consider necessary.

(8) Any person to whom a request is made, or to whom an enquiry is addressed, under this section shall reply in writing, within fourteen days after the receipt of the request or the enquiry and shall give the information required; and no person shall be liable for breach of any contract, trust or other obligation which is binding on him in law for supplying such information.

(9) Any person who fails to reply in accordance with subsection (7) or subsection (8) or who makes a reply or furnishes information or purported proof which is false in a material particular shall be liable on conviction by a court of summary jurisdiction to a fine of one thousand dollars and on conviction on indictment to a fine of two thousand dollars.

(10) This section does not apply to a local company that is licensed under section 114B.

[Section 118(10) added by 2000:29 s.17 effective 11 August 2000]

Minister may require information

119 (1) The Minister may at any time by notice in writing require the officers of a local company to forward to him such information as to the officers of and shareholdings (including the classes of shares and the voting and other rights attached to each class) in the local company as the Minister may specify.

(2) A notice under subsection (1) may require that the officers set out in writing within such period as may be specified in the notice the facts in relation to the officers, shareholdings and other matters relating to the control of the company which the officers contend establishes that the local company is Bermudian controlled and such facts shall specify the extent to which the control of any corporate body holding shares in the local company is vested in Bermudians.

(3) If the officers of a local company fail to comply with the requirements specified in a notice issued under this section, or fail to comply with the requirements thereof in such a manner as to establish, prima facie, that the company is Bermudian

controlled, the company shall be deemed not to be Bermudian controlled until the contrary is proved.

Acquisition of land by local companies

120 (1) *[Repealed by 2014 : 13]*

(1A) The Eleventh Schedule shall have effect with respect to—

(a) all rights, powers, duties and liabilities pertaining to the land held by a local company pursuant to a sanction granted by the Minister to a local company under the repealed subsection (1); and

(b) land held by a local company contrary to the repealed subsection (1) before the commencement of this subsection.

(2) Subject to subsection (3) of this section, where a local company holds an unlimited trust licence issued under the Trusts (Regulation of Trust Business) Act 2001, the company shall have the power to acquire and hold in its corporate name any land in Bermuda provided it holds such land in its capacity as trustee of any trust or settlement established by written instrument.

(3) Nothing in this section overrides any provision in Part VI of the Bermuda Immigration and Protection Act 1956 relating to the acquisition or the holding of land.

(4) A local company may, without requiring the consent of the Minister,—

(a) take land in Bermuda by way of lease or letting agreement for a term not exceeding fifty years, being land bona fide required for the purposes of the business of the company; and

(b) take land in Bermuda by way of lease or letting agreement for a term not exceeding twenty-one years in order to provide accommodation or recreational facilities for its officers and employees.

(5) A local company that has a physical presence in Bermuda may, with the previous sanction in each case of the Minister but not otherwise, take by way of lease or letting agreement for a term not exceeding 131 years, or such longer period as is provided for in a hotel concession order made under the Hotels Concession Act 2000 or a tourism investment order made under the Tourism Investment Act 2017, land in Bermuda that is "tourist accommodation" or a "hotel residence" (as defined in section 72(1) of the Bermuda Immigration and Protection Act 1956).

(5A) A local company that has a physical presence in Bermuda may, with the previous sanction in each case of the Minister but not otherwise, take by way of lease or letting agreement for a term not exceeding 131 years, land consisting only of one or more residential valuation units in an approved residential scheme.

(5B) A local company that has a physical presence in Bermuda may, with the previous sanction in each case of the Minister but not otherwise, take by way of lease or letting agreement for a term not exceeding 262 years, land in the scheduled area described in the Third Schedule to the Bermuda Land Management Corporation Act 1982.

(6) For the purpose of subsections (5) to (5B), a local company has a physical presence in Bermuda if it operates from Bermuda with staff and management present in Bermuda, has an affiliate that does so, or is a member of a group, one of the members of which operates in that manner.

(7) In subsection (5A)—

(a) "residential valuation unit" has the meaning given in section 72(1) of the Bermuda Immigration and Protection Act 1956;

(b) "approved residential scheme" means an approved EEZ residential scheme or an approved Hamilton residential scheme as defined in section 1 of the Economic Development Act 1968.

[Section 120 amended by 1997:21 effective 2 September 1997; by 1998:35 effective 5 October 1998; subsection (2) amended by 2001:22 Sch 2 para 6(1) effective 25 January 2002; subsection (1) amended, and (4) inserted, by 2006:40 s.30 effective 29 December 2006; subsection (3) amended and subsections (5) and (6) inserted by 2010 : 39 s. 2 effective 3 September 2010; subsections (1) and (4) amended by 2011 : 9 s. 2 effective 24 March 2011; subsection (1) repealed, subsection (1A) inserted and subsections (2), (4) and (5) amended by 2014 : 13 s. 5 effective 27 March 2014; subsection (5) amended by 2017 : 7 s. 4 effective 20 February 2017; subsection (5) amended by 2017 : 36 s. 14 & sch. 3 effective 10 November 2017; Section 120 subsections (5) and (6) amended, and subsections (5A) and (7) inserted by 2019 : 38 s. 6 effective 1 November 2019; Section 120 subsection (7)(b) amended by 2024 : 6 s. 8 effective 1 April 2024; Section 120 subsection (5B) inserted and subsection (6) amended by 2024 : 22 s. 9 effective 1 September 2024; Section 120 subsection (4) amended by 2024 : 27 s. 2 effective 11 October 2024]

Companies to make declarations and pay annual tax

121 (1) Every local company shall within one month of filing its memorandum and thereafter not later than the 31st March of each year—

(a) send to the Registrar a declaration in writing by an officer of the company stating what the issued capital of the company will be when it commences business or if it is in business what the issued capital of the company was on the 1st of January of that year and, in the case of a company whose business includes the management of any unit trust scheme, stating the number of unit trust schemes managed by the company on the first day of each calendar year;

(b) pay the appropriate fee, if applicable, and the appropriate annual tax as shown in Part I of the Fifth Schedule; and

(c) pay the corporate regulatory fee as shown in Part I of the Fifth Schedule:

Provided that, where the filing of the memorandum is effected after the 31st August in any year, the appropriate fee payable under paragraph (b), if applicable, and tax payable in respect of that year shall be half the fee, if applicable, and half the tax shown in the Schedule.

(2) If a company fails to comply with the requirements of subsection (1), the company and every officer of the company shall be liable to a default fine.

(3) It shall be lawful for the Registrar, in any case where a company has not made a declaration and payment in accordance with subsection (1) and where he is satisfied that such non-payment is not due to wilful neglect or default, to accept payment of the sum due together with a penalty of one hundred and fifty dollars, and in any such case subsection (2) shall not apply.

(4) In addition to any penalty it may incur if a company fails to pay the appropriate fee, if applicable, and the annual tax within three months of it becoming due it shall cease to carry on business until the fee, if applicable, and the tax and any penalty it may have incurred have been paid.

(5) Any company that carries on business in contravention of subsection (4) shall be liable to a fine of one hundred dollars in respect of each day that it carries on business in contravention of that subsection.

(6) If any question arises as to the appropriate fee, if applicable, and the annual tax payable by a local company the decision of the Minister as to what fee, if applicable, and tax are payable shall be final.

(7) The Minister may from time to time by order vary the fees shown in Part I of the Fifth Schedule. Any such order shall be subject to affirmative resolution procedure.

[Section 121 amended by 1992:51 effective 1 July 1992; amended by 1998:14 effective 1 April 1998; Section 121 amended by 2024 : 5 s. 2 effective 1 January 2024 (commencement date amended by 2024 : 15 s. 3 effective 15 July 2024)]

Accountant General may call for auditor's certificate

122 (1) The Accountant General may by notice in writing require a company to produce the certificate of an auditor approved by him setting out the issued capital of that company on the first day of January of such year as the Accountant General may specify in the notice.

(2) If a company without lawful excuse fails to comply with subsection (1), then that company shall be deemed to be liable for the maximum annual tax payable by a company pursuant to this Act in respect of the year to which the notice relates unless that company satisfies the Accountant General that it is liable to a lesser sum by way of annual tax.

Recovery of annual tax

123 Annual tax and any penalty payable pursuant to this Act may be recovered by the Accountant General in a court of summary jurisdiction as a civil debt, irrespective of the amount so payable.

124 *[Repealed by 2006:40 s.31 effective 29 December 2006]*

Certain companies exempt from tax

125 (1) A company shall be exempt from the payment of annual tax in any year if it satisfies the Accountant General that it is—

(a) a company limited by guarantee and is not a mutual company; or

(b) that it is operated for a charitable purpose; or

(c) that the company does not pursue any commercial enterprise for profit and that the income during each of the past years since its incorporation has not exceeded five hundred dollars.

(2) A company shall not be deemed to be operated for a charitable purpose for the purposes of subsection (1) if—

(i) it has power to engage or engages in any commercial enterprise otherwise than in furtherance of its charitable objects;

(ii) any dividend has at any time been paid on any of its share capital;

(iii) any interest has been paid on any capital employed other than capital employed in furtherance of its charitable purpose; or

(iv) any person is employed or remunerated for services otherwise than for services in furtherance of its charitable or reasonable administrative purposes.

Interpretation of sections 121 to 125

126 For the purposes of sections 121 to 125 unless the context otherwise requires—

"issued capital" means in relation to—

(a) any company limited by shares, or other company having a share capital, the aggregate of the nominal value of the shares actually issued by the company whether or not the shares so issued are fully paid up; and

(b) in the case of a mutual company the nominal value of the reserve fund;

"year" means a calendar year.

[Section 126 amended by 1994:22 effective 13 July 1994]

PART X

EXEMPTED COMPANIES

Meaning of exempted company

127 For the purposes of this Act, an exempted company means a company which does not comply with the requirements of this Act in respect of a local company and which—

(i) was recognised as an exempted company on 30 June 1983;

(ii) is a company registered under this Act and stated in its memorandum to be an exempted company;

(iii) is a company incorporated by virtue of a private Act enacted after 30 June 1983 and is declared by its incorporating Act to be an exempted company for the purposes of this Act;

(iv) is a company registered under this Act that has converted from an exempted partnership under section 13C of the Exempted Partnerships Act 1992 and section 27 of the Limited Partnership Act 1883, in accordance with section 132O of this Act.

[Section 127 amended by 1998:35 effective 5 October 1998; paragraph (iv) inserted by 2015 : 18 s. 2 effective 28 December 2015]

Exempted company to be an exempted undertaking

128 (1) An exempted company shall be an exempted undertaking for the purposes of the Exempted Undertakings Tax Protection Act 1966 .

(2) An exempted company shall be subject to the provisions of this Act and to the provisions of law save where otherwise expressly provided in this or any other Act.

Restriction on acquisition of property

129 (1) Unless otherwise authorized by its incorporating Act or any other Act an exempted company shall not—

(a) acquire or hold land in Bermuda except—

(i) land required for its business by way of lease or tenancy agreement for a term not exceeding fifty years; or

(ii) land by way of lease or tenancy agreement for a term not exceeding twenty-one years in order to provide accommodation or recreational facilities for its officers and employees;

(aa) acquire or hold land that is "tourist accommodation" or a "hotel residence" (as defined in section 72(1) of the Bermuda Immigration and Protection Act 1956), unless—

(i) the company has a physical presence in Bermuda and the Minister responsible for Immigration has given his consent by issuing a licence under Part VI of that Act; and

(ii) the land is acquired or held by way of lease or tenancy agreement for a term not exceeding 131 years, or such longer period as is provided for in a hotel concession order made under the Hotels Concession Act 2000 or in a tourism investment order made under the Tourism Investment Act 2017;

(ab) acquire or hold land consisting only of one or more residential valuation units in an approved residential scheme, unless—

(i) the company has a physical presence in Bermuda and the Minister has in each case given his prior sanction to the acquisition or holding of the land; and

(ii) the land is acquired or held by way of lease or tenancy agreement for a term not exceeding 131 years;

(ac) acquire or hold land in the scheduled area described in the Third Schedule to the Bermuda Land Management Corporation Act 1982 unless—

(i) the company has a physical presence in Bermuda and the Minister has in each case given his prior sanction to the acquisition or holding of the land; and

(ii) the land is acquired or held by way of lease or tenancy agreement for a term not exceeding 262 years;

(b) except as provided by section 144 take any mortgage of land in Bermuda;

(c) acquire any bonds, or debentures secured on any land in Bermuda except bonds or debentures issued by the Government or a public authority;

(d) *[deleted by 1996:21]*

(e) carry on business of any kind or type whatsoever in Bermuda either alone or in partnership or otherwise except—

(i) carrying on business with persons outside Bermuda;

(ii) doing business in Bermuda with an exempted undertaking in furtherance only of the business of the exempted undertaking carried on exterior to Bermuda;

(iii) buying or selling or otherwise dealing in shares, bonds, debenture stock obligations, mortgages or other securities or investments issued or created by an exempted undertaking, or a local company, or any partnership which is not an exempted undertaking;

(iv) transacting banking business in Bermuda with and through an institution licensed as a bank under the Banks and Deposit Companies Act 1999;

(v) effecting or concluding contracts in Bermuda, and exercising in Bermuda all other powers, so far as may be necessary for the carrying on of its business with persons outside Bermuda;

(vi) as manager or agent for, or consultant or adviser to any—

(aa) exempted company or permit company which is affiliated whether or not incorporated in Bermuda with the exempted company; or

(bb) exempted partnership registered under the Exempted Partnerships Act 1992 or overseas partnership registered under the Overseas Partnerships Act 1995 in which the exempted company is a partner;

(vii) carrying on the business of re-insuring risks undertaken by any company incorporated in Bermuda and permitted to engage in insurance and re-insurance business; or

(viii) in accordance with subsection (7)—

(aa) marketing of shares or dealing with the holders of shares of an exempted company where the exempted company is a mutual fund;

(bb) marketing interests in or dealing with holders of interests in a limited partnership in respect of which the exempted company is a general partner;

(cc) marketing units in or dealing with holders of units in a unit trust scheme in respect of which the exempted company is a manager.

(1AA) For the purpose of subsection (1), an exempted company has a physical presence in Bermuda if it operates from Bermuda with staff and management present in Bermuda, has an affiliate that does so, or is a member of a group, one of the members of which operates in that manner.

(1AB) In subsection (1)(ab)—

(a) "residential valuation unit" has the meaning given in section 72(1) of the Bermuda Immigration and Protection Act 1956;

(b) "approved residential scheme" means an approved EEZ residential scheme or an approved Hamilton residential scheme as defined in section 1 of the Economic Development Act 1968.

(1A) Nothing in subsection (1)(e) shall prohibit an exempted company from effecting or concluding contracts or arrangements with persons in Bermuda for the supply of goods and services to the company necessary for the purpose of enabling the company to carry on its business with persons outside Bermuda.

(1B) Nothing in subsection (1)(e) shall prohibit an exempted company from offering goods or services electronically from a place of business in Bermuda or through an internet or other electronic service provider located in Bermuda.

(2) Notwithstanding anything in any Act under authority of which an exempted company is incorporated such a company shall not engage or carry on the business of conveying or arranging for the conveyance of passengers, goods or mails by ships whether such conveyance is within the waters of Bermuda except—

(i) where the ship is owned, operated or chartered by or on behalf of an exempted company;

(ii) where the conveyance is of a passenger employed by the exempted company or of goods which are or are to become the property of the exempted company; or

(iii) when the business is negotiated by a local company.

(3) Notwithstanding anything in this Act an exempted company on 1 July 1983 having in its memorandum among its objects an object empowering the company to reinsure all or any risks undertaken by the company shall be deemed in addition to have and always to have had the power to accept insurance and reinsurance of any risks of another exempted company similarly empowered.

(4) Notwithstanding anything in this Act, any object in the memorandum of an exempted company empowering the company to engage in retail trade in Bermuda, including retail trade with another exempted company or an exempted undertaking or any other person, shall be void to the extent that it purports so to empower that exempted company.

(5) If an exempted company does anything in contravention of subsection (1), then the land, merchandise, stocks, shares bonds, debentures, securities, property or other interests so acquired or disposed of, taken or held, shall be liable to escheat under the Escheats Act 1871 or under any other Act relating to escheat.

(6) In any proceedings for escheat under subsection (5), the question whether any land, merchandise, stocks, shares bonds, debentures, securities, property or other interests have been taken, acquired, disposed of or held in contravention of subsection (1) shall be decided as a question of fact.

(7) For the purposes of subsection (1)(e)(viii), an exempted company shall be deemed to be marketing, or dealing with holders of shares, interests or units if it undertakes any of the following activities in Bermuda, that it to say,—

(i) the offering of such shares, interests or units for subscription or purchase by way of a prospectus or otherwise;

(ii) the acceptance of subscriptions for, or of offers to purchase, or of applications to redeem, such shares, interests or units;

(iii) the distribution of shareholder, limited partnership or unitholder information to holders of such shares, interests or units;

(iv) the making known, by way of advertisement or otherwise, that it may be contacted at a particular address in Bermuda for the purpose of communicating with the holders of such shares, interests or units or the distribution and collection of shareholder, limited partnership or unitholder information;

(v) any other dealing with the holders of such shares, interests or units with respect to any such shares, interests or units held by them.

[Section 129 amended by 1992:51 effective 1 July 1992; by 1994:22 effective 13 July 1994; by 1996:21 effective 24 July 1996; by 1997:21 effective 2 September 1997; by 1998:8 effective 23 March 1998; by 1998:35 effective 5 October 1998; subsection (1B) inserted by 1999:26 s.33 & Sch effective 4 October 1999; subsection (1)(e)(iv) amended by BR 81/1999 effective 1 January 2000; subsection (1) amended, and (1)(e)(vi) substituted by 2003:1 s.13 effective 14 February 2003 subject to saving in 2003:1 s.20(2); subsection (1) amended by 2006:40 s.32 effective 29 December 2006; subsection (1) paragraph (aa) inserted and subsection (1AA) inserted by 2010 : 39 s. 3 effective 3 September 2010; subsection (1)(aa) amended by 2017 : 7 s. 4 effective 20 February 2017; subsection (1)(aa)(ii) amended by 2017 : 36 s. 14 & sch. 3 effective 10 November 2017; Section 129 subsections (1)(ab) and (1AB) inserted, and subsection (1AA) amended by 2019 : 38 s. 6 effective 1 November 2019; Section 129 subsection (1AB)(b) amended by 2024 : 6 s. 8 effective 1 April 2024; Section 129 subsection (1)(ac) inserted and subsection (1AA) amended by 2024 : 22 s. 9 effective 1 September 2024; Section 129 subsection (1)(a)(ii) amended by 2024 : 27 s. 2 effective 11 October 2024]

Circumstances in which exempted company may carry on business in Bermuda

129A (1) Except as provided in subsection (4), no exempted company shall carry on business in Bermuda unless the Minister, on application made by the company in such form as the Minister may determine, grants a licence to the company empowering it so to do or to carry on in Bermuda a business or an activity prohibited by section 129(1) or (2):

Provided that such a licence shall not authorize an exempted company to engage in retail trade in Bermuda with any other person.

(1A) The company shall not less than seven days prior to an application for a licence under subsection (1) advertise its intention to apply for a licence under this section in an appointed newspaper.

(2) A licence issued under subsection (1) shall be for such duration and may be subject to such terms and conditions as the Minister may see fit to specify therein.

(3) Section 114B(3), (4) and (5) and section 114C shall apply *mutatis mutandis* to an exempted company licensed under this section.

(4) An exempted company shall not require a licence to carry on in Bermuda—

(a) a business or activity specified as an exception in section 129(1)(a) to (e) (inclusive); or

(aa) business as an insurance manager or broker as defined in the Insurance Act 1978 if the company is registered under that Act to do so;

(b) trust business as defined in the Trusts (Regulation of Trust Business) Act 2001 if—

(i) the exempted company holds an unlimited trust licence issued under the Trusts (Regulation of Trust Business) Act 2001; and

(ii) the settlor of the trust which is managed or administered in Bermuda by the exempted company is not ordinarily resident in Bermuda at the date of creation of the settlement; or

(c) digital assets business as defined in the Digital Assets Business Act 2018 if the company is licensed under that Act to do so.

(4A) The Minister shall lodge with the Registrar a copy of every licence granted under this section and the licence shall be available for inspection by members of the public at the office of the Registrar during normal business hours and by electronic means at times determined by the Registrar.

(5) An exempted company which contravenes the provisions of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding $500 for each day the offence continues or on conviction on indictment to a fine not exceeding $1,500 for each day the offence continues.

[Section 129A amended by 1992:51 effective 1 July 1992; by 1993:37 effective 13 July 1993; by 1998:35 effective 5 October 1998; subsection (4)(b) substituted by 2001:22 Sch 2 para 6(2) effective 25 January 2002; subsection (4)(aa) inserted by 2003:1 s.14 effective 14 February 2003; subsection (4A) amended by 2006:40 s.33 effective 29 December 2006; Section 129A subsection (4) amended by 2023 : 17 s. 3 effective 24 May 2023]

Requirements for officers or representatives in Bermuda

130 (1) Every exempted company shall have—

(a) a minimum of one director, other than an alternate director, who is ordinarily resident in Bermuda; or

(b) a secretary that is—

(i) an individual who is ordinarily resident in Bermuda; or

(ii) a company which is ordinarily resident in Bermuda; or

(c) a resident representative that is—

(i) an individual who is ordinarily resident in Bermuda; or

(ii) a company which is ordinarily resident in Bermuda.

(2) *[Repealed by 2009:38 s.4 effective 19 July 2009]*

(3) *[Repealed by 2009:38 s.4 effective 19 July 2009]*

(4) *[Repealed by 2009:38 s.4 effective 19 July 2009]*

(5) A resident representative shall:

(a) be entitled to attend, to be heard at, and to receive minutes of all proceedings of, all meetings of the directors and members of the company or of any committee of such directors;

(b) upon giving notice to the company of an address for the purposes of receipt of notices, be entitled to receive notice of any meeting of the directors or members, or any committee of such directors; but accidental

omission to give such notice shall not invalidate any action taken at any such meetings;

(c) act as agent for the service of process in Bermuda;

(d) be entitled to file all documents and make all applications required or permitted by this Act.

(6) It shall be the duty of the resident representative in any circumstances where the resident representative becomes aware that—

(a) the company has committed a breach of any provision of this Act or any regulation made hereunder which will have a material effect on the affairs of the company; or

(b) any issue or transfer of shares of the company has been effected in contravention of any other statute regulating the issue or transfer of shares,

to make a written report to the Registrar within thirty days of becoming so aware and the report shall contain all relevant particulars unless before such report is made the company has remedied such breach or contravention.

(7) Where an exempted company has a resident representative, the resident representative shall—

(a) *[repealed by 2009:38 s.4 effective 19 July 2009]*

(b) *[deleted by 2000:29 s.4 effective 19 July 2009]*

(c) maintain at his or its office in Bermuda originals or copies of minutes of all proceedings of meetings of directors and members of the company, all financial statements required to be prepared by the company under this Act together with the auditor's report thereon, and all records of account required by section 83 to be kept in Bermuda.

(8) *[Repealed by 2009:38 s.4 effective 19 July 2009]*

(9) For the purposes of section 92A only, "officer" shall include a resident representative.

(10) The duty of the resident representative under subsection (6) shall be owed to the Registrar and no resident representative shall be liable to the company or any other person for any report made by the resident representative pursuant to subsection (6) or any failure or purported failure to make any report under that subsection.

(11) The Minister may make regulations providing for the qualifications of a secretary for the purposes of this section; and any such regulations shall be subject to the affirmative resolution procedure.

(12) Wilful failure by the resident representative to comply with any of the provisions of this section shall be an offence and shall render the resident representative or the company liable on conviction to a fine not exceeding five thousand dollars

[Section 130 substituted by 1996:21 effective 24 July 1996; subsection (5)(d) added, and (7)(b) deleted, by 2000:29 s.18 effective 11 August 2000; amended by 2009:38 s.4 effective 19 July 2009]

Annual fees

131 (1) Subject to subsections (2A) and (2B), every exempted company shall at the time of filing its memorandum with the Registrar and thereafter during the month of January each year—

(a) send to the Registrar a declaration in writing signed on behalf of the company—

(i) stating what is or is intended to be the principal business of the company and, in the case of a company whose business is to include the management of any unit trust scheme, stating the number of unit trust schemes intended to be managed by the company; and

(ia) stating—

(A) whether or not the company is carrying on a relevant activity;

(B) the type of relevant activity carried on by the company; and

(C) the date of the company's financial year end; and

(ib) stating whether or not the company is (or will be upon the commencement of the CIT Act) a Bermuda Constituent Entity and, if a Bermuda Constituent Entity, details of its representative entity in Bermuda for these purposes;

(ic) stating whether or not the company is compliant with its beneficial ownership obligations under the Beneficial Ownership Act 2025 and that the information filed with the Registrar pursuant to that Act is adequate, accurate and current;

(id) stating whether or not the company is listed on the Bermuda Stock Exchange or an appointed stock exchange, or is a subsidiary of a company so listed, and details of the name and jurisdiction of the stock exchange on which the company is listed;

(ie) stating whether or not the company continues to qualify for exemption and is in compliance with the conditions of its exemption under the Beneficial Ownership Act 2025 and regulations made thereunder;

(ii) further stating—

(aa) where the company is one limited by shares, or other company having a share capital—

1 the amount of the company's authorized share capital; and

2 the amount of the company's share premium account; and

3 the amount of the company's assessable capital, that is to say, the total of the amounts at 1 and 2 above or, in the case of a mutual fund as defined in section 156A, the amount at 1 above; and

4 the amount of the company's assessable capital expressed in Bermuda area currency, where the amount of the company's assessable capital is not already so expressed; and

5 the exchange rate used to convert into Bermuda area currency the company's assessable capital, where that capital is denominated in a currency other than Bermuda area currency; and

6 the appropriate fee payable in respect of the company according to Part II of the Fifth Schedule; and

(bb) where the company is a mutual company—

1 the amount of the company's assessable capital, that is to say, the amount of the company's reserve fund; and

2 the amount of the company's assessable capital expressed in Bermuda area currency, where that amount is not already so expressed; and

3 the exchange rate used to convert into Bermuda area currency the company's assessable capital, where that capital is denominated in a currency other than Bermuda area currency; and

4 the appropriate fee payable in respect of the company according to Part II of the Fifth Schedule.

For the purposes of this paragraph—

(iii) the information called for thereby shall—

(aa) where it is to be given upon the incorporation of the company, be given as at the date of the filing of the company's memorandum;

(bb) where it is to be given in January in any year in relation to a company which was incorporated after 31st August of the next preceding year, be given as at the date of the filing of the company's memorandum;

(cc) in any other case, be given as at 31st August of the year next preceding the year in which the information is given, except that the date to be taken for converting a company's assessable capital into Bermuda area currency shall—

A in the case of a company limited by shares, or other company having a share capital, be the latest of the following dates, that is to say, the date of the filing of the company's memorandum and the date on which the company's authorized share capital was last lawfully altered; and

B in the case of a mutual company, be the later of the following dates, that is to say, the date of the filing of the company's memorandum and the date on which the company's reserve fund was last lawfully altered;

(iv) the exchange rate for converting into Bermuda area currency on any day a currency that is not Bermuda area currency shall be the middle market rate for that currency on that day as determined, in accordance with the provisions of section 15(4) of the Stamp Duties Act 1976 *mutatis mutandis,* by the Registrar, whose determination shall in any case be final and conclusive;

(v) currency of the United States of America shall be converted into Bermuda area currency at par;

(vi) where a calculation produces a fraction of a dollar, the result shall be rounded up to the next whole dollar; and

(vii) "authorized capital", in relation to a company, means the amount stated in the company's memorandum as the company's authorized capital, as lawfully altered from time to time;

(b) pay the appropriate fee as shown in Part II of the Fifth Schedule; and

(c) pay the corporate regulatory fee as shown in Part II of the Fifth Schedule:

Provided that, where the memorandum is filed after the 31st August in any year, the appropriate fee payable under paragraph (b) in respect of that year shall be half of that fee.

(2) If a company fails to comply with subsection (1), the company and every officer of the company shall be liable to a default fine.

(2A) A company liable to pay the fees provided for in paragraph 1(A)(b) of Part II of the Fifth Schedule must pay those fees in addition to any other fee that the company is liable to pay under subsection (1).

(2B) A company liable to pay a fee pursuant to paragraph 1(A)(c) of Part II of the Fifth Schedule must pay that fee in addition to the corporate regulatory fee that the company is liable to pay under subsection (1)(c).

(3) It shall be lawful for the Registrar, in any case where a company has failed to comply with subsection (1) and he is satisfied that such non-compliance is not the result of wilful neglect or default, to accept late compliance and payment of the sum due together with a penalty of three hundred dollars and in such case subsection (2) shall not apply.

(4) In addition to any penalty it may incur if a company fails to pay the appropriate fee within three months of it becoming due it shall cease to carry on business until the fee and any penalty it may have incurred have been paid.

(5) Any company that carries on business in contravention of subsection (4) shall be liable to a fine of one hundred dollars in respect of each day that it carries on business in contravention of that subsection.

(6) If any question arises as to the appropriate fee payable by an exempted company the decision of the Minister as to what fee is payable shall be final.

(7) The Minister may from time to time by order vary all or any of the fees shown in Part II of the Fifth Schedule. Any such order shall be subject to affirmative resolution procedure.

(8) Information submitted pursuant to subsection (1)(a)(ib) shall not be publicly available, provided that the Registrar shall share this information with the CIT Agency.

(9) Where the Registrar has received a declaration that does not contain the information required pursuant to subsection (1)(a)(ib), he may require the re-submission of an additional declaration that shall include the omitted information, notwithstanding the original declaration was filed prior to the date of commencement of this subsection but provided that where such original declaration was submitted prior to the date of commencement of this subsection, such omission shall not constitute an offence.

[Section 131 amended by 1990:57 effective 1 September 1990; by 1994:22 effective 13 July 1994; by 1998:14 effective 1 April 1998; by 1998:35 effective 5 October 1998; subsection (1)(a)(ii)(aa)3 amended by 2000:29 s.19 effective 11 August 2000; subsection (1) amended by 2004:36 s.6 effective 17 December 2004; Section 131 subsection (1)(a)(ia) inserted by 2019 : 50 s. 5 effective 24 December 2019; Section 131 subsection (1)(a)(ia) repealed and substituted by 2020 : 52 s. 2 effective 5 February 2021; Section 131 amended by 2024 : 5 s. 2 effective 1 January 2024 (commencement date amended by 2024 : 15 s. 3 effective 15 July 2024); Section 131 subsection (2B) repealed and substituted by 2024 : 40 s. 2 effective 1 January 2024; Section 131 subsection (1)(a)(ib) inserted by 2024 : 41 s. 2 effective 28 December 2024; Section 131 subsections (8) and (9) inserted by 2024 : 41 s. 2 effective 28 December 2024; Section 131 amended by BR 100 / 2025 para. 2 effective 3 November 2025]

Investigation of affairs of exempted company

132 (1) The Minister may at any time appoint one or more inspectors to investigate the affairs of an exempted company and to report on them in such manner as he may direct.

(2) All expenses of and incidental to the investigation shall be defrayed by the exempted company unless the Minister otherwise directs.

(3) Every officer, agent or employee of the company shall produce to the inspector such books or documents as the inspector may require for the purpose of his investigation.

(4) Any officer, agent or employee of the exempted company who, in the course of an investigation of the affairs of the company—

(a) refuses to produce any book or document required by the inspector to be produced; or

(b) refuses to answer any question relating to the affairs of the company,

shall be liable to a fine of one hundred dollars.

(5) The inspector may take evidence upon oath in investigating the affairs of the exempted company, and for that purpose may administer an oath or affirmation.

(6) Any investigation under this section shall be held in private unless the company requests that it be held in public.

(7) The inspector may from time to time report to the Minister and shall on the completion of his investigation report to him and shall send copies of such reports to the company. No other person shall be informed of the nature or contents of the report save at the request of the company or on the direction of the Minister.

(8) If the Minister considers, after examining any such report that the company or any or its officers, agents or employees—

(a) have knowingly and wilfully done anything in contravention of this Act or of any licence, permit or permission granted under this Act, he may direct the Registrar to petition the Court for the winding-up of the company;

(b) are carrying on its affairs in a manner detrimental to the interests of the members of the company of the creditors of the company he may require the company to take such measures as he may consider necessary in relation to its affairs.

(9) A copy of any petition referred to in subsection (8) shall be served on the company at least seven clear days before the day set by the Court for the hearing of the petition.

(10) If the Court, on the hearing of any such petition, is satisfied that the company or any of its officers, agents or employees have done anything in contravention of the provisions of this Act or of any licence, permit or permission granted under the Act, the Court may—

(a) make an order for the winding up of the company; or

(b) impose a fine of two thousand dollars on the company; or

(c) impose a like fine on any officer, agent or employee of the company who has knowingly and wilfully authorized or permitted any such contravention.

(11) Where the Court makes an order for the winding up of a company under subsection (10) the company shall be wound up in the same manner and with the same procedure as if the circumstances leading to the order were circumstances referred to in section 161.

(12) Any proceedings in connection with the holding of an investigation by the inspector in pursuance of the provisions of this section shall, for the purposes of those provisions of the Criminal Code relating to perjury, be deemed to be judicial proceedings.

(13) Whenever the Minister appoints an inspector or inspectors by virtue of subsection (1) the Registrar may make an application to the Court under section 112 for an order that the assets books and papers of the company be preserved and not moved, modified, destroyed or deleted and this section shall apply to such application *mutatis mutandis*.

[Section 132 subsection (13) amended by 2006:40 s.34 effective 29 December 2006]

Denomination of capital of exempted companies

132A Notwithstanding the provisions of the Bermuda Monetary Authority Act 1968 [*title 16 item 11*], the share capital of an exempted company and its share certificates may be denominated in such currency as the company thinks expedient.

[Section 132A amended by 1992:51 effective 1 July 1992]

Section 124 applies to an exempted company

132B Section 124 applies *mutatis mutandis* to an exempted company.

[Section 132B inserted by 1992:51 effective 1 July 1992]

PART XA

CONTINUANCE AND DISCONTINUATION OF COMPANIES

Continuance in Bermuda

132C (1) A body incorporated outside Bermuda (hereafter in this Part referred to as a "foreign corporation") may, subject to section 4A, be continued in Bermuda as an exempted company to which the provisions of this Act and any other relevant laws of Bermuda shall apply.

(2) A foreign corporation seeking to be continued in Bermuda shall—

(a) obtain all necessary authorizations, if any, required under the laws of the jurisdiction in which it was incorporated or is presently registered in order to enable it to continue as an exempted company registered in Bermuda;

(b) provide a memorandum of continuance in such form as the Minister may determine;

(c) provide financial statements of the foreign corporation prepared for a period ending within twelve months of the proposed date of continuance.

(3) A foreign corporation shall deliver to the Registrar the memorandum of continuance for registration.

(3A) A foreign corporation shall, within one month after the date of registration of the memorandum of continuance under this section in respect of the corporation as an exempted company, pay in accordance with Part II of the Fifth Schedule—

(a) the appropriate fee; and

(b) the corporate regulatory fee,

but, in the case of the appropriate fee payable under paragraph (a), where the registration is effected after 31 August in any year, the appropriate fee payable in respect of that year shall be half the appropriate fee set out in Part II of the Fifth Schedule.

(4) If the Registrar is satisfied that the foreign corporation will be in compliance with this Act, he shall register the memorandum of continuance whereupon it will become effective and—

(a) the Registrar shall issue a certificate of deposit of the memorandum of continuance in such form as the Minister may determine;

(b) the foreign corporation will become a company to which this Act and any other laws of Bermuda apply as if it had been incorporated in Bermuda on the date of the registration;

(c) the memorandum of continuance shall be deemed to be the memorandum of association of the foreign corporation in lieu of its original, re-stated or amended memorandum of association, articles of incorporation or other constituting documents;

(d) the Registrar shall issue a certificate of continuance in such form as the Minister may determine;

(e) the foreign corporation shall forward a copy of the certificate of continuance to the competent authority in the country or jurisdiction from which it has been continued.

(5) Notwithstanding the provisions of Part XI and the provisions of the Insurance Act 1978 , with effect from the date of continuance—

(a) any permit issued under section 134 shall cease to apply to the continued company; and

(b) any current registration of the continued company under section 4 of the Insurance Act 1978 shall continue with suitable endorsement by the Registrar as to the date of continuance.

(6) *[Deleted by 1998:35]*

(7) *[Deleted by 1998:35]*

(8) *[Deleted by 1998:35]*

(9) *[Deleted by 1998:35]*

(10) *[Deleted by 1998:35]*

(11) *[Deleted by 1998:35]*

(12) *[Deleted by 1998:35]*

[Section 132C inserted by 1992:51 effective 1 July 1992; amended by 1993:37 effective 13 July 1993; and by 1998:35 effective 5 October 1998; Section 132C subsection (3A) repealed and substituted by 2024 : 5 s. 2 effective 1 January 2024 (commencement date amended by 2024 : 15 s. 3 effective 15 July 2024)]

Provisions of Act applying to memorandum of continuance and certificate of continuance

132D (1) The provisions of this Act respecting a memorandum of association shall, mutatis mutandis, apply to a memorandum of continuance.

(2) The provisions of this Act respecting a certificate of incorporation shall, mutatis mutandis, apply to a certificate of continuance.

(3) The memorandum of continuance and a copy of the certificate of continuance shall be documents open to public inspection.

[Section 132D inserted by 1992:51 effective 1 July 1992]

Consequences of continuance of foreign corporation

132E (1) Upon continuance of a foreign corporation as a company under this Act—

(a) the property of the foreign corporation continues to be the property of the company;

(b) the company continues to be liable for the obligations of the foreign corporation;

(c) any existing cause of action, claim or liability to prosecution in respect of the foreign corporation is unaffected;

(d) any civil, criminal or administrative action or proceeding pending by or against the foreign corporation may be continued by or against the company; and

(e) any conviction against, or any ruling, order or judgment in favour of or against the foreign corporation may be enforced by or against the company.

(2) The registration of the continuance of a foreign corporation under this Part shall not be deemed to—

(a) create a new legal entity; or

(b) prejudice or affect the continuity of the body corporate which was formerly a foreign corporation, now a company continued in Bermuda under this Part.

(3) The courts shall apply the laws of evidence and the rules of procedure with the intent that no claimant against the continued company shall be prejudiced in pursuing in or under the laws of Bermuda a bona fide claim that existed prior to the date

of continuance and which could have been pursued under the laws then governing such foreign corporation.

[Section 132E inserted by 1992:51 effective 1 July 1992]

Continued company to adopt bye-laws

132F The continued company shall, as soon as practicable from the date of continuation in Bermuda, ensure that it has adopted bye-laws which conform to the requirements of this Act and any other law of Bermuda.

[Section 132F inserted by 1992:51 effective 1 July 1992]

Exempted company may discontinue out of Bermuda

132G (1) An exempted company may be discontinued under this Act and be continued in a jurisdiction outside Bermuda as if it had been incorporated under the laws of that other jurisdiction.

(2) An exempted company shall not be discontinued pursuant to subsection (1) unless—

(a) (i) a resolution of the members or each class of members is passed in general meeting approving the discontinuance, provided that at any such meeting each share of the company shall carry the right to vote in respect of such discontinuance whether or not it otherwise carries the right to vote; or

(ii) the discontinuance is approved in such manner as may be authorised by the bye-laws of the company;

(b) a statutory declaration has been signed by a director of the company stating that the company is solvent and can meet all of its liabilities and obligations and that the discontinuance will not adversely affect the interests or rights of bona fide creditors and members;

(c) an irrevocable deed poll is executed by such company and its directors pursuant to which—

(i) such company and each of its directors may be served with legal process in Bermuda in any proceeding arising out of actions or omissions of such company prior to the discontinuance and provision is made for the appointment of a person within Bermuda as agent for such company for the service of process for a period of not less than three years from the date of discontinuance and for a signed acceptance of the appointment; or

(ii) such company and each of its directors may be served with legal process at a specified address in the United Kingdom, the United States of America or any appointed jurisdiction, and whereby such company and such directors submit to the non-exclusive jurisdiction of the courts of that country or jurisdiction;

(ca) an irrevocable deed poll is executed by such company and its directors pursuant to which the company appoints a person within Bermuda as an agent who shall retain such company's beneficial ownership register and records of account as they stood immediately before the discontinuance, for a period of not less than five years from the effective date of discontinuance;

(d) at least fourteen days prior to the discontinuance such company advertises in an appointed newspaper and in a national newspaper in each jurisdiction within which it carried on a substantial part of its trade or business activities its intention to discontinue under this Act and continue in the named jurisdiction; and

(e) the jurisdiction in which such company is to be continued is –

(i) an appointed jurisdiction; or

(ii) approved by the Minister, upon application by the company for the purpose of the discontinuance of the company out of Bermuda.

[Section 132G inserted by 1992:51 effective 1 July 1992; amended by 1993:37 effective 13 July 1993; by 1994:22 effective 13 July 1994; by 1998:35 effective 5 October 1998; subsection (2)(e) substituted by 1999:25 s.16 effective 23 July 1999; subsection (2)(b) substituted by 2011 : 43 s. 32 effective 18 December 2011; Section 132G subsection (2)(ca) inserted by 2025 : 27 s. 2 effective 10 December 2025]

Documents to be filed on discontinuance

132H (1) An exempted company shall not be discontinued pursuant to section 132G unless on or before the effective date of the discontinuance, such company files with the Registrar a notice of the discontinuance which shall contain or have attached thereto the following information:

(a) the effective date of the discontinuance;

(b) the name of the jurisdiction in which the company will continue;

(c) the address of the registered office or the principal business address of the company in the jurisdiction in which the company will continue;

(d) a copy of the statutory declaration required pursuant to section 132G(2)(b);

(e) a copy of the irrevocable deed poll required pursuant to section 132G(2)(c); and

(f) a copy of the irrevocable deed poll required pursuant to section 132G(2)(ca).

(2) Within thirty days after the date of the issue thereof a company which has been discontinued pursuant to section 132G shall file with the Registrar a copy of the instrument of continuance issued to the company by the appropriate authority of the jurisdiction into which the company has been continued, or, if no such instrument of

continuance is issued, such other documentary evidence of such continuance as shall be issued by such authority.

(3) On receipt of the copy of the instrument of continuance or other documentary evidence of continuance, the Registrar shall file that instrument or document and issue a certificate of discontinuance which shall be in such form as the Minister may determine and thereupon the company shall cease to be registered as a company in Bermuda.

(4) The documents filed with the Registrar pursuant to subsections (1), (2) and (3) shall be open to public inspection.

[Section 132H inserted by 1992:51 effective 1 July 1992; amended by 1994:22 effective 13 July 1994; and by 1998:35 effective 5 October 1998; Section 132H subsection (1) amended by 2025 : 27 s. 2 effective 10 December 2025]

Effect of discontinuance

132I (1) The effective date of the discontinuance of a company pursuant to section 132H shall be the date that such company's continuance in the appointed jurisdiction is effective pursuant to the laws of such other jurisdiction, and such discontinuance and continuance shall not be deemed to operate to—

(a) create a new legal entity; or

(b) prejudice or affect the continuity of the body corporate which was formerly the company that was subject to this Act.

(2) On the effective date of the discontinuance of a company pursuant to section 132H this Act shall cease to apply to such company except as is required by the provisions hereof.

[Section 132I inserted by 1992:51 effective 1 July 1992; amended by 1994:22 effective 13 July 1994; and by 1998:35 effective 5 October 1998]

Discontinuance of company under this Act

132J *[Deleted]*

[Section 132J inserted by 1992:51 effective 1 July 1992; and deleted by 1998:35 effective 5 October 1998]

Minister's refusal to grant consent etc.

132K *[Deleted]*

[Section 132K inserted by 1992:51 effective 1 July 1992; and deleted by 1998:35 effective 5 October 1998]

Public inspection of documents

132L The instrument of continuance, the certificate of discontinuance and the declaration of discontinuance shall be documents open to public inspection.

[Section 132L inserted by 1992:51 effective 1 July 1992]

Regulations

132M The Minister may make Regulations for carrying out the purposes and provisions of this Part into effect.

[Section 132M inserted by 1992:51 effective 1 July 1992]

PART XB

CONVERSION OF EXEMPTED COMPANY TO PARTNERSHIP

Conversion of exempted company to partnership

132N (1) An exempted company may—

(a) upon payment of such fee as the Minister may prescribe;

(b) if at least fourteen days prior to its application under subsection (2), the company has advertised in an appointed newspaper and in a national newspaper in each jurisdiction within which it carried on a substantial part of its business activities its intention to convert to a partnership;

(c) with the Registrar's consent and upon filing the certificate required—

(i) by section 5(1) of the Exempted Partnerships Act 1992; and

(ii) by section 4(1) of the Limited Partnership Act 1883,

convert to a partnership and be registered under the Exempted Partnerships Act 1992 and Limited Partnership Act 1883 and, with effect from the date indicated on the certificate of registration issued by the Registrar pursuant to section 9(3) of the Exempted Partnerships Act 1992, shall be governed thereafter as a partnership in accordance with the Exempted Partnerships Act 1992, the Limited Partnership Act 1883 and the Partnership Act 1902.

(2) An application for the Registrar's consent to the conversion of an exempted company to a partnership shall be in such form, and be accompanied by the advertisement referred to in subsection (1)(b) and by such documents, as the Registrar may require.

(3) An application for conversion to a partnership in the prescribed form, shall be filed with the Registrar and shall include—

(a) the name of the exempted company;

(b) the date of its certificate of incorporation;

(c) the name of such exempted company as altered;

(d) the future effective date or time (which shall be a date or time certain) of the conversion if it is not to be effective as of the filing date of the certificates referred to in subsection (1)(c));

(e) confirmation that the conversion has been approved by the board of directors and by the shareholders of such exempted company in such

manner as may be authorized by the bye-laws of such exempted company;

(f) the registered office address of the partnership; and

(g) confirmation that the members have approved a form of partnership agreement of the partnership.

(4) The Registrar may grant or refuse consent to an application made under subsection (3).

(5) Section 4A(4) shall apply with the necessary modifications to an application for consent under this section as it applies to an application for consent under section 4A.

(6) Not later than six months after the Registrar has consented to an application under subsection (3), the partners shall deliver to the Registrar—

(a) a copy of the application for conversion filed under subsection (3);

(b) the consent of the Registrar referred to in subsection (4);

(c) a declaration signed by a director of the company stating that the company is solvent and can meet all of its liabilities and obligations and that the conversion will not adversely affect the interests or rights of bona fide creditors and members; and

(d) the certificates required by subsection (1)(c).

(7) Where the Registrar receives confirmation that the Registrar has consented to the conversion, the Registrar shall deliver a certificate of conversion which shall specify the date of conversion of the exempted company to a partnership.

(8) Upon conversion of an exempted company to a partnership under this section—

(a) the property of the exempted company so converted continues to be the property of the partnership;

(b) the partnership continues to be liable for the obligations of the exempted company;

(c) any existing cause of action, claim or liability to prosecution in respect of the exempted company is unaffected;

(d) any civil, criminal or administrative action or proceeding pending by or against the exempted company may be continued by or against the partnership; and

(e) any conviction against, or any ruling, order or judgment in favour of or against the exempted company may be enforced by or against the partnership.

(9) The conversion of an exempted company to a partnership pursuant to this section—

(a) shall not constitute a dissolution of such exempted company; and

(b) shall cause the partnership to be deemed to be the same entity as the converting exempted company and the conversion shall constitute a continuation of the existence of the exempted company in the form of a partnership.

(10) The rights, privileges, powers and interests in property of the exempted company that has converted, shall not be deemed, as a consequence of the conversion, to have been transferred to the partnership to which the company has converted for any purpose of the laws of Bermuda.

(11) The conversion of an exempted company to a partnership under this section shall not be deemed to—

(a) create a new legal entity; or

(b) prejudice or affect the continuity of the body corporate which was formerly an exempted company, now converted to an exempted partnership under this section.

(11A) Conversion of an exempted company to a partnership does not require such company to wind up its affairs nor does it constitute a dissolution of such company.

(12) For the purposes of this section, "partnership" means a partnership—

(a) that is both—

(i) a limited partnership registered under the Limited Partnership Act 1883; and

(ii) an exempted partnership registered under the Exempted Partnerships Act 1992; and

(b) which has elected to have legal personality pursuant to section 4A or 4BA of the Partnership Act 1902.

[Section 132N inserted by 2015 : 18 s. 3 effective 28 December 2015; subsection (11A) inserted by 2016 : 25 s. 5 effective 22 June 2016; Section 132N subsection (12)(b) amended by 2018 : 6 s. 6 effective 1 April 2018; Section 132N amended by BR 100 / 2025 para. 2 effective 3 November 2025]

Conversion of partnership that is exempted and limited to an exempted company

132O (1) This section applies to a partnership —

(a) that is both—

(i) a limited partnership registered under the Limited Partnership Act 1883; and

(ii) an exempted partnership registered under the Exempted Partnerships Act 1992; and

(b) which has elected to have legal personality, pursuant to section 4A or 4BA of the Partnership Act 1902.

(2) Upon satisfaction of the requirements for conversion that are set out in section 13C of the Exempted Partnerships Act 1992 and in section 27 of the Limited Partnership Act 1883, any partnership may—

(a) convert to an exempted company; and

(b) be registered as an exempted company under this Act.

(3) With effect from the date indicated on the certificate of conversion issued by the Registrar under section 13C of the Exempted Partnerships Act 1992 and under section 27 of the Limited Partnership Act 1883, the partnership shall be governed as an exempted company in accordance with this Act.

(4) For any exempted company so converted, the certificate of conversion so issued by the Registrar shall be deemed to be the certificate of registration for the purposes of this Act.

[Section 132O inserted by 2015 : 18 s. 3 effective 28 December 2015; Section 132O subsection (1)(b) amended by 2018 : 6 s. 6 effective 1 April 2018]

Conversion of company to limited liability company

132P (1) Upon satisfaction of the requirements for conversion that are set out in section 101 of the Limited Liability Company Act 2016, any company may—

(a) convert to a limited liability company; and

(b) be registered as a limited liability company under the Limited Liability Company Act 2016.

(2) The effective date of the conversion of the company to a limited liability company shall be the date of filing with the Registrar of the certificate of conversion or any later date or time (which shall be a date or time certain) specified in the certificate of conversion of the company to a limited liability company.

(3) With effect from the date indicated on the certificate of conversion filed with the Registrar under section 101 of the Limited Liability Company Act 2016, the company shall be governed as a limited liability company in accordance with the Limited Liability Company Act 2016.

[Section 132P inserted by 2016 : 40 s. 258 effective 1 October 2016]

Conversion of a limited liability company to a company

132Q (1) Upon satisfaction of the requirements for conversion that are set out in section 100 of the Limited Liability Company Act 2016, any limited liability company may—

(a) convert to a company; and

(b) be registered as a company under this Act.

(2) With effect from the date indicated on the certificate of conversion filed with the Registrar under section 100 of the Limited Liability Company Act 2016, the limited liability company shall be governed as a company in accordance with this Act.

(3) For any company so converted, the certificate of conversion shall be deemed to be the certificate of incorporation for the purposes of this Act.

[Section 132Q inserted by 2016 : 40 s. 258 effective 1 October 2016]

Continuance of an incorporated segregated account as a company

132R (1) Upon satisfaction of the requirements for continuance that are set out in sections 38 and 39 of the Incorporated Segregated Accounts Companies Act 2019, any incorporated segregated account may be continued as a company under this Act.

(2) With effect from the date indicated on the certificate of incorporation and the memorandum filed with the Registrar under section 39 of the Incorporated Segregated Accounts Companies Act 2019, the incorporated segregated account shall be continued, and shall be governed, as a company in accordance with this Act.

[Section 132R inserted by 2019 : 44 s. 74 effective 15 January 2020; Section 132R amended by 2021 : 43 s. 16 effective 22 October 2021]

PART XI

OVERSEAS COMPANIES

Overseas company not to carry on business without a permit

133 (1) An overseas company shall not engage in or carry on any trade or business in Bermuda without a permit from the Minister issued under section 134.

(2) Any permit issued to an overseas company enabling it lawfully to engage in or carry on any trade or business in Bermuda under the authority of any Act other than this Act or the Non-Resident Insurance Undertakings Act 1967 shall be deemed to be a permit issued under section 134 if valid on 1 July 1983 and for so long as it remains valid.

(3) For the purposes of this Part "engage in or carry on any trade or business in Bermuda" includes the engaging in or carrying on any trade or business outside Bermuda from a place of business in Bermuda.

(4) A company shall be deemed to engage in or carry on any trade or business in Bermuda if it occupies premises in Bermuda or if it makes known by way of advertisement, or by an insertion in a directory or by means of letter heads that it may be contacted at a particular address in Bermuda or is otherwise seen to be engaging in or carrying on any trade or business in or from within Bermuda on a continuing basis:

Provided that a company shall not be deemed to engage in or carry on any trade or business in Bermuda by reason only that—

(a) a travelling salesman representing the company who has been permitted to land in Bermuda as such establishes a temporary place of business in Bermuda; or

(b) meetings of its officers or members are held in Bermuda; or

(c) the company is buying or selling or otherwise dealing in shares, bonds, debenture stock obligations, mortgages or other securities issued or created by an exempted undertaking, or a local company, or any partnership which is not an exempted undertaking.

(5) A company shall be deemed to engage in or carry on any trade or business in Bermuda if it makes known by way of advertisement or by any statement on a web site or by an electronic record as defined in the Electronic Transactions Act 1999 that it may be contacted at a particular address in Bermuda or if it uses a Bermudian domain name.

[Section 133 amended by 1996:21 effective 24 July 1996; subsection (5) inserted by 1999:26 s.33 & Sch effective 4 October 1999]

Mutual fund exempted from requirement of a permit

133A (1) Section 133 shall not apply to a mutual fund exempted under subsection (2).

(2) A mutual fund is exempt if it engages a person in Bermuda to be the mutual fund's administrator or registrar to perform any or all of the following services or activities for the mutual fund in Bermuda—

(a) corporate secretarial;

(b) accounting;

(c) administrative;

(d) registrar and transfer agency;

(e) in relation to the marketing or dealing with the holders of its shares, the activities specified in section 136(4).

(3) In this section "mutual fund" has the meaning given in section 136(5).

[Section 133A inserted by 2001:30 s.6 effective 14 August 2001]

Grant of permit to overseas company

134 (1) An overseas company without a permit may apply to the Minister for a permit to engage in or carry on any trade or business in Bermuda.

(2) Every application for a permit shall be accompanied by such documents and particulars as the Minister may from time to time require and shall be accompanied by the application fee prescribed under the Government Fees Act 1965 .

(3) Within three months prior to an application for a permit under subsection (1) the company shall publish in an appointed newspaper an advertisement announcing the intention to apply for a permit specifying its name and stating the trade or business it proposes to engage in or carry on in Bermuda.

(4) Where the Minister refuses to grant a permit he shall not be bound to assign any reason therefor.

(5) Without prejudice to the discretion conferred on the Minister by this section, he shall, in deciding whether or not to grant a permit, have regard to—

(a) the economic situation in Bermuda and the due protection of persons already engaged in or carrying on any trade or business in Bermuda;

(b) the nature and previous conduct of the company and the persons having an interest in the company whether as directors, shareholders or otherwise;

(c) any advantage or disadvantage which may result from the company engaging in or carrying on a trade or business in Bermuda.

Annual fees

135 (1) Subject to subsection (1A), every permit company shall before engaging in or carrying on any trade or business in Bermuda, and thereafter during the month of March each year, pay in respect of the company in accordance with Part II of the Fifth Schedule—

(a) the appropriate fee, subject to subsection (1B); and

(b) the corporate regulatory fee,

and section 131(1)(a)(i) shall apply *mutatis mutandis* to every such company.

(1A) A company liable to pay the fees provided for in paragraph 1(B)(c) of Part II of the Fifth Schedule must pay those fees in addition to any other fee that the company is liable to pay under subsection (1).

(1B) For the purposes of subsection (1), where a permit is issued after 31 October in any year, the appropriate fee payable under subsection (1)(a) in respect of that year shall be half the appropriate fee.

(2) If a company fails to pay the appropriate fee as provided in subsection (1) it shall be liable to a default fine.

(2A) Every permit company shall at the time of paying its annual fee also file with the Registrar a statement of—

(a) whether or not the permit company is carrying on a relevant activity;

(b) the type of relevant activity carried on by the permit company;

(c) the date of the permit company's financial year end;

(d) whether or not the permit company is (or will be upon the commencement of the CIT Act) a Bermuda Constituent Entity and, if a Bermuda Constituent Entity, details of its representative entity in Bermuda for these purposes;

(e) whether or not the permit company is compliant with its beneficial ownership obligations under the Beneficial Ownership Act 2025 and that the information provided to the Registrar is adequate, accurate and current;

(f) whether or not the permit company is listed on the Bermuda Stock Exchange or an appointed stock exchange, or is a subsidiary of a permit

company so listed, and details of the name and jurisdiction of the stock exchange on which it is listed; and

(g) whether or not the permit company continues to qualify for exemption and is in compliance with the conditions of its exemption under the Beneficial Ownership Act 2025 and regulations made thereunder.

(3) Section 131(2), (3), (4), (5), (6), (8) and (9) shall apply *mutatis mutandis* to permit companies.

[Section 135 amended by 1990:57 effective 1 September 1990; and by 1993:37 effective 13 July 1993; Section 135 subsection (2A) inserted by 2019 : 50 s. 5 effective 24 December 2019; Section 135 subsection (2A) repealed and substituted by 2020 : 52 s. 2(8) effective 31 May 2021; Section 135 amended by 2024 : 5 s. 2 effective 1 January 2024 (commencement date amended by 2024 : 15 s. 3 effective 15 July 2024); Section 135 subsection (2A)(d) inserted by 2024 : 41 s. 2 effective 28 December 2024; Section 135 subsection (3) amended by 2024 : 41 s. 2 effective 28 December 2024; Section 135 amended by BR 100 / 2025 para. 2 effective 3 November 2025]

Conditions subject to which permits may be granted

136 (1) Permits shall be subject to such conditions as the Minister may think fit to impose which shall be specified in the permit and, without derogation from the generality of this provision a permit may require that the company shall have one or more directors ordinarily resident in Bermuda and shall inform the Minister of any change in its beneficial ownership.

(2) Subject to any conditions which may be specified in a permit pursuant to subsection (1), an overseas company which has been granted a permit shall have power in Bermuda—

(a) if it is a mutual fund as defined in subsection (5), to market its shares or deal with holders of its shares in Bermuda;

(b) if it is a general partner in a limited partnership, as so defined, to market interests in, or deal with the holders of interests in, such limited partnership; or

(c) if it is the manager of a unit trust scheme, as so defined, to market units in, or deal with holders of units in, such unit trust scheme,

in accordance with subsection (3).

(3) For the purposes of subsection (2), an overseas company shall be deemed to be marketing or dealing with the holders of the shares of that overseas company, interests in a limited partnership, or units in a unit trust scheme, if it undertakes in Bermuda any of the activities specified in subsection (4).

(4) The activities referred to in subsection (3) are—

(i) the offering of such shares, interests or units for subscription or purchase by way of a prospectus or otherwise;

(ii) the acceptance of subscriptions for, or of offers to purchase, or of applications to redeem, such shares, interests or units;

(iii) the distribution of shareholder, limited partnership or unit-holder information to holders of such shares, interests or units;

(iv) the making known, by way of advertisement or otherwise, that it may be contacted at a particular address in Bermuda for the purpose of communication with the holders of such shares, interests or units or the distribution and collection of shareholder, limited partnership or unit-holder information; and

(v) any other dealing with the holders of such shares, interests or units with respect to any such shares, interests or units held by them.

(5) In this section—

(a) "mutual fund" means a company incorporated outside Bermuda but having the characteristics set out in section 156A of this Act;

(b) "limited partnership" means a limited partnership formed under the laws of a country outside Bermuda, but having the characteristics set out in section 2(1) of the Limited Partnership Act 1883;

(c) "unit trust scheme" means a unit trust scheme formed under the laws of a country outside Bermuda, but having the characteristics set out in section 1 of the Exempted Undertakings Tax Protection Act 1966.

[Section 136 amended by 1997:21 effective 2 September 1997]

Principal representatives

136A (1) Every permit company shall appoint and maintain a principal representative in Bermuda and shall give notice in writing to the Registrar of such particulars of its principal representative as the Minister may determine.

(2) If any particulars of a principal representative required by subsection (1) to be notified to the Registrar are altered the company shall give in writing to the Registrar particulars of the alteration within twenty-one days after the alteration is made.

(3) If a company fails to comply with this section it shall be liable to a default fine.

Form and proof of a permit

137 (1) A permit shall be in such form as the Minister shall determine.

(2) A copy of every permit shall be lodged by the Minister with the Registrar.

(3) A certificate purporting to be signed by the Registrar—

(a) certifying that a permit was or was not in force in respect of an overseas company at the time specified in the certificate; and

(b) specifying the conditions of the permit,

shall be admissible in evidence in proceedings under this Act without further proof and shall be prima facie evidence of the facts certified or specified therein.

Alteration of conditions of a permit

138 (1) The Minister may on the application of a permit company vary the terms of its permit.

(2) Where under subsection (1) the Minister varies the terms of a permit he shall notify the Registrar who shall amend his copy of the permit accordingly.

Revocation of a permit

139 (1) The Minister may at any time revoke the permit of an overseas company if—

(a) the company or any of its servants or agents contravenes a condition of its permit;

(b) in the opinion of the Minister the company is carrying on business in a manner detrimental to the public interest;

(c) the company ceases to engage in or carry on any trade or business in Bermuda;

(d) a court or other competent authority in any country makes an order for the winding up, dissolution or judicial management of the company or of any person who directly or indirectly controls the company;

(e) the company is otherwise wound up or if any person who directly or indirectly controls the company is wound up or ceases to carry on business;

(f) there is a substantial change in the effective control of the company;

(g) there is a substantial change in the nature of the business carried on by the company;

(ga) the company does not pay the annual fee prescribed under section 135(1) within thirty days of the due date;

(gb) the company makes a request in writing to the Minister to revoke its permit; or

(h) the company contravenes any provision of this Part, or fails to comply with the Registrar of Companies (Compliance Measures) Act 2017 or a notice, direction or other requirement issued by the Registrar under this Part or that Act.

(2) A request under subsection (1)(gb) shall be accompanied by the relevant fee prescribed in the Government Fees Regulations 1976.

[Section 139 paragraph (ga) inserted by 2004:36 s.7 effective 17 December 2004; Section 139 paragraph (gb) inserted by 2020 : 52 s. 2(9) effective 31 May 2021; Section 139 amended by 2023 : 12 s. 2 effective 1 April 2023; Section 139 subsection (1)(h) deleted and substituted by 2026 : 28 s. 16 effective 14 September 2026]

Revocation procedure

140 (1) The Minister shall give a company reasonable notice in writing of his intention to revoke its permit under section 139 and shall afford the company an opportunity of making representations to him.

(2) A notice under subsection (1) shall specify the ground on which the Minister intends to revoke the permit.

(3) Upon the revocation of its permit a company shall forthwith cease to engage in or carry on any trade or business in Bermuda unless the Minister in his discretion authorizes the company so to do—

(a) pending the determination of an appeal against the revocation;

(b) for such period as the Minister may specify for the purpose of closing its business in Bermuda.

(4) When the Minister revokes the permit of an overseas company the Registrar may, if he is satisfied that it would be in the interests of any creditor of the company or of any other person to whom the company has an obligation that the affairs of the company in Bermuda should be wound up in the same manner as a company incorporated in Bermuda, petition the Court to wind up such affairs and the Court may make such orders for the winding up of such affairs as is practicable.

Appeals to Supreme Court

141 (1) A company aggrieved by the revocation by the Minister of its permit may appeal to the Court within twenty-one days or such longer period as the Court may allow after receipt of notification of such revocation.

(2) If an appeal is allowed by the court, the company shall be entitled to engage in or carry on any trade or business in Bermuda in the same manner as it did before its permit was revoked.

(3) If an appeal is dismissed by the court, the company shall, forthwith or in such time as the Minister may allow, cease to engage in or carry on any trade or business in Bermuda.

(4) Section 62 of the Supreme Court Act 1905 shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an appeal under this section.

Register of permit companies

142 (1) The Registrar shall keep a register of permit companies in such form as he shall determine but which shall show—

(a) the name of the company;

(b) the principal place in Bermuda from which the company engages in or carries on any trade or business in Bermuda and the address of its registered office outside Bermuda;

(c) the date and place of its incorporation; and

(d) a copy of its permit.

(2) The register shall be open to inspection by members of the public during ordinary office hours on payment of such fee not exceeding five dollars as the Minister may determine.

(3) Every permit company with an established place of business in Bermuda on the appointed day shall within one month of that day deliver to the Registrar—

(i) a copy of its memorandum or in the event of it not having a memorandum, a document setting the objects of the company, the names of the directors and their nationalities, the business it is permitted to carry on in Bermuda and the amount of its authorized and paid up share capital;

(ii) a copy of its permit;

(iii) particulars of its place or places of business in Bermuda and the address of its registered office outside Bermuda;

(iv) a list of persons resident in Bermuda authorized to accept on its behalf service of process and any notices required to be served on it.

(4) Every overseas company in receipt of a permit after 1 July 1983 shall deliver to the Registrar such of the particulars set out in subsection (3) as it has not delivered to the Minister on its application for a permit.

(5) An alteration of any of the matters details of which are required to be delivered to the Registrar under subsection (3) shall be notified to the Registrar by every permit company within thirty days of the alteration becoming effective.

[Section 142 amended by 1992:51 effective 1 July 1992]

Restrictions on activities of a permit company

143 Unless authorized by this Act or any other Act or its permit a permit company shall not—

(a) acquire or hold land in Bermuda except—

(i) land required for its business by way of lease or tenancy agreement for a term not exceeding fifty years; or

(ii) with the consent of the Minister granted in his discretion, land by way of lease or tenancy agreement for a term not exceeding twenty-one years in order to provide accommodation or recreational facilities for its officers and employees;

(b) subject to section 144 take any mortgage of land in Bermuda;

(c) acquire any bonds or debentures secured on any land in Bermuda other than bonds or debentures issued by the Government or a public authority;

(d) *[deleted by 1996:21]*

(e) carry on business of any kind or type whatsoever in Bermuda either alone or in partnership or otherwise except—

(i) carrying on business with persons outside Bermuda;

(ii) doing business in Bermuda with an exempted undertaking in furtherance only of the business of the permit company carried on exterior to Bermuda;

(iii) buying or selling or otherwise dealing in shares, bonds, debenture stock obligations, mortgages or other securities or investments issued or created by an exempted undertaking, or a local company, or any partnership which is not an exempted undertaking;

(iv) transacting banking business in Bermuda with and through an institution licensed as a bank under the Banks and Deposit Companies Act 1999;

(v) effecting or concluding contracts in Bermuda, and exercising in Bermuda all other powers, so far as may be necessary for the carrying on of its business with persons outside Bermuda;

(vi) as manager or agent for, or consultant or adviser to, the business of an exempted undertaking whether or not such business is the sole business of the permit company provided that the permit company is authorized by law to carry on the kind or type of business in Bermuda;

(vii) notwithstanding the Non-Resident Insurance Undertakings Act 1967 [*title 5 item 17*], carrying on the business of re-insuring risks undertaken by any company incorporated in Bermuda and permitted to engage in insurance and reinsurance business.

[Section 143 amended by 1984:36; by 1992:51 effective 1 July 1992; by 1993:37 effective 13 July 1993; by 1996:21 effective 24 July 1996; by 1997:21 effective 2 September 1997; by 1998:8 effective 23 March 1998; by 1998:35 effective 5 October 1998; subsection (1)(e)(iv) amended by BR 81/1999 effective 1 January 2000]

Permit company and re-insuring

143A Where a permit company carries on the kind or type of business specified in section 143(e)(vii) that company shall be deemed not to be a non-resident insurance undertaking.

[Section 143A inserted by 1993:37 effective 13 July 1993]

Permit companies: bearer shares prohibited

143B From the commencement of this section, it shall not be lawful for a permit company to issue bearer shares.

[Section 143B inserted by 2026 : 28 s. 17 effective 14 September 2026]

Power of overseas and exempted companies to hold mortgages

144 (1) Subject to subsection (2) an overseas company may hold in its corporate name a mortgage on real and personal property of every description in Bermuda in the same manner and in the same respects as a local company and shall as mortgagee have all the rights of a local company.

(2) No overseas company without the prior consent of the Minister shall take any mortgage on land in Bermuda to secure any principal sum exceeding $50,000; or whereby any such mortgage shall together with any other principal sum or sums received by any other mortgage or mortgages held by such company from the same mortgagor or mortgagors exceed the sum of $50,000:

Provided that—

(a) the Minister may withhold such consent without assigning any reason;

(b) if any overseas company enters into possession of any land in Bermuda as mortgagee it shall cause the land to be sold within five years of so entering into possession thereof, or within such further period as the Minister may from time to time sanction in any such case, and any such land which is not sold within the time hereby limited shall be liable to escheat.

(3) For the purposes of this section an exempted company shall be deemed to be an overseas company.

(4) The Minister may by rule vary the principal sum exceeding which his consent is necessary prior to the taking out of a mortgage under this section.

Records to be kept by permit company

145 (1) Every permit company shall keep proper records of account with respect to the trade or business it is engaging in or carrying on or has engaged in or carried on in Bermuda, including records of account with respect to—

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

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

(c) the assets and liabilities of the company.

(2) The records of account shall be kept at the principal place in Bermuda from which the company engages in or carries on any trade or business in Bermuda provided that if the records of account are kept at some place outside Bermuda, there shall be kept at an office of the permit company in Bermuda such records as will enable the directors or a principal representative referred to in section 136A(1) to ascertain with reasonable accuracy the financial position of the permit company at the end of each three month period.

(3) Every permit company shall keep, for a period of five years from the date on which they were prepared, records of account referred to in subsection (1) and, if applicable, subsection (2).

(4) A permit company and any officer of the company who knowingly contravenes, permits or authorizes the contravention of the requirements of subsection (3) shall be liable on summary conviction to a fine of seven thousand five hundred dollars.

[Section 145 amended by 1992:51 effective 1 July 1992; Section 145 repealed and substituted by 2012 : 27 s. 2 effective 13 July 2012]

Investigation of affairs of permit company

146 The Minister shall have the same power to appoint an inspector to investigate the affairs of a permit company as he has under section 132 to appoint an inspector to investigate the affairs of an exempted company and section 132(2) to (12) shall apply *mutatis mutandis* to such an investigation.

Letter heads and service of process; permit company

147 (1) Every permit company shall have the following particulars on all letters sent from a place of business in Bermuda in connection with its business—

(a) its name;

(b) its place of incorporation; and

(c) the principal place in Bermuda from which the company engages in or carries on any trade or business in Bermuda.

(2) Any process or notice required to be served on an overseas company shall be sufficiently served if served on any person named in the list of persons delivered to the Registrar or the Minister pursuant to section 142(3)(iv) or if left at a place of business notified to the Registrar or the Minister pursuant to section 142(3)(iii).

Offences

148 Where any overseas company, whether a permit company or not, fails to comply with any provision of this Part where no other penalty is provided the company, its officers and the person who appears to the court trying the case to be in charge of its affairs in Bermuda shall be liable to a fine of one thousand dollars.

149 *[Section 149 repealed by 2002:6 s.4 & Sch 3 effective 18 June 2002]*

Effect of repeals or amendments of other enactments and savings

150 (1) Notwithstanding the repeal or amendment of any enactment by this Act, any licence or permit granted under the Acts so repealed or amended enabling any overseas company to carry on business in or from within Bermuda shall continue to have effect according to the tenor thereof until such licence or permit is either revoked under section 139 or the company is granted a permit under this Act.

(2) This Part shall be read in addition to and not in derogation of the External Companies (Jurisdiction in Actions) Act 1885 .

Application of certain sections to non-resident insurance undertakings

150A Sections 136A, 137(2) and (3), 138, 142, 144, 145, 146, 147 and 151 shall apply to non-resident insurance undertakings as if they were permit companies.

Application of 1966:41 to permit companies

151 The Exempted Undertakings Tax Protection Act 1966 shall apply to permit companies as if they were exempted companies.

PART XII

MUTUAL COMPANIES

Interpretation

152 (1) In this Part unless the context otherwise requires—

"mutual company" means any company, other than a company limited by shares, or other company having a share capital, whether incorporated before or after 1st July 1983, which is authorized to engage in or carry on as a principal object insurance or re-insurance business of all kinds on the mutual principle.

(2) For the purposes of this Part, a mutual company shall be deemed to engage in or carry on insurance or re-insurance business on the mutual principle where the members thereof who are exposed to some contingency associate themselves together by contributing by way of premiums on the basis that if the contemplated contingency befalls any member he shall receive a compensatory payment.

[Section 152 amended by 1992:51 effective 1 July 1992; and by 1994:22 effective 13 July 1994]

Mutual companies to create and maintain a reserve fund

153 (1) A mutual company shall create and maintain a reserve fund of not less than an amount approved by the Minister in respect of such company.

(2) The memorandum of a mutual company shall in addition to the requirements of section 7 state the amount of its reserve fund.

(3) The reserve fund of a mutual company shall be treated in all respects as if it were share capital.

Liability of members on a winding up

154 (1) Section 7(3) shall not apply to mutual companies and the liability of a member of such a company in the event of it being wound up shall be limited to the premiums or any unpaid premiums or undischarged portion thereof due to the company on the date of the commencement of the winding up from such member.

(2) For the purposes of this section "premiums" means the premiums, including retrospective premium adjustments or calls payable for insurance issued or effected by a mutual company to, for or on behalf of each member of the company and any capital

contribution or other such assessment that is due under the bye-laws or any other contractual obligation with a member of the company.

[Section 154 amended by 1992:51 effective 1 July 1992]

Apportionment of assets of mutual companies

155 When a mutual company is wound up, after its liabilities have been satisfied the person carrying out the winding up shall either apportion the remaining assets in accordance with the byelaws of the company or if there is no provision in the bye-laws for such apportionment then in such a fair and equitable manner amongst the members of the company as such person may decide.

Criteria for determining membership

155A (1) Subject to subsection (2), a mutual company shall in its bye-laws make provision to establish the criteria by reference to which membership in the company and eligibility therefor shall be determined.

(2) Without prejudice to the generality of subsection (1) and notwithstanding sub-section (2) of section 152, the following persons shall unless the bye-laws of the company otherwise provide, be members of a mutual company:

(a) any person who is for the time being a provisional director thereof—

(b) any person whose risks are insured, whether directly or indirectly, by the company and who has been accepted by the company as a member; or

(c) any person who provides some part of the funds necessary to establish or maintain the reserve fund of the company.

(3) For the purposes of subsection (2), the reference to a risk of a person being indirectly insured by the company is a reference to that risk being covered by the company by reinsurance through one or more intermediaries.

[Section 155A inserted by 1992:51 effective 1 July 1992]

Act to apply to mutual companies

156 (1) Subject to section 4 the provisions of this Act relating to companies limited by guarantee shall apply to all mutual companies:

Provided that the Minister from time to time may by regulations declare that any provision of this Act shall not apply to mutual companies or that in its application it shall be varied in such manner as shall be set out in the regulations.

(2) Any regulations made by the Minister under subsection (1) shall be subject to affirmative resolution procedure.

(3) For the avoidance of doubt it is declared that –

(a) sections 104 to 109 apply, with the necessary changes, to mutual companies;

(b) in sections 105 to 108 references to "shares" and to "capital" shall be read as if they were references to "membership interests" and to "a reserve fund" respectively.

[Section 156(3) added by 1999:25 s.17 effective 23 July 1999]

PART XIIA

MUTUAL FUND COMPANIES

Interpretation

156A In this Part, unless the context otherwise requires, "mutual fund" means a company limited by shares, or other company having a share capital and incorporated for the purpose of investing the moneys of its members for their mutual benefit and having the power to redeem or purchase for cancellation its shares without reducing its authorized share capital and stating in its memorandum that it is a mutual fund.

[Section 156A amended by 1994:22 effective 13 July 1994]

Redemption and purchase of shares by mutual fund

156B (1) No shares of a mutual fund shall be redeemed or purchased by another mutual fund unless such shares are fully paid.

(2) *[repealed]*

[Section 156B subsection (2) repealed by 2006:40 s.35 effective 29 December 2006]

Redemption and purchase by mutual fund company of its own shares

156C (1) A mutual fund shall, if authorized by its memorandum or bye-laws, have power to redeem or purchase for cancellation its issued shares at the option of the company or at the option, or on the request, of a member.

(2) A mutual fund, on the redemption or purchase of its own shares, may—

(a) repay the capital paid up on such shares out of paid in capital, share premium or other reserves of the company;

(b) pay the premium, if any, out of realized or unrealized profits, share premium or other reserves of the company, on such terms and in such manner and at such price as may be determined having regard to the asset value of such shares as ascertained in accordance with the bye-laws of the mutual fund.

(3) The redemption or purchase of its own shares by a mutual fund shall not be taken as reducing its authorized share capital and a mutual fund shall have power to issue shares equal in aggregate par value to the aggregate par value of the shares so redeemed or purchased as if those shares had never been issued and the issuance of such shares under the power herein contained shall not be taken as increasing the amount of its issued share capital.

(4) The power of a mutual fund referred to in subsection (3) shall be exercisable by the directors of the mutual fund.

[Section 156C amended by 1997:21 effective 2 September 1997]

156 *[Section 156D repealed by 1992:51 effective 1 July 1992]*

Private Act companies incorporated with certain powers deemed to be mutual funds

156E Every company incorporated by private Act and having the power to redeem or purchase for cancellation its issued shares at the option of, or on the request of, a member shall be deemed for the purposes of this Act to be a mutual fund.

Certain sections do not apply to mutual fund

156F Sections 40, 42, 42A, 42B, 54(1)(b), 65(6) and 66 shall not apply to a mutual fund.

[Section 156F replaced by 1992:51 effective 1 July 1992; and amended by 1995:33 effective 7 July 1995; and 2006:40 s.36 effective 29 December 2006]

Certain companies incorporated after 1 July 1983 deemed to be mutual funds

156G Every company incorporated after 30 June 1983 and before 12 July 1984 having the power to redeem or purchase for cancellation its issued shares or any class of shares at the option of, or on the request of, a member and which is an open-ended company (as defined in Part II of the Fifth Schedule) shall be deemed for the purposes of this Act to be a mutual fund and to have and always to have had the powers set out in section 156C.

Certification by Minister of fund as United Kingdom class scheme

156H Subject to section 156I, upon application by a mutual fund, the Minister may, in such form as he may determine, certify that the mutual fund is, in his opinion, a United Kingdom class scheme.

Conditions to be satisfied for certification

156I (1) The Minister shall not certify a mutual fund in accordance with section 156H, unless he is satisfied that—

(a) the applicant is a mutual fund within the meaning of this Part;

(b) the applicant is in compliance with this Act;

(c) the custodian of the mutual fund is a bank incorporated in Bermuda;

(d) the manager of the mutual fund is a company incorporated in Bermuda which is separate and apart from the custodian and is in compliance with this Act;

(e) the mutual fund is fit and proper to be approved as a United Kingdom class scheme;

(f) the bye-laws of the mutual fund comply with such requirements as are prescribed;

(g) the members of the mutual fund are entitled to have their shares redeemed or purchased by the fund in accordance with the bye-laws of the fund;

(h) the officers, directors, manager and custodian of the mutual fund are of good standing and repute, financially sound and have sufficient qualifications and experience to fulfill properly their respective roles; and

(i) the custodian and manager of the mutual fund are or will, upon certification, be participants in a compensation arrangement.

(2) For the purposes of this section and section 156O(2)—

"compensation arrangement" means an arrangement, approved by the Minister, in which the custodian and manager of a mutual fund are participants, providing for compensation to any member or former member of the mutual fund who has suffered loss as a result of any material breach by the custodian or manager of the fund—

(i) of the bye-laws of the fund; or

(ii) of any provision of this Act;

and where the custodian or manager, as the case may be, is or is likely to be unable otherwise to satisfy any judgment against it for such breach.

Right of member to bring action against custodian or manager for loss suffered as a result of breach of bye-laws

156J A member or a former member of a mutual fund certified under section 156H shall have a right of action against the custodian or manager of the fund, as the case may be, for any loss incurred by him as a result of any material breach of the bye-laws of the fund by the custodian or manager respectively, or as a result of any material breach by the custodian or manager respectively of any provision of this Act, subject to the defences applying to actions for breach of statutory duty.

Power of Minister to require rectification where fund no longer complies with statutory conditions

156K Where the Minister is of the opinion that any of the conditions set forth in section 156I are no longer fulfilled by a mutual fund, he shall immediately notify the mutual fund thereof and may, after affording the mutual fund an opportunity of making representations to him, require rectification thereof within such reasonable time as shall be set out in the said notice, failing which rectification as aforesaid, the Minister may revoke the certification made under section 156H, and so notify the mutual fund and the Secretary of State in the United Kingdom or his designate.

Custodian and manager required to be independent of one another

156L The custodian and manager of a mutual fund certified under section 156H shall in fulfilling their respective duties act independently of one another.

Manager of fund deemed to be an officer of fund

156M For the purposes of this Act the manager of a mutual fund certified under section 156H shall be deemed to be an officer of such fund whether or not such manager would otherwise be treated as an officer of the fund for the purposes of this Act.

Power of directors to amend bye-laws to ensure compliance with prescribed requirements

156N (1) Notwithstanding section 13(5), the directors of a mutual fund certified under section 156H shall have the right to amend the bye-laws of the mutual fund to the extent required to ensure continued compliance of such bye-laws with the requirements prescribed from time to time and no such amendment shall require the approval of the company in general meeting.

(2) Notwithstanding anything in this Act contained, no amendment may be made to the bye-laws of a mutual fund certified under section 156H if the effect thereof would be that the bye-laws of the mutual fund would no longer comply with such requirements as are prescribed from time to time.

Power of Minister to direct custodian or manager of fund to furnish information

156O (1) For the purposes of obtaining any information which the Minister needs to ensure that the provisions of this Part are fulfilled, the Minister may direct the custodian or the manager of a mutual fund certified under section 156H to furnish him with such information in such form and manner and within such time as he may specify.

(2) The custodian and manager of a mutual fund certified under section 156H shall furnish the trustee or administrator of any compensation arrangement with such information as he may require for the proper performance of his duties as such.

Regulations by Minister for Part XII

156P (1) The Minister may make regulations prescribing anything required or authorized to be prescribed under this Part and generally for the better carrying out of this Part.

(2) Subject to subsection (3), the Minister shall—

(a) cause a copy of all regulations made under this Part to be available at the office of the Registrar of Companies for inspection by any interested person free of charge at any time when the office of the Registrar of Companies is open to the public;

(b) cause to be published in the Gazette a notice briefly describing the nature of any regulations made under this Part, stating the date on which such regulations are to come into operation and that such regulations may be inspected at the office of the Registrar of Companies.

(3) Section 6 of the Statutory Instruments Act 1977 shall not apply to any regulations made under this Part. The provisions of subsection (2) shall be deemed to be deposit for public inspection for the purpose of section 5(1) of that Act.

PART XIIB

BENEFIT COMPANIES

Application of Part XIIB

156Q (1) This Part applies to benefit companies.

(2) The other provisions of this Act apply to benefit companies as they apply to other companies, but where this Part imposes additional or different requirements on benefit companies, those requirements prevail over any conflicting provisions of this Act.

(3) The additional or different requirements imposed on benefit companies by this Part may not be altered in the bye-laws of a benefit company except as provided in this Part.

(4) Nothing in this Part affects the law applicable to companies that are not benefit companies.

[Section 156Q inserted by 2025 : 21 s. 3 effective 1 December 2025]

Interpretation of Part XIIB

156R (1) In this Part—

"benefit company" means a company that includes in its memorandum a statement that it is a benefit company and subject to this Part;

"environment" means any aspect of the Bermuda or global environment, including air, land, water, flora and fauna;

"positive effect" includes the reduction of a negative effect on society or the environment;

"public benefit" means a positive effect on society or the environment, including (but not limited to) an effect of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, public health, religious, scientific, sporting or technological nature;

"public benefit provision" means a provision in the memorandum stating that the benefit company will pursue one or more specified public benefits;

"responsible and sustainable manner" shall be interpreted in accordance with subsection (2);

"requisite percentage of members of a benefit company" means members owning, individually or collectively—

(a) at least 2% of the issued shares; or

(b) in the case of a benefit company with shares listed on an appointed stock exchange, the lesser of such percentage or shares of at least $2,000,000 in fair market value;

"society" means one or more communities or categories of persons in Bermuda or overseas (other than the members of a benefit company in their capacity as members);

"stakeholder" in relation to a benefit company, includes—

(a) its employees, and the employees of its subsidiaries and suppliers;

(b) its customers;

(c) society, including in particular communities in which the offices or facilities of the benefit company, its subsidiaries, or its suppliers are located;

(d) the environment.

(2) Directors of a benefit company shall be taken to manage or direct the operations of the business of the benefit company in a "responsible and sustainable manner" if they—

(a) pursue, through the business and operations of the benefit company, an overall positive effect on society or the environment, that is material taking into account the size and nature of the business and operations of the benefit company; and

(b) consider, in addition to the interests of the members, the separate interests of stakeholders known by the directors to be affected by the conduct of the business or operations of the benefit company.

[Section 156R inserted by 2025 : 21 s. 3 effective 1 December 2025]

Procedure for becoming or ceasing to be a benefit company

156S (1) A company may be formed as a benefit company by including in its original memorandum a statement that it is a benefit company subject to this Part.

(2) A company may become a benefit company by altering its memorandum to include a statement that it is a benefit company subject to this Part.

(3) A benefit company may alter its memorandum to include, amend or remove a public benefit provision.

(4) A benefit company may cease to be a benefit company by altering its memorandum to remove the statement that it is a benefit company subject to this Part and any public benefit provision.

[Section 156S inserted by 2025 : 21 s. 3 effective 1 December 2025]

Duties of directors

156T (1) The directors of a benefit company shall manage or direct the business and operations of the benefit company in a manner that—

(a) is responsible and sustainable; and

(b) pursues the public benefits specified in any public benefit provision.

(2) Except in the case of fraud or dishonesty, no director shall have any liability for monetary damages for the failure to manage or direct the business or operations of the benefit company as provided in subsection (1), unless otherwise provided in the bye-laws; and if the bye-laws are amended to include such a provision it shall not have retrospective effect.

(3) A director shall not, by virtue of a public benefit provision or this section, have a duty to any person, other than the benefit company itself, on account of any interest of such person in the status of the company as a benefit company or a public benefit provision.

(4) Section 97 (duty of care of officers) applies to directors of a benefit company as if for subsection (1) there were substituted—

(1) "Every director of a benefit company in discharging his duties shall—

(a) act honestly and in good faith with a view to the best interests of the company;

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances,

having due regard to the duty to manage or direct the business in a responsible and sustainable manner and to pursue any specified public benefits."

[Section 156T inserted by 2025 : 21 s. 3 effective 1 December 2025]

Benefit statement and third-party certification

156U (1) Except as provided in subsection (4) or its bye-laws, a benefit company shall provide its members annually with a benefit statement as to the benefit company's efforts to comply with this Part.

(2) The statement shall include a description of the ways in which the benefit company sought during the reporting period—

(a) to operate in a responsible and sustainable manner;

(b) to comply with any public benefit provision.

(3) Except as provided in subsection (4) or its bye-laws, the benefit company shall use a third-party standard in preparing the analysis required in subsection (2)(a) and (b); and the third-party standard shall—

(a) be applied consistently with any application of that standard in prior statements; or

(b) be accompanied by an explanation of the reasons for any inconsistent application or change in the standard from the one used in the immediately prior statement.

(4) Except as provided in its bye-laws, the directors of the benefit company may decide—

(a) to provide the statement less frequently than annually;

(b) to prepare the statement without using a third-party standard.

(5) In relation to any year for which a decision has been made under subsection (4) that the statement will not be provided for that year or will not be prepared using a third-party standard, the requisite percentage of members of the benefit company, may, by notice to the benefit company not later than three months before the end of the year require that a statement be prepared for that year or that the benefit company use a third-party standard.

(6) In this section, "third-party standard" means a recognized standard for reporting overall social and environmental performance of a business that is comprehensive, independent, credible and transparent.

(7) For the purposes of subsection (6), a standard is—

(a) comprehensive, if it assesses whether the benefit company has been operated in a responsible and sustainable manner and how the operation of the business has affected stakeholder interests;

(b) independent, if it is developed by an entity that does not control, is not controlled by and is not under common control with, the benefit company;

(c) credible, if it is developed by an entity that has access to necessary expertise to assess overall corporate social and environmental performance, and uses a multi-stakeholder approach to develop the standard; and

(d) transparent, if information is publicly available about—

(i) the criteria used by the standard when measuring the overall social and environmental performance of a business, and the relative weightings, if any, of those criteria; and

(ii) the identity of the directors, officers, material owners, and the governing body of the entity that developed and controls revisions to the standard, and the process by which revisions to the standard and changes to the membership of the governing body are made.

[Section 156U inserted by 2025 : 21 s. 3 effective 1 December 2025]

Enforcement

156V (1) The requisite percentage of members of a benefit company may bring an action in the Court to enforce the requirements of this Part.

(2) The bye-laws may provide standing to other persons or classes of persons to bring an action in the Court to enforce the requirements of this Part.

(3) Unless otherwise provided in its bye-laws, a benefit company will not be liable for monetary damages for any failure to comply with this Part, or any failure of the benefit company to pursue the public benefits identified in any public benefit provision.

[Section 156V inserted by 2025 : 21 s. 3 effective 1 December 2025]

PART XIII

WINDING UP

Modes of winding up

157 The winding up of a company may be either by the Court or voluntary and this Act, subject to any other Act, shall be applied to the winding up of a company by either of these modes.

Liability as contributories of present and past members

158 Subject to section 158A, in the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following qualifications—

(a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before 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 he ceased to be a member;

(c) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(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;

(e) in the case of a company limited by guarantee, no contribution shall, subject to the special provisions relating to mutual companies, be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(ee) in the case of an unlimited liability company there shall be no limitation on the liability of any member;

(f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

(g) a sum due to any member of a company, in his character as a member, by way of dividends, profits or otherwise shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company, but any

such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

[Section 158 amended by 1994:22 effective 13 July 1994; by 1995:33 effective 7 July 1995; by BR 81/1999 effective 1 January 2000; and by 2000:29 s.20 effective 11 August 2000]

Winding up of limited company that was formerly unlimited

158A (1) This section applies in the case of a company being wound up which was at some former time registered as unlimited but has re-registered as a company limited by shares or by guarantee under section 14B.

(2) Notwithstanding section 158(a), a past member of the company who was a member of it at the time of re-registration, if the winding up commences within the period of three years beginning on the day on which the company was re-registered, is liable to contribute to the assets of the company in respect of debts and liabilities contracted before that time.

(3) If no persons who were members of the company at that time are existing members of it, a person who at that time was a present or past member is liable to contribute as provided in subsection (2) notwithstanding that the existing members have satisfied the contributions required to be made by them under this Act.

(4) Subsection (3) applies subject to section 158(a) and to subsection (2), but notwithstanding section 158(c).

(5) Notwithstanding section 158(d) and (e), there is no limit on the amount which a person who, at that time, was a past or present member of the company is liable to contribute.

[Section 158A inserted by 2000:29 s.21 effective 11 August 2000]

Definition and nature of liability of a contributory

159 (1) The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings prior to the final determining of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

(2) The liability of a contributory shall create a debt of the nature of a specialty accruing due from him at the time when his liability commenced but payable at the times when calls are made for enforcing the liability.

Contributories in case of death or bankruptcy of a member

160 (1) If a contributory dies either before or after he has been placed on the list of contributories, his estate representatives shall be liable in the due course of the administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) If the estate representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereout of the money due.

(3) If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories—

(a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the estate of the company; and

(b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

Circumstances in which company may be wound up by the Court

161 In addition to any other provision in this or any other Act prescribing for the winding up of a company a company may be wound up by the Court if—

(a) the company has by resolution resolved that the company be wound up by the Court;

(b) subject to section 88 default is made in holding the statutory meeting or failing to comply with section 84 or section 89;

(c) the company does not commence its business within a year of its incorporation or suspends its business for a whole year;

(ca) the company carries on any restricted business activity in contravention of section 4A;

(d) the company engages in a prohibited business activity in contravention of section 4B;

(e) the company is unable to pay its debts;

(f) the consent of the Minister, where under this Act such consent was required, was obtained as a result of a material misstatement in the application for consent; or

(g) the Court is of the opinion that it is just and equitable that the company should be wound up.

[Section 161 amended by 1998:35 effective 5 October 1998; paragraph (ca) inserted and (f) substituted by 2003:1 s.15 effective 14 February 2003]

Definition of inability to pay debts

162 A company shall be deemed to be unable to pay its debts—

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred dollars then due has served on the company, by leaving it at the registered office of the company, a demand requiring the company to pay the sum so due and the company

has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

(b) if the execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts; in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

[Section 162 paragraph (a) amended by 2006:40 s.37 effective 29 December 2006]

Applications for winding up

163 (1) An application to the Court for the winding up of a company shall be by petition, presented either by the company or by any creditor or creditors, including any contingent or prospective creditor or creditors, contributory or contributories, or by all of those parties, together or separately:

Provided that—

(a) a contributory shall not be entitled to present a winding up petition unless the shares in respect of which he is a contributory, or some of them, either were allotted to him or have been held by him and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and

(b) a winding up petition shall not, if the ground of the petition is default in holding the statutory meeting, be presented by any person except a member, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(c) the Court shall not give a hearing to a winding up petition presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the Court; and

(d) in a case falling within section 161(g) the winding up petition may be presented by the Registrar.

(2) When a company is being wound up voluntarily a winding-up petition may be presented by the Official Receiver as well as by any other person authorized in that behalf under this section, but the Court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interest of the creditors or contributories.

(3) Where the petition is presented on the ground that a material mis-statement was made in the application for the consent of the registration of the company the Court shall not make a winding-up order unless it is satisfied—

(a) that but for the mis-statement the consent of the Minister would not have been given; and

(b) that an order winding up the company will not cause hardship to any person who was not responsible for the mis-statement.

(4) Where the petition is presented on the ground that a material mis-statement was made in the application for the consent for the registration of the company the Court, if it finds that a material mis-statement was made, whether it makes an order winding up the company or not, may—

(a) impose on the company a fine of two thousand dollars; and

(b) require the company to pay the costs of the proceedings.

[Section 163 amended by 1993 : 37 effective 13 July 1993]

Powers of Court on hearing petition

164 (1) On hearing a winding-up petition the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the Court, if it is of opinion,—

(a) that the petitioners are entitled to relief either by winding up the company or by some other means; and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding-up order, unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) Where the petition is presented on the ground of default in holding the statutory meeting the Court may—

(a) instead of making a winding-up order, direct that a meeting shall be held; and

(b) order the costs to be paid by any person who, in the opinion of the Court, is responsible for the default.

Powers to stay or restrain proceedings against a company

165 (1) At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company or any creditor or contributory may, where an action or proceeding against the company is pending, apply to the Court for a stay of those proceedings.

(2) On an application being made under subsection (1) the Court may stay the proceedings accordingly on such terms as it thinks fit.

Avoidance of dispositions of property etc. after commencement of winding up

166 (1) In a winding-up by the Court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding-up, shall, unless the Court otherwise orders, be void.

(2) Where any company is being wound up by the Court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

Commencement of winding up by the Court

167 (1) Where, before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

(3) On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company to the Registrar, who shall make a minute thereof in his books relating to the company.

(4) When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose.

(5) An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Statement of company affairs to be submitted to Official Receiver

168 (1) Where the Court has made a winding-up order or appointed a provisional liquidator, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the Official Receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the Official Receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the

secretary of the company, or by such of the persons hereinafter in this subsection mentioned as the Official Receiver, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons—

(a) who are or have been officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the Official Receiver capable of giving the information required;

(d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within thirty days from the relevant date or within such extended time as the Official Receiver or the Court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Receiver or provisional liquidator, as the case may be, out of the assets of the company such costs and expenses, incurred in and about the preparation and making of the statement and affidavit as the Official Receiver may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a default fine.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section and a copy thereof or extract therefrom.

(7) Any person falsely stating himself to be a creditor or contributory shall be liable to a fine of one thousand dollars or imprisonment for a period of six months or both such fine and imprisonment.

(8) In this section "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding-up order.

Report by Official Receiver

169 (1) In a case where a winding-up order is made, the Official Receiver shall, as soon as practicable after receipt of the statement to be submitted under section 168, or, in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court—

(a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and

(b) if the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

(2) The Official Receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation thereof and any other matters which in his opinion it is desirable to bring to the notice of the Court.

(3) If the Official Receiver states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the Court shall have the further powers provided in section 196.

Power of Court to appoint liquidators

170 (1) For the purpose of conducting proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a liquidator or liquidators.

(2) The Court may on the presentation of a winding-up petition or at any time thereafter and before the first appointment of a liquidator appoint a provisional liquidator who may be the Official Receiver or any other fit person.

(3) When the Court appoints a provisional liquidator, the Court may limit his powers by the order appointing him.

Appointment of liquidators

171 The following provisions with respect to liquidators shall have effect on a winding-up order being made—

(a) if the Court has appointed no other provisional liquidator prior to the winding-up order being made the Official Receiver shall become the provisional liquidator and he or the provisional liquidator appointed by the Court shall continue to act as provisional liquidator until another person becomes liquidator and is capable of acting as such;

(b) the provisional liquidator shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the provisional liquidator;

(c) the Court may make any appointment and order required to give effect to any such determination and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order thereon as it thinks fit;

(d) in a case where a liquidator is not appointed by the Court, the Official Receiver shall be the liquidator of the company;

(e) the Official Receiver shall be the liquidator during any vacancy;

(f) a liquidator shall be described when a person other than the Official Receiver is liquidator, by the style of "the liquidator", and, where the Official Receiver is liquidator, by the style of "the Official Receiver and liquidator", of the particular company in respect of which he is appointed and not by his individual name.

Liquidator who is not the Official Receiver

172 Where, in the winding up of a company by the Court, a person other than the Official Receiver is appointed liquidator, that person—

(a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the prescribed manner to the satisfaction of the Registrar; and

(b) shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the company and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

Liquidators; resignation, removal, salary

173 (1) A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court.

(2) Where a person other than the Official Receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the Court may direct, and, if more persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportion as the Court directs.

(3) A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court.

(4) If more than one liquidator is appointed by the Court, the Court shall declare whether any act by this Act required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to section 249, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualifications.

Custody and vesting of companies property

174 (1) Where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.

(2) Where a company is being wound up by the Court, the Court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order

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

Powers of liquidator

175 (1) The liquidator in a winding-up by the Court shall have power, with the sanction either of the Court or of the committee of inspection—

(a) to bring or defend any action or other legal proceeding 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 appoint an attorney to assist him in the performance of his duties;

(d) to pay any classes of creditors in full;

(e) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, certain or contingent ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;

(f) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a 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 or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof.

(2) The liquidator in a winding up by the Court shall have power—

(a) to sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or to sell the same in parcels;

(b) 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;

(c) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;

(d) to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;

(e) to raise on the security of the assets of the company any money required;

(f) 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 money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;

(g) to appoint an agent to do any business which the liquidator is unable to do himself;

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

(3) The exercise by the liquidator in a winding up by the Court of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

Exercise and control of liquidator's powers

176 (1) Subject to this Act, the liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is dissatisfied by any act, omission or decision of the liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act

or decision complained of, and may give such directions and make such order in the premises as it thinks just.

[Section 176 amended by 1989:58 effective 31 January 1990]

Books to be kept by liquidator

177 Every liquidator of a company which is being wound up by the Court shall keep, in the manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

Release of liquidators

178 (1) When the liquidator of a company which is being wound up by the Court has realized all the property of the company or as much thereof as can, in his opinion, be realized without needlessly protracting the liquidation and has distributed a final dividend, if any, to the creditors and has adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Court shall on his application and on his complying with all its requirements after hearing any objection that may be urged by any creditor, contributory or person interested against the release of the liquidator either release or withhold his release.

(2) An appeal shall lie to the Court of Appeal against a decision withholding the release of a liquidator under subsection (1).

Receipts by liquidator

179 (1) Every liquidator of a company which is being wound up by the Court shall deal with the money received by him in such manner as the Court shall direct.

(2) If any liquidator at any time retains for more than thirty days a sum exceeding five thousand dollars after he has received directions of the Court as to how he is to deal with the money, he shall pay interest on the sum so retained at the statutory rate of interest fixed under the Interest and Credit Charges (Regulation) Act 1975 unless the Court otherwise orders.

(3) A liquidator of a company which is being wound up by the Court shall not pay any sums received by him as liquidator into his private banking account.

Audit of liquidators' accounts

180 Every liquidator of a company which is being wound up by the Court shall at such times as the Court shall direct send to the Court audited accounts of his receipts and payments as liquidator.

Meetings of creditors and contributories to determine whether committee of inspection shall be appointed

181 (1) When a winding-up order has been made by the Court, it shall be the business of the separate meetings of the creditors and contributories summoned for the

purpose of determining whether or not an application should be made to the Court for appointing a liquidator in place of the Official Receiver to determine further whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the Court shall decide the difference and make such order thereon as the Court may think fit.

Constitution and proceedings of committee of inspection

182 (1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed upon by the meetings of creditors and contributories or as, in case of difference, maybe determined by the Court.

(2) The committee shall meet at such times as it shall from time to time determine and the liquidator and any member of the committee may also call a meeting of the committee as and when either of them consider it necessary.

(3) The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories of which seven days notice has been given stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy:

Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the Court and the Court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

Powers of Registrar where no committee of inspection

183 Where in the case of a winding up there is no committee of inspection, the Registrar may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorized or required to be done or given by a committee.

Power to stay winding up

184 (1) The Court may at any time after an order for winding up, on the application either of the liquidator or the Official Receiver or any creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) Where the Court makes an order staying the proceedings altogether it may on hearing the liquidator, the Official Receiver, if he desires to be heard, and the interested creditors or contributories make such order as it considers desirable to enable the company to be as near as practicable as it was before the winding-up order was made.

(3) On any application under this section the Court may, before making an order, require the Official Receiver to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.

(4) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

Settlement of list of contributories and application of assets

185 (1) As soon as may be after making a winding-up order, the Court shall settle a list of contributories with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities:

Provided that, where it appears to the Court that it will not be necessary to make calls on or adjust the rights of the contributories, the Court may dispense with the settlement of a list of contributories.

(2) 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 or liable for the debts of others.

Delivery of property to liquidator

186 The Court may, at any time after making a winding-up order, require any contributory for the time being on list of contributories and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to the liquidator any money, property or books and papers in his hands to which the company is prima facie entitled.

Payment of debts due by contributory to company and extent to which set-off allowed

187 (1) The Court may, at any time after making a winding-up order make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) In the case of any company when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of Court to make calls

188 (1) The Court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Order on contributory conclusive evidence

189 (1) An order made by the Court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

Appointment of special manager

190 (1) Where in proceedings the Official Receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court, and the Court may on such application appoint a special manager of the said estate or business to act during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court.

(2) The special manager shall give such security and account in such manner as the Court shall direct.

(3) The special manager shall receive such remuneration as may be fixed by the Court.

Power to exclude creditors not proving in time

191 The Court may fix a time or times within which creditors are to prove their debts or claims or be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories

192 The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

Inspection of books by creditors and contributories

193 (1) The Court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a government department or person acting under the authority of a government department.

Power to order costs of winding up to be made out of assets

194 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 assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

Power to summon persons suspected of having property of company etc.

195 (1) The Court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or persons known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The Court may examine such person on oath, concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The Court may require such person to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful excuse, made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be apprehended and brought before the Court for examination.

Power to order public examination of promoter and officer

196 (1) Where an order has been made for winding up a company by the Court the Official Receiver may make a report under this Act stating that in his opinion any person in the promotion or formation of the company or any officer of the company since its formation has been guilty of fraud or dishonesty or has been in default in complying with the provisions of the law relating to companies or has shown himself to have acted in an improper, reckless or incompetent manner in relation to the company's affairs.

(2) Where a report is made to the Court under subsection (1) the Court may, after consideration of the Official Receiver's report, direct that the person or officer referred to in the report shall attend before the Court on a day appointed for that purpose and be publicly examined as to his conduct in relation to the company.

(3) The Official Receiver shall take part in the examination either in person or by attorney.

(4) The liquidator, where the Official Receiver is not the liquidator, and any creditor or contributory may also take part in the examination either personally or by attorney.

(5) The Court may put such questions to the person examined as the Court thinks fit.

(6) The person examined shall be examined on oath and shall answer all such questions as the Court may put or allow to be put to him.

(7) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the Official Receiver's report, and may at his own cost employ an attorney who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that, if any such person applies to the Court to be exculpated from any charges made or suggested against him, it shall be the duty of the Official Receiver to appear on the hearing of the application and call the attention of the Court to any matters which appear to the Official Receiver to be relevant, and if the Court, after hearing any evidence given or witnesses called by the Official Receiver, grants the application, the Court may allow the applicant such costs as in its discretion it may think fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) An examination under this section, may if the Court so directs, be held by any person appointed by the Court for that purpose. Such person shall have all the powers of the Court in conducting such examination.

Power to arrest absconding contributory

197 The Court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit Bermuda or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be safely kept until such time as the Court may order.

Powers of Court cumulative

198 Any powers by this Act conferred on the Court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor, for the recovery of any call or other sums.

Delegation to liquidator of certain powers of the Court

199 (1) The Chief Justice may make rules enabling all or any of the powers and duties conferred or imposed on the Court by this Act in respect of the following matters—

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;

(c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(d) the making of calls;

(e) the fixing of a time within which debts and claims must be proved;

(f) the use of electronic means of communication,

to be exercised or performed by the liquidator as an officer of the Court, and subject to the control of the Court:

Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

(2) Rules made under subsection (1) shall not be subject to Parliamentary scrutiny by virtue of section 6 of the Statutory Instruments Act 1977 .

[Section 199 subsection (1)(f) inserted by 2006:40 s.38 effective 29 December 2006]

Early dissolution

199A (1) This section applies where an order for the winding up of a company has been made by the Court.

(2) The Official Receiver, if—

(a) he is the liquidator of the company, and

(b) it appears to him—

(i) that the realizable assets of the company are insufficient to cover the expenses of the winding up, and

(ii) that the affairs of the company do not require any further investigation,

may at any time apply to the Registrar for the early dissolution of the company.

(3) Before making that application, the Official Receiver shall give not less than twenty-eight days' notice of his intention to do so to the company's creditors and contributories and, if there is a receiver of the company, to that receiver.

(4) With the giving of that notice the Official Receiver ceases (subject to any directions under section 199B) to be required to perform any duties imposed on him in relation to the company, its creditors or contributories by virtue of any provision of this Act, apart from a duty to make an application under subsection (2).

(5) On the receipt of the Official Receiver's application under subsection (2) the Registrar shall forthwith register it and, at the end of the period of three months beginning with the day of the registration of the application, the company shall be dissolved; however, the Minister may, on the application of the Official Receiver or any other person who appears to the Minister to be interested, give directions under section 199B at any time before the end of that period.

[Section 199A inserted by 1992:51 effective 1 July 1992]

Consequences of notice under section 199A

199B (1) Where a notice has been given under section 199A(3), the Official Receiver or any creditor of or contributory to the company, or the receiver of the company (if there is one) may apply to the Minister for directions under this section.

(2) The grounds on which that application may be made are—

(a) that the realizable assets of the company are sufficient to cover the expenses of the winding up;

(b) that the affairs of the company do require further investigation; or

(c) that for any other reason the early dissolution of the company is inappropriate.

(3) Directions under this section—

(a) are directions making such provision as the Minister thinks fit for enabling the winding up of the company to proceed as if no notice had been given under section 199A(3), and

(b) may, in the case of an application under section 199A(5), include a direction deferring the date at which the dissolution of the company is to take effect for such period as the Minister thinks fit.

(4) An appeal to the Court lies from any decision of the Minister on an application for directions under this section.

(5) It is the duty of the person on whose application any directions are given under this section, or in whose favour an appeal with respect to an application for such directions is determined within seven days after the giving of the directions or the determination of the appeal, to deliver to the Registrar for registration such a copy of the directions or determination as is prescribed.

(6) If a person without reasonable excuse fails to deliver a copy as required by subsection (5), he is liable to a fine of two hundred and fifty dollars, and, for continued contravention, to a daily default fine.

[Section 199B inserted by 1992:51 effective 1 July 1992]

Dissolution of company

200 (1) When the affairs of a company have been completely wound up, the Court, if the liquidator makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall within fourteen days from the date thereof be forwarded by the liquidator to the Registrar who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section, he shall be liable to a default fine.

Circumstances in which a company may be wound up voluntarily

201 A company shall be wound up voluntarily—

(a) when the company resolves in general meeting that the company be wound up voluntarily; or

(b) pursuant to section 201A.

[Section 201 replaced by 1996:21 effective 24 July 1996]

Appointment of liquidator and dissolution of company of limited duration

201A (1) A company shall be wound up voluntarily upon the expiration of the period fixed for the duration of the company by its incorporating Act or its memorandum or upon the occurrence of the event on the occurrence of which its incorporating Act or its memorandum provides that the company is to be dissolved and thereafter the company shall be dissolved in accordance with this Part.

(2) Where a company is being wound up pursuant to subsection (1)—

(a) references in this Part to the resolution for voluntary winding up shall be deemed to be references to the expiration of the period, or the occurrence of the event, referred to in subsection (1);

(b) section 216(1) shall be read as requiring the meeting of the creditors of the company to be summoned within thirty days of the expiration of the period, or the occurrence of the event, referred to in subsection (1);

(c) sections 208(1), 216(5) and 230 shall not apply to the company.

(3) Subject to section 227, where a company is being wound up pursuant to subsection (1) by way of members' voluntary winding up, within ninety days after the expiration of the period, or the occurrence of the event, referred to in that subsection the members of the company shall appoint one or more liquidators for the purpose of winding up the affairs, and distributing the assets, of the company, and may fix their remuneration, and in the absence of such an appointment within that time period, the Official Receiver shall be the liquidator.

(4) Where a company is being wound up pursuant to subsection (1) by way of a creditor's voluntary winding up and no liquidator has been appointed within ninety days after the expiration of the period, or the occurrence of the event, referred to in subsection (1), the Official Receiver shall be the liquidator.

[Section 201A replaced by 1996:21 effective 24 July 1996]

Notice of resolution to wind up voluntarily

202 (1) Where a company is being wound up voluntarily, then within twenty-one days after—

(a) the expiration of the period fixed for the duration of the company by its incorporating Act or memorandum;

(b) the occurrence of the event, on the occurrence of which the incorporating Act or memorandum provides that the company is to be dissolved; or

(c) the passing of the resolution that the company be wound up voluntarily,

the company shall give notice thereof by advertisement in an appointed newspaper.

(2) If default is made in complying with this section, the company and every officer of the company shall be liable to a default fine. For the purpose of this section the liquidator of the company shall be deemed to be an officer of the company.

[Section 202 amended by 1994:22 effective 13 July 1994; and by 1996:21 effective 24 July 1996]

Commencement of voluntary winding up

203 A voluntary winding up shall be deemed to commence—

(a) on the expiration of the period, if any, fixed in the incorporating Act or the memorandum for the duration of a company;

(b) on the occurrence of the event, if any, on the occurrence of which it is provided in the incorporating Act or the memorandum that a company is to be dissolved; or

(c) at the time of the passing of the resolution for voluntary winding up.

[Section 203 replaced by 1994:22 effective 13 July 1994]

Effect of voluntary winding up on business and status of company

204 In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding any thing to the contrary in its memorandum or bye-laws, continue until it is dissolved.

[Section 204 amended by 1994:22 effective 13 July 1994; and by 1996:21 effective 24 July 1996]

Avoidance of transfers etc. after commencement of voluntary winding up

205 Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

Statutory declaration of solvency in case of proposal to wind up voluntarily

206 (1) Where it is proposed to wind up a company voluntarily, the majority of the directors, shall each make a statutory declaration to the effect that they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless—

(a) it is made within five weeks immediately preceding—

(i) the expiration of the period, if any, fixed by the incorporating Act or the memorandum for the duration of the company;

(ii) the occurrence of the event, if any, on the occurrence of which it is provided in the incorporating Act or the memorandum that the company is to be dissolved; or

(iii) the date of the passing of the resolution for voluntarily winding up,

and is delivered to the Registrar for registration before that date;

(b) it embodies either—

(i) a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration; or

(ii) a statement to the effect that the opinion of the directors was based on an indemnity, undertaking or pledge made in favour of the company in respect of its liabilities.

(3) Any director of a company making a declaration under this section without having any reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be liable to imprisonment for a period of six months or to a fine of two thousand five hundred dollars or to both; and if the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

(4) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as "a member's voluntary winding up", and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as "a creditors' voluntary winding up".

[Section 204 amended by 1994:22 effective 13 July 1994, and by 1996:21 effective 24 July 1996]

Members' winding up

207 Sections 208 to 214 shall, subject to section 214, apply in relation to a members' voluntary winding up.

Power of company to appoint and fix remuneration of liquidators

208 (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix their remuneration.

(2) On the appointment of a liquidator all the powers of the officers shall cease, except so far as the company in general meeting or the liquidator sanctions the continuance thereof.

Power to fill vacancy in office of liquidator

209 (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the bye-laws, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

Power of liquidator to accept shares etc. as consideration for sale of property of company

210 (1) Where a company is proposed to be, or is in the course of being, wound up voluntarily, and the whole or part of its business or property is proposed to be transferred

or sold to another company whether a company within the meaning of this Act or not, in this section called "the transferee company", the liquidator of the first-mentioned company, in this section called "the transferor company", may, with the sanction of a resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits or receive any other benefits from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by resolution.

(5) A resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the company by the Court, the resolution shall not be valid unless sanctioned by the Court.

Duty of liquidator to call creditors' meeting in case of insolvency

211 (1) If the liquidator is at any time of the opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 206 he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding two hundred and fifty dollars.

Duty of liquidator to call general meeting at end of each year

212 (1) Subject to section 214, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Registrar may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding fifty dollars.

Final meeting and dissolution. Members voluntary winding up

213 (1) Subject to section 214, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding-up, showing how the winding-up has been conducted and the property has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in an appointed newspaper, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting the liquidator shall notify the Registrar that the company has been dissolved and the Registrar shall record that fact and the date of the dissolution in the appropriate register:

Provided that, if a quorum is not present at the meeting the liquidator, in lieu of notifying the Registrar as herebefore mentioned, shall notify him that the meeting was duly summoned and that no quorum was present thereat and on such notification the requirements of this subsection shall be deemed to have been complied with.

(4) If the liquidator fails to call a general meeting of the company as required by this section or fails to comply with the requirements of subsection (3), he shall be liable to a default fine.

Alternative provisions as to annual and final meetings in case of insolvency.

214 Where section 211 has effect, sections 222 and 223 shall apply to the winding up, as if the winding up were a creditor's voluntary winding up:

Provided that the liquidator shall not be required to summon a meeting of creditors under section 222 at the end of the first year from the commencement of the winding up, unless the meeting held under section 211, is held more than three months before the end of the year.

Creditors' winding up

215 Section 216 to 223 shall apply in relation to a creditor's voluntary winding up.

Meeting of creditors

216 (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the next day following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall cause notice of the meeting of creditors to be advertised in an appointed newspaper on at least two occasions.

(3) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

(b) appoint one of their number to preside at such meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it has been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made—

(a) by the company in complying with subsections (1) and (2);

(b) by the directors of the company in complying with subsection (3);

(c) by any director of the company in complying with subsection (4),

the company, directors or director, as the case may be, shall be liable to a fine of five hundred dollars, and in the case of default by the company, every officer of the company who is in default shall be liable to like penalty.

[Section 216 subsection (1) amended by 2006:40 s.39 effective 29 December 2006]

Appointment of liquidator

217 The creditors and the company at their respective meetings mentioned in section 216 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated, any director, member or creditor of the company may within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors or appointing some other person to be liquidator instead of the person appointed by the creditors.

Appointment of committee of inspection

218 (1) The creditors at the meeting to be held in pursuance of section 216 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any

time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to this section and to general rules, section 182 except subsection (1), shall apply with respect to a committee of inspection appointed under this section as it applies with respect to a committee of inspection appointed in a winding up by the Court.

Fixing of liquidator's remuneration and cessor of officers' powers

219 (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the officers shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

Power to fill vacancy in office of liquidator

220 If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the Court, the creditors may fill the vacancy.

Application of s.210 to a creditors' voluntary winding up

221 Section 210 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

Duty of liquidator to call meetings of company and creditors at end of each year

222 (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Registrar may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding fifty dollars.

Final meeting and dissolution

223 (1) As soon as the affairs of the company are fully wound up, the liquidator shall make an account of the winding up showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in an appointed newspaper specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a default fine:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The Registrar on receiving the account and, in respect of each such meeting, either of the returns hereinbefore mentioned, shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within seven days after the making of the order, to deliver to the Registrar an office copy of the order for registration, and if the person fails to do so he shall be liable to a default fine.

(6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be liable to a fine of two hundred and fifty dollars.

Sections 225 to 233 apply to every winding up

224 Sections 225 to 233 shall apply to every winding up whether a member's or a creditor's winding up.

Distribution of property of company

225 Subject to this Act as to preferential payment the property of a company shall, on its winding up, be applied in satisfaction of its liabilities pari passu, and, subject to such

application, shall, unless the bye-laws otherwise provide, be distributed among the members according to their rights and interests in the company.

Powers and duties of liquidator in voluntary winding up

226 (1) The liquidator may—

(a) in the case of a member's voluntary winding up, with the sanction of a resolution of the company, and, in the case of a creditor's voluntary winding up, with the sanction of the Court or the committee of inspection or if there is no such committee a meeting of the creditors, exercise any of the powers given by section 175(1)(d), (e) and (f) to a liquidator in a winding up by the Court;

(b) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;

(c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories;

(d) exercise the power of the Court to make calls;

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act 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.

Power of Court to appoint and remove liquidator in voluntary winding up

227 (1) If from any cause whatever there is no liquidator acting, the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

Notice by liquidator of his appointment

228 (1) The liquidator shall, within twenty-one days after his appointment, publish in an appointed newspaper and deliver to the Registrar for registration a notice of his appointment.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a default fine.

Arrangement when binding on creditors

229 (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a resolution and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

Liquidator's power to stay voluntary winding up

230 (1) The liquidator of a company may at any time after he has been appointed stay the winding up either altogether or for a limited time if he is satisfied that such a stay is in the best interests of the contributories or the creditors.

(2) The liquidator shall three weeks prior to staying the winding up of a company under subsection (1) publish in an appointed newspaper his intentions and his reasons for so doing and shall give notice of such intention to the Registrar.

(3) The Official Receiver or any contributory or creditor may within three weeks of the publication of a notice under subsection (2) apply to the Court under section 231 for an order requiring the liquidator to continue the winding up proceedings.

(4) When a liquidator stays the winding up of a company altogether he shall, after the period allowed for an application under subsection (3) has expired, take such steps as he considers desirable to enable the company to be as near as practicable as it was before the resolution to wind up the company was made.

Power to apply to Court to have questions determined or powers exercised

231 (1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed to the Registrar who shall make a minute of the order in his books relating to the company.

Costs of voluntary winding up

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

Saving for rights of creditors and contributories

233 The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

Debts of all description may be proved

234 In every winding up, subject in the case of insolvent companies to the rules of bankruptcy as applied by this Act all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Application of bankruptcy rules in winding up of insolvent companies

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

Preferential payments

236 (1) In a winding up there shall be paid in priority to all other debts—

(a) all taxes owing to the Government and rates owing to a municipality at the relevant date;

(b) all wages or salary, whether or not earned wholly or in part by way of commission or whether payable for time or piece work of any employee of the company in respect of services rendered to the company during four months next before the relevant date;

(c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death to any other person in his right, on the termination of his employment before or by the effect of the winding-up order or resolution;

(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation or of merger with another company, all amounts due in respect of contributions payable during the twelve months next before the relevant date by the company as the employer of any persons under the Contributory Pensions Act 1970 or any contract of insurance;

(e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation or of merger with another company, or unless the company has, at the commencement of the winding up, under a contract with insurers capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act 1965 , being amounts which have accrued before the relevant date.

(2) Notwithstanding anything in subsection (1)(b), the sum to which priority is to be given under subsection (1)(b) shall not, in the case of any one claimant, exceed two thousand five hundred dollars:

Provided that where a claimant under subsection (1)(b) has entered into a contract for the payment of a portion of his wages in a lump sum or for the payment of a gratuity at the end of his hiring, he shall have priority in respect of the whole of each sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(3) Where any compensation under the Workmen's Compensation Act 1965 , is a weekly payment, the amount due in respect thereof shall, for the purposes of subsection (1)(e), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(4) Where any payment has been made—

(a) to any employee of a company, on account of wages or salary; or

(b) to any such employee or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration, out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the employee or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) The foregoing debts shall—

(a) rank equally among 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.

(6) 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, and in the case of the debts to which priority is given by subsection (1)(d) formal proof thereof shall not be required.

(7) 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.

(8) For the purpose of this section—

(a) any remuneration in respect of a period of holiday or absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period.

(b) "accrued holiday remuneration" includes in relation to any person, all sums which. by virtue either of his contract of employment or of any enactment, including any order made or direction given under an Act, are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday;

(c) "the relevant date" means—

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment, or first appointment, of a provisional liquidator, or, if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

(ii) in any case where sub-paragraph (i) does not apply, means the date of the passing of the resolution for the winding up of the company.

[Section 236 subsection (2) amended by 2004:36 s.8 effective 17 December 2004; subsection (1) amended by 2011 : 43 s. 33 effective 18 December 2011]

Fraudulent preference

237 (1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company within six months before the commencement of its winding up which, had it been made or done by or against an individual within six months before the presentation of a bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference, shall in the event of the company being wound up be deemed a fraudulent preference of its creditors and be invalid accordingly.

(2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

Liability and rights of certain fraudulently preferred persons

238 (1) Where anything made or done is void under section 237 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then, without prejudice to any rights or liabilities arising apart from this provision, the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debts to the extent of the charge on the property or the value of his interest, whichever is the less.

(2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the charge for the company's debts was then subject.

(3) On any application made to the Court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

This subsection shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

Effect of floating charge

239 (1) Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the statutory rate fixed under the Interest and Credit Charges (Regulation) Act 1975 .

Disclaimer of onerous property

240 (1) The liquidator of a company may with the leave of the Court disclaim any property belonging to the company whether real or personal including any right of action or right under a contract which in his opinion is onerous for the company to hold or is unprofitable or unsaleable.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company, and the property of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(4) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

(5) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

Restriction of rights of creditor as to execution or attachment in case of company being wound up

241 (1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up:

Provided that—

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purpose of the foregoing provision, be substituted for the date of the commencement of the winding up;

(b) a person who purchases in good faith under a sale by the Provost Marshal any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and

(c) the rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court may think fit.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure or by the appointment of a receiver.

(3) In this section and section 242 "goods" includes all chattels personal, and "Provost Marshal" includes any officer charged with the execution of a writ or other process.

Duties of Provost Marshal as to goods taken in execution

242 (1) Subject to subsection (3), where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or

recovery of the full amount of the levy, notice is served on the Provost Marshal that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the Provost Marshal shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof for the purpose of satisfying that charge.

(2) Subject to subsection (3), where under an execution in respect of a judgment for a sum exceeding five hundred dollars the goods of a company are sold or money is paid in order to avoid sale, the Provost Marshal shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the Provost Marshal shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

Offences by officers of companies in liquidation

243 (1) If any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by the Court or voluntarily, or is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up—

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or

(b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or

(c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;

(d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of three hundred dollars or upwards, or conceals any debt due to or from the company; or

(e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of fifty dollars or upwards; or

(f) makes any material omission in any statement relating to the affairs of the company; or

(g) knowing or believing that a false debt has been proved by any person under winding up, fails for the period of a month to inform the liquidator thereof; or

(h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or

(i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company; or

(j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or

(k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; or

(l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or

(m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit for which the company does not subsequently pay for; or

(n) within twelve months next before the winding up or any time thereafter, under false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

(o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or

(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

he shall, in the case of the offences mentioned respectively in paragraphs (m), (n) and (o), be liable on indictment to imprisonment for a term of five years, or on summary conviction to imprisonment for a term of twelve months, and in the case of any other offence he shall be liable on conviction on indictment to imprisonment for a term of two years, or on summary conviction to imprisonment for a term of twelve months:

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (m), (n) and (o), if the accused proves that he had no intent to defraud, and to charge under any of paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(o), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be liable to be punished in the same way as if he had committed an offence under subsection (1)(o).

(3) For the purpose of this section "officer" includes any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

Penalty for falsification of books

244 If any officer or contributory of any company being wound up destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable on conviction on indictment to imprisonment for a period of five years.

Frauds by officers of companies which have gone into liquidation

245 If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up,—

(a) has by false pretence or by means of any other fraud induced any person to give credit to the company;

(b) with intent to defraud creditors of the company, has made or caused to be made any transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

he shall be liable on conviction on indictment to imprisonment for a term of two years, or on summary conviction to imprisonment for a term of twelve months.

Persons concerned responsible for fraudulent trading

246 (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the Official Receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liability of the company as the Court may direct.

On the hearing of an application under this subsection the Official Receiver of the liquidator, as the case may be, may himself give evidence or call witnesses.

(2) Where the Court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purpose of this subsection, "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction on indictment to imprisonment for a term of two years or to a fine of two thousand five hundred dollars, or to both.

(4) This section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) is made unless the person concerned pays the debts and liabilities which the Court in the declaration has directed that he should pay within a space of three weeks of the declaration he shall be deemed to have been guilty of an act of bankruptcy under section 3 of the Bankruptcy Act 1989 .

[Section 246 amended by 1994:22 effective 13 July 1994]

Power of Court to assess damages against delinquent officers

247 (1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property 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 the Official Receiver, or of the liquidator, or of any creditor or contributor, examine the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) This section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) When an order is made under this section, if the person concerned fails to comply with the order within the space of three weeks of it being served upon him or within such time, or such further time that the Court may allow, unless he satisfies the Court that he has a counter-claim, set-off or cross demand which equals or exceeds the amount he has been ordered to pay he shall be guilty of an act of bankruptcy for the purposes of section 3 of the Bankruptcy Act 1989 .

[Section 247 amended by 1994:22 effective 13 July 1994]

Prosecution of delinquent officers and members of company

248 (1) If it appears to the Court in the course of a winding up by the Court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its owns motion, direct the liquidator to refer the matter to the Director of Public Prosecutions.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Director of Public Prosecutions and shall furnish him with such information as he shall require and give him such access to and facilities for inspecting and taking copies of any documents in his possession or control relating to the matter in question.

[Section 248 subsections (1) and (2) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Body corporate disqualified for appointment as liquidator

249 A body corporate, unless empowered so to do by an incorporating Act, shall not be qualified for appointment as liquidator of a company whether in a winding up by the Court or in a voluntary winding up and—

(a) any appointment made in contravention of this provision shall be void; and

(b) any body corporate which acts in contravention of this section shall be liable to a fine not exceeding five hundred dollars.

Corrupt inducement affecting appointment as liquidator

250 (1) Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be liable—

(a) on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and

(b) on conviction on indictment to an unlimited fine or imprisonment for 15 years, or both.

(2) No person shall be charged with an offence under subsection (1) committed wholly on or after the commencement date of the Bribery Act 2016.

[Section 250 amended by 2016 : 47 s. 24(1) & Sch 2 effective 1 September 2017]

Enforcement of duty of liquidator to make returns etc.

251 (1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Court may, on an application made to the Court by any contributory or creditor of the company or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any provision imposing penalties on a liquidator in respect of any such default as aforesaid.

Notification that a company is in liquidation

252 (1) Where a company is being wound up, whether by the Court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company and any of the following persons who knowingly and wilfully authorizes or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine of one hundred dollars.

Exemption of certain documents from stamp duty

253 (1) When a company is being wound up by the Court or when a company is the subject of a creditors' voluntary winding up—

(a) every assurance relating solely to freehold property, or to any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and

(b) every power of attorney, proxy paper, writ, order, certificate, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties,

(2) In this section "assurance" includes deed, conveyance, assignment and surrender.

Books of company to be evidence

254 Where a company is being wound up, all books and papers 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.

Form of books and papers of company and liquidators

254A (1) For the purposes of sections 255 and 261, the books and papers of the company and books and papers of the liquidators may be kept in hard copy form or in electronic form and arranged in such manner as may be prescribed under subsection (8).

(2) Where such books and papers are kept otherwise than in hard copy form, reasonable precautions shall be taken for ensuring the proper maintenance and retention of the books and papers.

(3) Where such books and papers are kept by the company or by the liquidators, as the case may be, by recording the information in question in electronic form, they shall ensure that proper facilities shall be provided to enable such books and papers to be inspected as required.

(4) In the case where books and papers are kept in electronic form, the company or the liquidators as the case may be, shall provide for the manner by which the books and papers are to be authenticated or verified.

(5) Where default is made in complying with this section, the liquidator and every person who was a director or an officer of the company at the commencement of the winding up who is in default shall be liable to a default fine.

(6) With respect to the books and papers of the company which are in existence at the commencement of the winding up—

(a) the liquidator's duties under this section relate only to the books and papers of the company that have been received by the liquidator; and

(b) the liquidator is only required to verify that such books and papers which the liquidator has stored in electronic form are true and correct copies of the books and papers which the liquidator has received from the company.

(7) In this section—

"in electronic form" means in the form of an electronic record; and

"in hard copy form" means in a paper form or similar form capable of being read.

(8) The Minister may make regulations for the purposes of this section and, without prejudice to the generality of this subsection, the regulations may prescribe classes of books and papers that must be kept in hard copy form.

(9) Regulations made under subsection (8) shall be subject to the negative resolution procedure.

[Section 254A inserted by 2017 : 13 s. 2(2) effective 10 March 2017]

Disposal of books and papers of company

255 (A1) When a company has been wound up and is about to be dissolved the liquidator, in relation to the company for which he has been appointed as the liquidator, shall—

(a) keep the records of account of the company referred to in section 83 which are in existence at the commencement of the winding up, and have been provided to the liquidator, for five years from the end of the period to which such records of account relate;

(aa) *[Repealed by BR 100 / 2025 para. 2]*

(b) keep the books and papers of the liquidator for five years from the date of the dissolution of the company;

(c) where applicable, keep the records specified in regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 that are in existence at the commencement of the winding up in relation to the company, and have been provided to the liquidator, for the period specified in regulation 15.

(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is say—

(a) in the case of a winding up by the Court, in such way as the Court directs;

(b) in the case of a members' voluntary winding up, in such way as the company by resolution directs, and, in the case of a creditors' voluntary

winding up, in such a way as the committee of inspection or, if there is no such committee, as the creditors of the company may direct,

provided that no direction given under this section shall direct the disposal of such books and papers of the company or of the liquidators or of such records referred to in subsection (A1) unless, with respect to the books and papers or record, the applicable period specified in this Act for its retention has expired.

(2) No responsibility shall rest on the company, the liquidator or any person to whom the custody of the books and papers has been committed, by reason only of any book or paper not being forthcoming to any person claiming to be interested therein provided that the company, liquidator or person, as the case may be, retains custody of such books and papers—

(i) in the case of a company dissolved pursuant to Section 213, for a period of at least ten years;

(ii) in the case of a company dissolved pursuant to Section 261, for a period of at least twenty years; and

(iii) in any other case, for a period of at least five years,

commencing on the date of the dissolution of the company.

(3) The Minister may make rules for enabling the Registrar to prevent, for such period from the dissolution of the company, as the Registrar thinks proper, the destruction of the books and papers of a company which has been wound up, and of its liquidator, and for enabling any creditor or contributory of the company to make representations to the Registrar and to appeal to the Court from any direction which may be given by the Registrar in the matter, provided that such period shall not exceed—

(a) in the case of a company dissolved pursuant to Section 213, ten years;

(b) in the case of a company dissolved pursuant to Section 261, twenty years; and

(c) in any other case, five years,

commencing on the date of the dissolution of the company.

(4) If any person acts in contravention of any rules made for the purposes of this section or of any direction of the Registrar thereunder, he shall be liable to a fine of five hundred dollars.

(5) Any rules made under subsection (3) shall be subject to negative resolution procedure.

(6) A person who fails to comply with subsection (A1) shall be liable to a default fine of five hundred dollars.

[Section 255 amended by 1995:33 effective 7 July 1995; subsections (A1) and (6) inserted and subsections (1) - (3) amended by 2017 : 13 s. 2(3) effective 10 March 2017; Section 255 subsection (A1)(aa) inserted by 2017 : 41 s. 5 effective 23 March 2018; Section 255 subsection (A1)(aa) repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

Information as to pending liquidations

256 (1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar such particulars as the Registrar may require with respect to the proceedings in and position of the liquidation.

(2) If a liquidator fails to comply with this section, he shall be liable to a default fine.

(3) This section shall not apply in the case of a members' voluntary winding up of a company.

Unclaimed assets to be paid into Consolidated Fund

257 (1) If, where a company is being wound up, it appears either from any statement sent to the Registrar under section 256 or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt or any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company, the liquidator shall forthwith pay the said money to the Accountant General who shall pay it into the Consolidated Fund and the liquidator shall be entitled to a receipt for the money so paid which shall be an effectual discharge to him in respect thereof.

(2) Any person claiming to be entitled to any money paid into the Consolidated Fund in pursuance of this section may apply to the Accountant General for payment thereof, and the Accountant General, on receipt of a certificate by the liquidator that the person claiming is entitled, may make an order for the payment to that person of the sum due.

(3) Any person dissatisfied with the decision of the liquidator or the Accountant General in respect of a claim made under this section may appeal to the Court.

Appointment of commissioner to take evidence

258 (1) The Court may appoint a commissioner for the purpose of taking evidence under this Act and may refer the whole or any part of the examination of any witnesses under this Act to any person it has appointed as commissioner.

(2) Every commissioner shall have in relation to any matter referred to him all the powers of the Court to summon and to examine witnesses, to require the delivery of documents, to punish defaults by witnesses, and to allow their costs and expenses to witnesses.

(3) Any examination so taken shall be returned or reported to the Court.

The swearing of affidavits etc.

259 (1) Any affidavit or declaration required to be sworn under or for the purposes of this Part may be sworn in Bermuda or elsewhere before any Court or person lawfully

authorized to take and receive affidavits or before any of Her Majesty's consuls, vice consuls or high commissioners.

(2) All courts, judges, justices, commissioners and persons acting judicially shall for the purposes of subsection (1) take judicial notice of the seal or stamp or signature of any court, judge or person in Bermuda and of any court, consul, vice consul or high commissioner elsewhere but may in its discretion require the seal or stamp of any other person to be authenticated by a court, consul, vice consul or high commissioner or require evidence that the person is lawfully authorized to seal and receive affidavits.

Power of Court to declare dissolution of company void

260 (1) Where a company has been dissolved the Court may—

(a) in the case of a dissolution pursuant to section 213, at any time not later than ten years from the date of such dissolution; and

(b) in any other case, at any time not later than five years from such date,

on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order declaring the dissolution to have been void.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the Court may allow, to deliver to the Registrar for registration a copy of the order, and if that person fails so to do he shall be liable to a default fine.

(2A) Where an order is made and registered pursuant to this section, the company shall be deemed to have continued in existence as if it had not been dissolved.

(3) Where the Court makes an order under subsection (1), the Court may make such consequential orders, or impose such terms and conditions, as to the Court may seem appropriate in the circumstances.

[Section 260 amended by 1992:51 effective 1 July 1992; by 1993:37 effective 13 July 1993; by 1994:22 effective 13 July 1994; and by 1995:33 effective 7 July 1995; subsection (1)(b) amended by 2017 : 13 s. 2(4) effective 10 March 2017]

Registrar may strike defunct company off register

261 (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company a letter inquiring whether the company is carrying on business or is in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof a notice will be published in an appointed newspaper with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer to the effect that the company is not carrying on business or is not in operation, or does not within one month after sending the second letter receive any answer, he may publish in an appointed newspaper, and send to the company a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in an appointed newspaper and send to the company or the liquidator if any, a like notice as is provided in subsection (3).

(5) At the expiration of the time mentioned in subsection (3) the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in an appointed newspaper, and on such publication the company shall be dissolved:

Provided that—

(a) the liability, if any, of every officer, manager and member of the company shall continue and may be enforced as if the company had not been dissolved;

(aa) nothing in this section shall affect the continuity of the requirement imposed on such director or officer of the company by subsection (5A) to keep such records for the period referred to in that subsection; and

(b) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(5A) Every person who was a director or an officer of a company at the date upon which the company is struck off the register pursuant to this section shall ensure that—

(a) the records of account of the company referred to in section 83 that are in existence on that date are kept for five years from the end of the period to which such records of account relate; and

(aa) the beneficial ownership register of the company referred to in section 98H that is in existence on that date is kept for a minimum of five years from the date on which the company is struck off the register;

(b) where applicable, any record specified in regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 is kept for the period specified in that regulation.

(5B) A person who fails to comply with subsection (5A) shall be liable to a default fine of five hundred dollars.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on an application made by the company or member or creditor before the expiration of twenty years from the publication

of the notice aforesaid may, if satisfied that the company was at the time of the striking off 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, and upon copy of the order being delivered to the Registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seems 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.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

[Section 261 subsections (1) and (3) amended by 2006:40 s.40 effective 29 December 2006; subsection (5) amended and subsections (5A) and (5B) inserted by 2017 : 13 s. 2(5) effective 10 March 2017; Section 261 subsection (5A)(aa) inserted by 2017 : 41 s. 6 effective 23 March 2018]

Striking off an application by a company

261A (1) The Registrar may, on the application of a company, strike the company's name off of the register on such grounds and subject to such conditions as may be prescribed.

(2) An application under subsection (1) shall be made on the company's behalf by all of its directors or by a majority of them.

(3) Upon the receipt of the application, the Registrar shall, if satisfied that the grounds and conditions referred to in subsection (1) have been satisfied, send to the company and its directors, secretaries, and members a letter informing them of the application and stating that if an answer showing cause to the contrary (in the form and manner referred to in section 261C is not received within thirty calendar days after the date thereof a notice, details of which are set out in subsection (4), will be published in the Official Gazette with a view to striking the name of the company off of the register.

(4) The Registrar may not strike a company's name off of the register under this section until after the expiration of sixty days after the publication by the Registrar in the Official Gazette of a notice—

(a) stating that the Registrar intends to exercise the power under this section in relation to the company; and

(b) inviting any person to show cause as to why that should not be done within thirty calendar days after the date of the initial notice referenced in subsection (3).

(5) If no person shows cause or sufficient cause within the period referred to in subsection (4)(b) as to why the name of the company should not be struck off the register,

the Registrar shall strike the name of the company off the register and publish a notice in the Official Gazette of the company's name having been struck off.

(6) On the publication of the notice in the Official Gazette under subsection (5), the company is dissolved, provided that—

(a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved;

(b) nothing in this section shall affect the continuity of the requirement imposed on such director or officer of the company by subsection (7) to keep such records for the period referred to in that subsection; and

(c) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off of the register.

(7) Every person who was a director or an officer of a company at the date upon which the company is struck off of the register pursuant to this section shall ensure that—

(a) the records of account of the company referred to in section 83 that are in existence on that date are kept for five years from the end of the period to which such records of account relate; and

(b) where applicable, any record specified in regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 is kept for the period specified in that regulation.

(8) A person who fails to comply with subsection (7) shall be liable to a default fine of five hundred dollars.

(9) The Registrar shall ensure that such particulars of the company and of the application referred to in subsection (1), as he may determine, are sent to—

(a) the Office of the Tax Commissioner;

(b) the Department of Social Insurance; and

(c) the Bermuda Monetary Authority, provided that such company is an entity regulated by the Bermuda Monetary Authority.

(10) The Registrar may, for the purposes of this section, send notices to the company by ordinary post or in such other agreed upon manner.

[Section 261A inserted by 2018 : 5 s. 7 effective 21 March 2018]

Withdrawal of application

261B (1) The applicant or applicants may, by written notice to the Registrar, withdraw an application to strike a company's name off of the register under section 261A at any time before the name of the company has been struck off of the register.

(2) Upon receipt of the notice referred to in subsection (1), the Registrar shall send to the company by ordinary post a notice that the application to strike the company's name off of the register has been withdrawn.

(3) Upon receipt of the notice referred to in subsection (1), the Registrar may publish a notice on the Registrar's website that the application to strike the company's name off of the register has been withdrawn.

[Section 261B inserted by 2018 : 5 s. 7 effective 21 March 2018]

Objections to strikeoff

261C (1) Where a notice is published by the Registrar under section 261A(4) of the Registrar's intention to strike the company's name off of the register, any person may deliver, not later than the date specified in section 261A(4)(b), an objection to the striking off of the name of the company from the register on the ground that there is reasonable cause why the name of the company should not be struck off, including that the company does not satisfy any of the prescribed grounds for striking off referred to in section 261A(1).

(2) Upon receipt of a notice of objection, within the time referred to in subsection (1), the Register shall—

(a) where applicable, give the applicant or applicants for striking the name of the company off of the register notice of the objection; and

(b) in deciding whether to allow the objection, take into account such considerations as may be prescribed.

[Section 261C inserted by 2018 : 5 s. 7 effective 21 March 2018]

Property of dissolved company to be bona vacantia

262 Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution, including leasehold property but not including property held by the company on trust for any other person, shall, subject and without prejudice to any order which may at any time be made by the Court under sections 260 and 261, be deemed to be bona vacantia and shall accordingly belong to the Crown.

Power of Crown to disclaim title to property vesting under section 262

263 (1) Where any property vests in the Crown under section 262, the Crown's title thereto under that section may be disclaimed by a notice signed by the Attorney-General.

(2) When a notice of disclaimer is executed under this section as respects any property, that property shall be deemed not to have been vested in the Crown under section 262 and section 240 shall apply to the property as if it had been disclaimed under 240(1).

Investment of surplus funds

264 (1) When the cash balance standing to the credit of the account of any company in liquidation is in excess of the amount which, in the opinion of the liquidator is required for the time being to answer demands in respect of the company's debts, the liquidator may invest the amount not so required in investments that the committee of

inspection authorizes, or in the absence of a committee of inspection that the Court authorizes.

(2) In the case of a winding up by the Court the liquidator shall not make any investment under subsection (1) without the sanction of the Court; in the case of a members' or creditors' voluntary winding up the liquidator shall not act without the sanction of the committee of inspection or when there is no committee of inspection without the sanction of a general meeting of members or a meeting of creditors, as the case may be.

[Section 264 amended by 1992:51 effective 1 July 1992]

PART XIV

RECEIVERS AND MANAGERS

Disqualification of undischarged bankrupt from acting as receiver or manager

265 (1) If any person being an undischarged bankrupt under the laws of any country acts as receiver or manager of the property of a company on behalf of debenture holders, he shall, subject to subsection (2), be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one thousand dollars or to both.

(2) Subsection (1) shall not apply to a receiver or manager where—

(a) the appointment under which he acts and the bankruptcy were both before 1 July 1983; or

(b) he acts under an appointment made by order of a court.

Receivers and managers appointed out of Court

266 (1) A receiver or manager of the property of a company appointed under the powers contained in any instrument may apply to the Court for directions in relation to any particular matter arising in connection with the performance of his functions and on any such application the Court may give such directions, or may make such order declaring the rights of persons before the Court or otherwise, as the Court thinks just.

(2) A receiver or manager of the property of a company appointed under the powers contained in any instrument shall, to the same extent as if he had been appointed by order of a Court, be personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides, and entitled in respect of that liability to indemnity out of the assets; but nothing in this subsection shall be taken as limiting any right to indemnity which he would have apart from this subsection, or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

(3) This section shall apply whether the receiver or manager was appointed before or after 1 July 1983 but subsection (2) thereof shall not apply to contracts entered into before 1 July 1983.

Notification that receiver or manager appointed

267 (1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with the requirements of this section, the company and any of the following persons who knowingly and wilfully authorizes or permits the default namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine of one hundred dollars.

Power of Court to fix remuneration on application of liquidator

268 The Court may, on an application made to the Court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company and may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend any order so made.

Information where receiver or manager appointed

269 (1) Where, a receiver or manager of the whole or substantially the whole of the property of the company (in this section and in section 270 referred to as "the receiver") is appointed on behalf of the holders of any debentures of the company secured by a floating charge, then subject to this section and section 270—

(a) the receiver shall forthwith send to the company notice of his appointment; and

(b) the company shall, within fourteen days after receipt of the notice, or such longer time as may be allowed by the Court or the receiver, submit to the receiver a statement showing as at the date of the receiver's appointment particulars of the company's assets, debts and liabilities, the names, addresses and occupations of its creditors, the securities held by them respectively and such further information as the receiver shall require and the company is able to give.

(2) The receiver may require any statement or part of a statement submitted under subsection 1(b) to be verified by an affidavit from an officer of the company.

(3) If any person without reasonable excuse makes default in complying with the requirements of this section, he shall be liable to a default fine.

Delivery to Registrar of accounts of receivers and managers

270 (1) Every receiver of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the Registrar may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months and within one month

after he ceases to act as receiver or manager, deliver to the Registrar for registration an abstract showing his receipts and his payments during that period of six months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Any receiver or manager who makes default in complying with this section shall be liable to a default fine.

Enforcement of duty of receiver to make returns

271 (1) If—

(a) any receiver of the property of a company, who has made default in filing, delivering or making any return, account or other document or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so; or

(b) any receiver of the property of a company who has been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to pay over to the liquidator the amount properly payable to him,

the Court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order.

(2) An application for the purposes of this section may be made by any member or creditor of the company or by the Registrar or in the case of a default under subsection 1(b) by the liquidator and the order may provide that all costs of and incidental to the application shall be borne by the receiver.

Construction of references to receivers and managers

272 It is hereby declared that, except where the context otherwise requires—

(a) any reference in this Act to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager, or, as the case may be, to a receiver, of part only of that property and to a receiver only of the income arising from that property or from part thereof; and

(b) any reference in this Act to the appointment of a receiver or manager under powers contained in any instrument includes a reference to an appointment made under powers which, by virtue of any enactment are implied in and have effect as if contained in an instrument.

PART XIVA

TRANSFER OF SECURITIES

Transfer of securities

272A *[Repealed by 2011 : 43 s. 34]*

[Section 272A repealed by 2011 : 43 s. 34 effective 18 December 2011]

PART XIVB

POWER TO ASSIST FOREIGN REGULATORY AUTHORITIES

[Part XIVB, Sections 272B – 272E repealed by 2008:3 s.10(1) effective 25 March 2008]

PART XIVC

FINTECH ADVISORY COMMITTEE

FinTech Advisory Committee

272F *[Repealed by 2020 : 18 s. 84]*

[Section 272F repealed by 2020 : 18 s. 84 effective 6 May 2020]

PART XV

GENERAL

Form of registers

273 (1) Any book or paper required by this or any other Act, whether public or private, to be kept by the Registrar or a company may be kept by recording the matters in question in bound books or in any other permanent manner including a form otherwise than legible.

(2) Where any such book or paper is not kept in a bound book adequate precautions shall be taken for guarding against falsification and facilitating its discovery and where the book or paper is kept in a form otherwise than legible it shall be capable of being reproduced in a legible form.

(3) Where in this or any other Act, whether public or private, provision is made for the inspection or reproduction of any book or paper then it shall be treated as a provision to allow inspection or reproduction in a legible form or of being accessed in the manner provided in section 2A(3).

(4) Copies of minutes referred to in section 81 and financial statements referred to in section 84 and any summarised financial statements referred to in section 87A shall be preserved in the registered office of the company for a period of six years from the date when they were first required.

(5) Where any company fails to comply with any provision of this section the company and any officer responsible for the default shall be liable to a fine of one thousand dollars.

[Section 273 subsection (4) amended by 2003:1 s.17 effective 14 February 2003; subsection (3) amended by 2006:40 s.41 effective 29 December 2006]

Accountant General and other officers may inspect books without charge

274 The Accountant General, the Registrar, the Official Receiver and any person acting on their behalf shall be exempt from the payment of any fee or charges for inspecting or copying the register or any books or papers of a company when lawfully entitled so to do.

Penalty for improper use of word "Limited"

275 If any person or persons trade or carry on business under any name or title of which "Limited" or any contraction or imitation of such word is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a default fine.

Production and inspection of books when offence suspected

276 (1) Without prejudice to any other provision of law, where, on an application to the Minister by or on behalf of the Director of Public Prosecutions, it appears to the Minister that an offence under this Act may have been committed, and that evidence relating to the commission of such offence may be found in any books or papers of or under the control of the company, a direction in writing may be made by the Minister requiring the secretary to the company or such other officer or person as may be named in the direction to produce the said books or papers or any of them to a person named in the direction at a place and time so named.

(2) When a direction has been made under subsection (1), the person named in the direction to whom the said books or papers are to be produced, shall inspect and may take copies thereof for the purpose of investigating and obtaining evidence of any offence under this Act.

(3) A person to whom books and papers are produced pursuant to subsection (1) shall on completion of his investigation forward a report of the results thereof to the Director of Public Prosecutions together with all copies of documents made by him pursuant to subsection (2).

(4) Any person who fails to comply with a direction of the Minister made under subsection (1) is guilty of a summary offence and is liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(5) A certificate purporting to be signed by the Minister certifying that a person has failed to comply with a direction made by him under subsection (1) shall, in any prosecution for an offence under subsection (3) be prima facie proof of such failure to comply.

(6) For the purpose of this section "company" shall include an overseas company.

[Section 247 subsections (1) and (3) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Appeals to Supreme Court against revocation of licence under section 114B or 129A

276A (1) An appeal shall lie to the Court against an order of the Minister revoking a licence under section 114B or section 129A.

(2) An appeal under this section shall lie at the instance of the company affected thereby and shall be commenced by notice in writing served upon the Attorney-General within twenty-one days after the day on which the revocation made under section 114B or section 129A takes effect.

(3) Subject to subsection (2), the Chief Justice may make rules of court under section 62 of the Supreme Court Act 1905 for the purpose of regulating the practice and procedure on appeals under this section.

(4) On an appeal under this section, the Court may confirm, reverse, or modify the decision of the Minister or remit the matter to him with the opinion of the Court thereon.

(5) Unless the Court otherwise orders, an appeal under this section shall not have the effect of suspending the execution of the decision appealed against, pending the determination of the appeal.

Onus of proof

276B In any proceedings under this Act in which the right of any company to carry on business in Bermuda is in issue, the onus of proving that the company had, at the relevant time, the right to carry on business in Bermuda, shall be on that company unless, at the relevant time, that company was licensed under this Act.

Proof of certificate

276C A certificate purporting to be under the hand of the Minister specifying that any particular company was or was not licensed under this Act during any period specified in the certificate shall be receivable in evidence in any proceedings under this Act without further proof and shall be prima facie evidence of the facts specified therein.

Publication of orders

276D Every revocation of the licence of a company made under section 114B or section 129A shall be published in the Gazette and shall take effect from the date of such publication or such later date as may be specified therein.

Penalty for false statements or failure to make a statement

277 (1) If any person in any return, report, certificate, book or paper or other document, required by or for the purposes of any provision of this Act wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term of two years, or

on summary conviction to imprisonment for a term of twelve months or to a fine of two thousand dollars or to both such fine and imprisonment.

(2) Any person in any return, report, certificate, book or paper or other document, required by or for the purposes of any provision of this Act fails to make a statement he is required to make in such return, report, certificate, book or paper or other document and any person who wilfully fails to make a return, report or document which he is required to make shall be liable to a fine of one thousand dollars.

Section 80 of the Criminal Jurisdiction and Procedure Act 2015 not to apply

278 Section 80 of the Criminal Jurisdiction and Procedure Act 2015 shall not apply to offences against this Act:

Provided that no prosecution for a summary offence shall be begun more than three years after the offence was committed.

[Section 278 headnote and section amended by 2015 : 38 s. 91 effective 6 November 2015]

Application of fines

279 A court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings.

Default fines

280 (1) Where in this Act it is provided that any person who is in default shall be liable to a default fine, such person shall, for every day during which the default, refusal or contravention continues, be liable to a fine of twenty dollars.

(2) Notwithstanding subsection (1) an individual who is in default shall only be liable to a fine if he knowingly is guilty of the default or knowingly and wilfully authorizes or permits the default.

(3) It shall be lawful for the Registrar, in any case where a person fails to comply with a provision of this Act which is subject to a default fine and the failure is not due to wilful neglect or default, to accept payment of a penalty of two hundred and fifty dollars, and in such case subsection (1) shall not apply.

(4) Any penalty payable under this Act may be recovered by the Accountant General in the Supreme Court or in a court of summary jurisdiction as a civil debt.

[Section 280 amended by 1992:51 effective 1 July 1992]

Power of Court to grant relief in certain cases

281 (1) If in any proceedings for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor, whether he is or is not an officer of the company, it appears to the Court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or

breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.

(2) Where any such officer or person aforesaid has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

Suits and actions against Registrar and Official Receiver

282 (1) No suit or action shall lie against the Registrar or the Official Receiver or any person acting on their behalf in respect of anything done or omitted to be done in their official capacity in good faith without negligence.

(2) Nothing in subsection (1) shall be deemed to interfere with applications or references to the Court under Part XIII.

Registrar and Official Receiver to be indemnified in respect of foreign suits

283 Neither the Registrar nor the Official Receiver shall be required to prosecute, defend or take part in any proceedings outside the jurisdiction of the Court unless he is indemnified by or on behalf of the person who wishes him to act against any judgment, order or costs that may be awarded against him by deed guarantee or deposit, as he may require.

Applications to Supreme Court by originating summons

284 (1) Subject to any other provision of the law including the Rules of the Supreme Court 1985 *[title 8 item 1(a)]* any application under this Act shall be made by originating summons.

(2) An originating summons may in the first place be heard ex parte when the Court may direct that the summons shall be served on such persons, if any, as it shall think fit and that the summons shall be supported by such evidence as it shall require.

Power to enforce orders

285 Orders made by any Court under this Act may be enforced as orders made in an action pending therein.

Amendment of private Acts

286 (1) Subject to subsections (5), (6) and the other provisions of this Act which enable private Acts incorporating companies to be amended a company to which this Act

applies may amend any provision of its incorporating Act by resolution passed at a general meeting of members of which due notice has been given:

Provided that before notice of the meeting is given to the members the Minister has consented to the amendment.

(2) *[Repealed by 1992:51]*

(3) *[Repealed by 1984:36]*

(4) Subject to subsections (5) and (6), the provisions of section 12, other than subsection (1) thereof, shall apply to a company wishing to amend a provision of its incorporating Act as if it were altering its memorandum and in the application of such provisions the words "private Act" shall be substituted for the word "memorandum".

(5) No amendment shall be made to any private Act which amends the provisions of any public Act including this Act or amends any provision of law referred to in paragraphs (a) to (e) of the proviso to section 35(2) of the Constitution .

(6) The change of name of a company incorporated by private Act shall be made in accordance with section 10.

[Section 286 amended by 1984 : 36 s. 50 effective 12 July 1984; Section 286 amended by 1992 : 51 s. 53 effective 1 July 1992 (Note: Subsection (3) repealed by 1984 : 36 s. 50 effective 12 July 1984, and s.50 provided that the principal Act shall be construed and deemed always to have had effect as if subsection (3) had never been enacted. Subsections (2), (3) and (4) substituted by 1992 : 51 s. 53 but renumbered as subsections (4), (5) and (6) respectively by the authority of s.11(b) of the Computerization and Revision of Laws Act 1989 (CARLA) to preserve the references to the repealed subsections (2) and (3). The cross-references in subsection (1) to subsections (5) and (6) were originally to subsections (3) and (4), but altered by the authority of s.11(b) of CARLA to preserve the references to the original subsections (2) and (3).)]

Repeal; amendments; transitional savings

287 (1) The enactments specified in Part I of the Seventh Schedule are repealed, and the enactments specified in Part II of that Schedule are amended in the respects specified in that Part of that Schedule.

(2) Nothing in this Act shall affect any appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under any enactment repealed or amended by subsection (1) (in this Act referred to as a "former enactment relating to companies"), but any such appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing shall, if in force immediately before 1 July 1983 continue in force and, so far as it could have been made, passed, given, taken, issued or done under this Act, shall have effect as if made, passed, given, taken, issued or done under this Act.

(2A) Where immediately before 1 July 1983—

(a) a permit under section 9 of the Companies (Incorporation by Registration) Act 1970 had not either been granted or refused by the Minister in response to an application made to him under that Act before that day for the incorporation of a company; or

(b) such a permit had in fact been granted by the Minister but a certificate of incorporation had not been issued in respect of the company under that Act,

the repeals and amendments effected by subsection (1) shall be deemed not to have had effect in relation to such an application but the enactments repealed or, as the case may be, amended by that subsection shall be deemed to continue in full force and effect on and after that day to such extent as to enable the Minister, if he thinks fit, to grant the permit, and the Registrar to issue the certificate of incorporation, under the Companies (Incorporation by Registration) Act 1970; and where a certificate of incorporation is issued in respect of a company on or after 1 July 1983 by virtue of this subsection, the company shall be deemed to be a company registered before 1 July 1983 for the purposes of section 4(1)(a).

(2B) Where before 1 July 1983 a company had made proposals to the Minister under section 19 of the Companies (Incorporation by Registration) Act 1970 for the alteration of its memorandum of association and immediately before that day the Minister had not either approved or rejected the proposals, the repeals and amendments effected by subsection (1) shall be deemed not to have had effect in relation to those proposals, but the enactments repealed or, as the case may be, amended by subsection (1) shall be deemed to continue in full force and effect on and after that day to such extent as to enable the Minister, if he thinks fit, to approve the proposals, and the Registrar to register the altered memorandum, under the Companies (Incorporation by Registration) Act 1970; and where an altered memorandum is so registered on or after 1 July 1983 by virtue of this subsection, the alteration to the memorandum shall be deemed for the purposes of this Act to have been effected before 1 July 1983.

(3) Any legal proceeding, winding up or inspection taking place on 1 July 1983 shall continue as if this Act had not been enacted unless the Court orders that this Act shall apply to the proceeding, winding up or inspection.

(4) Any document referring to any former enactment elating to companies shall be construed as referring to the corresponding enactment of this Act.

(5) Any person appointed to any office under or by virtue of any former enactment relating to companies shall be deemed to have been appointed to that office under or by virtue of this Act.

(5A) *[transitional provision omitted]*

(5B) *[transitional provision omitted]*

(6) Any register kept under any former enactment relating to companies shall be deemed part of the register to be kept under the corresponding provisions of this Act.

(7) All funds and accounts constituted under this Act shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former enactments relating to companies.

(7A) Where immediately before 1 July 1983 an exempted company incorporated by registration under any former enactment relating to companies specified its objects or powers by reference to all or any paragraphs of the First Schedule to the Companies

(Incorporation by Registration) Act 1970 (now repealed) such company shall after 30 June 1983 continue to have the objects or powers so specified by reference and shall be capable of exercising such objects or powers whether or not stated as such, anything to the contrary notwithstanding.

(7B) Where immediately before 1 July 1983 a company in its incorporating Act specified its objects or powers by reference to all or any paragraphs of the Schedule to the Exempted Companies Act 1950 (now repealed), such company shall after 30 June 1983 continue to have and shall be deemed always to have had the objects or powers, as the case may be, so specified by reference and further shall be deemed to be and always to have been capable of exercising such objects or powers, whether or not stated as such, anything to the contrary notwithstanding.

(7C) *[transitional provision omitted]*

(7D) *[transitional provision omitted]*

(8) Where any offence, being an offence for the continuance of which a penalty was proved, has been committed under any former enactment relating to companies, proceedings may be taken under this Act in respect of the continuance of the offence after 30 June 1983, in the same manner as if the offence had been committed under the corresponding provisions of this Act.

(9) Save where otherwise provided in this Act nothing in this section shall affect the provisions of the Interpretation Act 1951 relating to the repeal, re-enactment or amendment of Acts.

Regulations

287A (1) The Minister may make such regulations as are expedient to give effect to the provisions of this Act.

(2) Regulations made by the Minister under this section shall be subject to the negative resolution procedure.

(2A) Where compliance with any provision of this Act relating to the filing of returns is required by a specified date, the Minister may by notice published in the Gazette, subject to such conditions as he may determine, defer such compliance by any person or class of persons to a later date in the case where there is an occurrence in Bermuda of any of the exceptional circumstances provided in section 22(7) of the Public Treasury (Administration and Payments) Act 1969.

(3) Regulations may be made by the Minister of Finance under the Government Fees Act 1965 or the Stamp Duties Act 1976 to fix fees for any function performed under this Act, unless such fees are otherwise prescribed.

[Section 287A inserted by 2017 : 41 s. 7 effective 23 March 2018; Section 287A subsection (2) amended by 2018 : 20 s. 6 effective 9 July 2018; Section 287A subsection (2A) inserted by 2020 : 30 s. 3 effective 15 July 2020]

Rules

288 (1) The power of the Chief Justice to make rules of Court under section 62 of the Supreme Court Act 1905, shall include a like power in relation to all Court proceedings under this Act including any matters to be prescribed in relation to the winding up of a company by the Court, including matters relating to the retention of records in electronic form, and the fees to be paid in respect of Court proceedings.

(2) The Minister may by rule prescribe any matter to be prescribed under this Act in respect of which the Chief Justice is not entitled to make rules and may make rules prescribing the manner and form in which any application or declaration under this Act may be made and may by regulations under the Government Fees Act 1965 or the Stamp Duties Act 1976 whichever is appropriate fix fees for any function performed under this Act unless otherwise prescribed.

(3) All rules made by the Chief Justice, other than rules prescribing fees shall not be subject to section 6 of the Statutory Instruments Act 1977 .

(4) All rules by whomsoever made under this Act prescribing fees shall be subject to affirmative resolution procedure.

(5) All rules unless otherwise expressly provided and those referred to in subsections (3) and (4) shall be subject to negative resolution procedure.

[Section 288 subsection (1) amended by 2017 : 13 s. 2(6) effective 10 March 2017]

Saving

289 (1) Nothing in this Act shall affect section 61 of the Bermuda Housing Act 1980 .

(2) *[Repealed by BR 100 / 2025 para. 2]*

(3) *[Repealed by BR 100 / 2025 para. 2]*

(4) *[Repealed by BR 100 / 2025 para. 2]*

(5) *[Repealed by BR 100 / 2025 para. 2]*

(6) Nothing in Part IIIA shall be construed as affecting any requirements under any statutory provision relating to securities or foreign exchange or any other applicable law.

(7) Part IIIA does not affect any liability that a person has under any other law.

[Section 289 amended by 2017 : 41 s. 8 effective 23 March 2018; Section 289 subsections (6) and (7) inserted by 2018 : 20 s. 7 effective 9 July 2018; Section 289 subsections (2), (3), (4) and (5) repealed by BR 100 / 2025 para. 2 effective 3 November 2025]

FIRST SCHEDULE

[First Schedule repealed by 2006:40 s.42 effective 29 December 2006]

SECOND SCHEDULE

[Second Schedule repealed by 2006:40 s.42 effective 29 December 2006]

THIRD SCHEDULE

(Section 114)

PART I

PROVISIONS TO BE COMPLIED WITH BY A LOCAL COMPANY CARRYING ON BUSINESS IN BERMUDA

1 (1) The company shall be controlled by Bermudians.

(2) Without prejudice to the generality of sub-paragraph (1), at least sixty per centum of the total voting rights in the company shall be exercisable by Bermudians.

2 (1) The percentage of Bermudian directors, and the percentage of shares beneficially owned by Bermudians, in the company shall not be less than sixty per centum in each case:

Provided that the company shall not be deemed to be in breach of this paragraph in so far as, and so long as, it is acting in accordance with sub-paragraph (2).

(2) The company shall act in accordance with this subparagraph if the percentage of shares beneficially owned by Bermudians in it falls below sixty per centum by virtue of factors which are beyond its control and it gives notice in writing to the person who is not Bermudian and whose ownership of shares results in the percentage so falling, as soon as the directors become aware of that fact, that—

(a) he must divest himself of his interest in those shares as soon as may be and, in any event, not later than three years from the date upon which he receives the notice; and

(b) he must not exercise any voting rights attaching to such shares from the date upon which he receives the notice,

and the three years calculated in accordance with paragraph (a) have not elapsed:

Provided that the Minister, may in any particular case, for good cause, extend the period of three years for a further period not exceeding one year.

(3) For the purposes of sub-paragraph (2), the directors of a company shall be deemed to become aware that the percentage of shares beneficially owned by Bermudians in their company is less than the percentage specified in sub-paragraph (1) three days after the day upon which any director of a company would, if acting with due diligence, have become aware of that fact.

PART II

COMPANIES NOT REQUIRED TO COMPLY WITH PART I

The Shell Company of Bermuda Limited within the scope of any enactment authorizing the carrying on of its business operation in Bermuda.

FOURTH SCHEDULE

(Section 152)

[repealed by 1984:36]

FIFTH SCHEDULE

PART I (Section 121)

1 The appropriate fee in the case of a company whose business includes the management of any unit trust fund, shall be $3,050 in respect of each unit trust fund managed by that company at the date of the declaration made under section 121.

2 When the issued capital of a company if a company limited by shares, or other company having a share capital, is—

	Issued capital	**Tax payable**
(i)	less than $50,000	$685
(ii)	$50,000 or more but less than $250,000	$1,020
(iii)	$250,000 or more but less than $500,000	$1,700
(iv)	$500,000 or more but less than $1,000,000	$3,385
(v)	$1,000,000 or more but less than $5,000,000	$6,765
(vi)	$5,000,000 or more but less than $10,000,000	$12,890
(vii)	$10,000,000 or more	$19,330

3 The corporate regulatory fee in the case of a local company shall be $150.

In the case of a local company which is a mutual company, the tax payable by such company shall be on the same scale as a company limited by shares but the basis shall be the reserve fund of such a company in place of that issued capital.

In the case of a local company which is a company limited by guarantee, other than a mutual company no fee shall be payable.

In the case of a local company engaging in or carrying on wholesale trading business in respect of petroleum and other oils or liquefied petroleum gas the tax payable by such company shall be $19,330.

PART II (Section 131, 135)

1 A *EXEMPTED COMPANIES* (Section 131)

Conditions		**Fee**
(a)	Where the assessable capital of the exempted company—	
	(i) is $0-$12,000	$2,095
	(ii) is $12,001-$120,000	$4,275
	(iii) is $120,001-$1,200,000	$6,590
	(iv) is $1,200,001-$12,000,000	$8,780
	(v) is $12,000,001-$100,000,000	$10,980

	(vi)	is $100,000,001-$500,000,000	$19,605
	(vii)	is $500,000,001 or more	$32,676
(b)		Where the exempted company's business includes the management of any unit trust fund: in respect of each unit trust fund managed by the company at the date the declaration under section 131(1) was made	$3,050
(bb)	(i)	Where the exempted company is a small foreign sales corporation which does not lease aircraft	$615
	(ii)	Where the exempted company is a regular foreign sales corporation which does not lease aircraft	$1,240
	(iii)	Where the exempted company is a foreign sales corporation, whether small or regular, which leases aircraft	$2,079
(c)	(i)	Where the exempted company is one whose capital is denominated in a currency other than Bermuda area currency or currency of the United States of America, and the Bermuda area currency equivalent is $15,000 or less	$2,095
	(ii)	Where the exempted company is one limited by guarantee (but is not a mutual company)	$2,095
	(iii)	Where the exempted company is the parent company of a wholly owned exempted company that carries on insurance business as defined in the Insurance Act 1978	$2,095
	(iv)	Where the exempted company is one whose capital is denominated in a currency other than Bermuda area currency or currency of the United States of America, and the Bermuda area currency equivalent is $150,000 or less	$4,335
	(v)	Where the exempted company is one which is engaging in or carrying on, in Bermuda, wholesale trading business in respect of petroleum and other oils or liquefied petroleum gas	$20,300

B *PERMIT COMPANIES* (Section 135)

Conditions			**Fee**
(a)		Where the permit company is one which is engaging in or carrying on, in Bermuda, wholesale trading business in respect of petroleum and other oils or liquefied petroleum gas	$20,300
(b)		Where the principal business of the permit company is finance business or insurance business or, in the case of a permit company which is open-ended, mutual fund business	$4,335
(c)		Where the permit company's business includes the management of any unit trust fund: in respect of each unit trust fund managed by the company at the date the declaration under section 135 (as read with section 131) was made	$3,050
(d)		In a case not falling with paragraphs (a) to (c)	
	(i)	where the permit company has a physical presence in Bermuda; or	$2,095

(ii)	where the permit company does not have a physical presence in Bermuda, but where its principal business falls within one of the specified categories	$2,095
(e)	In any other case	$25,000

For the above purposes, the following expressions have the following meanings—

"finance business" means the business of raising money from the public by the issue of bonds or other securities;

"foreign sales corporation" means a company which—

(a) has been registered under this Act as an exempted company; and

(b) has been designated as a foreign sales corporation under the Internal Revenue Code, of the United States of America, and has submitted to the Registrar a certified copy of the document which—

(i) evidences such designation; and

(ii) specifies whether the company is a small or regular foreign sales corporation;

"insurance business" means the business of effecting or carrying out contracts of insurance or reinsurance as principal, but excluding insurance management or insurance brokerage business;

"mutual fund business" means the business of raising money from the public for investment in real property, shares, stocks or personal property;

"open-ended company" means a company which has power under the terms of its incorporation to redeem or purchase for cancellation its issued shares at the option of, or on the request of, a shareholder;

"physical presence" means that the permit company operates from Bermuda with staff and management present in Bermuda, has an affiliate that does so, or is a member of a group, one of the members of which operates in that manner;

"regular foreign sales corporation" means a foreign sales corporation which, under the Internal Revenue Code of the United States of America, has been so designated.

"small foreign sales corporation" means a foreign sales corporation which, under the Internal Revenue Code of the United States of America, has been so designated;

"specified category "means—

(a) the ownership, commercial management or operation of ships or aircraft;

(b) pharmaceutical operations;

(c) research and development in bio-science or bio-medicine; or

(d) a charitable purpose, within the meaning of the Charities Act 2014, which would enable the permit company to be registered as a charity under that Act if it were established as such in Bermuda;

"unit trust fund" means a fund under which the property is held on trust for the participants.

2 Where a company liable to pay the higher fee in any year does not carry on the business attracting the higher fee, it shall only pay the lower. Where a company liable to pay the higher fee at any time during a year carries on the business attracting the higher fee, it shall pay that fee for that year.

3 The corporate regulatory fee in the case of an exempted and a permit company shall be $500.

C SEGREGATED ACCOUNTS COMPANIES

In addition to the annual fee or tax otherwise payable under this Schedule a segregated accounts company registered under section 6 of the Segregated Accounts Companies Act 2000 shall pay an annual fee of $295 in respect of each segregated account operated by the company, subject to a maximum annual fee of $1,180 in the aggregate.

D INCORPORATED SEGREGATED ACCOUNTS COMPANIES

In addition to the annual fee otherwise payable under this Schedule an incorporated segregated accounts company registered under the Incorporated Segregated Accounts Companies Act 2019 shall pay an annual fee of $295 in respect of each incorporated segregated account operated by the company, subject to a maximum annual fee of $1,180 in the aggregate.

[Fifth Schedule Part II amended by 2017 : 29 s. 2 effective 1 April 2017; Fifth Schedule repealed and replaced by 2018 : 6 s. 2 effective 1 April 2018; Fifth Schedule amended by 2019 : 44 s. 74 effective 15 January 2020; Fifth Schedule amended by 2024 : 5 s. 2 effective 1 January 2024 (commencement date amended by 2024 : 15 s. 3 effective 15 July 2024)]

SIXTH SCHEDULE

[repealed by 1984:36]

SEVENTH SCHEDULE

(Section 287(1))

[omitted]

EIGHTH SCHEDULE

FEES FOR PROVISION OF COPIES AND ENTRIES IN REGISTERS

The fee prescribed for the purposes of section 66(2) and section 92A(3A) of the Act is as follows:

(a) for the first one hundred entries or part thereof copied	$5.00
(b) for the next one thousand entries or part thereof copied	$20.00
(c) for every subsequent one thousand entries or part thereof copied	$20.00

[Eighth Schedule inserted by 1992:51 effective 1 July 1992; amended by 2006:40 s.43 effective 29 December 2006]

NINTH SCHEDULE

(section 4A)

RESTRICTED BUSINESS ACTIVITIES

Restricted business activities are—

(a) operating a financial institution within the meaning of section 1(1) of the Bermuda Monetary Authority Act 1969 other than institutions that are investment funds or persons registered under section 4 or 10 of the Insurance Act 1978;

(aa) Digital Asset Issuances (as defined in the Digital Asset Issuance Act 2020); or

(b) providing by way of business any of the following services to the general public—

offering of professional services as a barrister and attorney, medical practitioner, architect, dental practitioner, public accountant, optometrist, optician, professional surveyor, nurse, health service provider or any profession or occupation specified under the First Schedule to the Professions Supplementary to Medicine Act 1973;

(c) acquiring land or holding land other than in the case of land acquired or held under sections 120 and 129.

[Ninth Schedule inserted by 1998:35 effective 5 October 1998; amended by BR 1998:68 effective 5 October 1998; revoked and substituted by BR 10/1999 effective 29 March 1999; repealed and substituted by 2003:1 s.19 effective 14 February 2003; amended by BR 50 / 2005 effective 25 November 2005; amended by 2006:27 s. 15 effective 27 December 2006; amended by 2008:3 s. 10(1) effective 25 March 2008; by 2014:13 s. 6 effective 27 March 2014; amended by 2018 : 20 s. 8 effective 9 July 2018; amended by 2020 : 18 s. 83 effective 6 May 2020]

TENTH SCHEDULE

(section 4B)

PROHIBITED BUSINESS ACTIVITIES

The following are prohibited business activities—

(a) trafficking in armaments as defined in the Armaments (Control) Act 1964 [*title 10 item 14*];

(b) except as authorised by law, providing a gaming service within the meaning of the Gaming Act 2014;

(c) except as authorized by law, importation, exportation trading in, manufacture, production or supply of controlled drugs as defined by the Misuse of Drugs Act 1972 [*title 11 item 4*].

[Tenth Schedule inserted by 1998 : 35 effective 5 October 1998; Tenth Schedule amended by 2021 : 23 s. 31 effective 1 August 2021]

ELEVENTH SCHEDULE

(Section 120(1A))

REPEALED SECTION 120(1) SAVING PROVISIONS

Saving provisions

1 Notwithstanding the repeal of section 120(1), which provided for a local company to acquire and hold in its corporate name any land in Bermuda with the previous sanction of the Minister, the following savings shall apply to the land acquired and held under that subsection—

(a) all rights vested in or in any manner held on behalf of a local company over land acquired under that subsection immediately before the commencement of this paragraph shall continue to be vested in such local company or held on behalf of such company (as the case may be);

(b) all liabilities and obligations subsisting against the local company with respect to the land acquired under that subsection immediately before the commencement of this paragraph shall continue to subsist against such local company;

(c) every contract in respect to the land acquired under that subsection, being a contract between the local company and any other party immediately before the commencement of this paragraph shall thereafter continue to subsist between the local company and such other party;

(d) all rights, powers and duties, whether arising under any written law or otherwise, with respect to the land acquired under that subsection, which immediately before the commencement of this paragraph were vested in or applied to the local company shall, by virtue of this paragraph, continue to be vested in, imposed on, or be enforceable by or against the local company.

Retroactive sanctions

2 Notwithstanding the repeal of section 120(1), the Minister may, where he considers it appropriate to so do, sanction retroactively the holding of land by a local company that is holding land, before the commencement of this paragraph, contrary to the provisions of the repealed section 120(1), only in the case where—

(a) all statutory requirements for the holding of the land, other than the repealed section 120(1) of the Act, have been complied with by the local company;

(b) the intention of the Minister to sanction retroactively the holding of the land by the local company is advertised in an appointed newspaper once each week for four consecutive weeks;

(c) no person registers any claim with the Minister with respect to that land during a period of 90 days from the date the advertisement is first published;

(d) a claim registered under subparagraph (c) is proved not to affect the local company's right to the title to the land for the period of time to be retroactively sanctioned.

[Eleventh Schedule inserted by 2014 : 13 s. 7 effective 27 March 2014]

[Assent Date: 16 July 1981]

[This Act was brought into operation on 1 July 1983 by BR 22/1983]

[Amended by:

1982 : 72
1983 : 47
1984 : 36
1988 : 52
1989 : 58
1990 : 22
1990 : 52
1990 : 57
1991 : 39
1992 : 51
1992 : 66
1993 : 37
BR 15 / 1994
1994 : 22
1995 : 33
1996 : 21
BR 17 / 1997
1997 : 21
1998 : 8
1998 : 14
1998 : 35
BR 68 / 1998
BR 10 / 1999
1999 : 8
1999 : 25
1999 : 26
BR 81 / 1999
BR 28 / 2000
2000 : 29
2000 : 33
2001 : 20
2001 : 22
2001 : 30
2002 : 6

2003 : 1
2004 : 36
BR 50 / 2005
2006 : 27
2006 : 40
2007 : 7
2008 : 3
2008 : 4
2009 : 38
2010 : 23
2010 : 39
2011 : 9
2011 : 20
2011 : 43
2012 : 27
2012 : 32
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2021 : 43
2021 : 51
2023 : 12
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2024 : 5
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