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COMPANIES ACT 2006

(Chapter 13)

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AN ACT

to provide for the incorporation, management and operation of different types of companies, for the relationships between companies and their directors and members and to provide for connected and consequential matters.

PART I

INCORPORATION AND STATUS OF COMPANIES

Chapter 1 - Incorporation

1 Types of company

A company may be incorporated or continued under this Act as-

- (a) a company limited by shares;
- (b) a company limited by guarantee;
- (c) a company limited by shares and by guarantee;
- (d) an unlimited company with shares; or
- (e) an unlimited company without shares.

2 Application to incorporate a company

(1) Subject to subsection (2), application may be made to the Registrar for the incorporation of a company by filing-

- (a) a memorandum complying with section 5; and
- (b) if the articles of the company are to differ from the relevant model articles or if the company is a protected cell company or an unlimited company without shares, articles.

(2) An application for the incorporation of a company may be filed only by the person named in the memorandum as the first registered agent of the proposed company and the Registrar shall not accept an application for the incorporation of a company filed by any other person.

3 Incorporation of a company

(1) Upon receipt of the documents filed under section 2(1), the Registrar shall-

- (a) register the documents;
- (b) allot a unique number to the company; and
- (c) issue a certificate of incorporation to the company in the prescribed form.

(2) A certificate of incorporation issued under subsection (1) is conclusive evidence that-

- (a) all the requirements of this Act as to incorporation have been complied with; and
- (b) the company is incorporated on the date specified in the certificate of incorporation.

4 Subscribers become members of the company on incorporation

On the incorporation of a company-

- (a) each subscriber becomes a member of the company with effect from the date of its incorporation; and
- (b) each subscriber who agreed, in the memorandum, to take one or more shares in the company-
 - (i) is deemed to have been issued with the number of shares that such subscriber is specified in the memorandum as having agreed to take; and
 - (ii) becomes liable to the company to pay the amount that such subscriber is specified in the memorandum as having agreed to pay for those shares.

Chapter 2 - Memorandum and Articles

5 Memorandum

(1) The memorandum of a company shall state-

- (a) the name of the company;
- (b) whether the company is-
 - (i) a company limited by shares;
 - (ii) a company limited by guarantee;
 - (iii) a company limited by shares and by guarantee;
 - (iv) an unlimited company with shares; or
 - (v) an unlimited company without shares;
- (c) the address of the first registered office of the company;
- (d) the name of the first registered agent of the company;
- (e) the full name and residential or business address of each subscriber;
- (f) in the case of a company limited by shares and an unlimited company with shares, the agreement of each subscriber to take one or more shares on the incorporation of the company;
- (g) in the case of a company limited by guarantee, a company limited by shares and by guarantee and an unlimited company without shares, the agreement of each subscriber to become a member on the incorporation of the company;
- (h) in the case of a company limited by shares and by guarantee where a subscriber intends to take shares, the agreement of each such subscriber to take one or more shares on the incorporation of the company;

- (i) in the case of a company limited by guarantee and a company limited by shares and by guarantee, the amount which every member of the company is liable to contribute to the company's assets in the event that the company is wound up while such person is a member or within 1 year (or such longer period as may be specified for the purpose in the memorandum) after such person ceased to be a member; and
- (j) in the case of a company limited by shares that is a protected cell company, that the company is a protected cell company.

(2) The memorandum shall state, in respect of each subscriber agreeing to take one or more shares on the incorporation of a company-

- (a) the number of shares that the subscriber agrees to take; and
- (b) the amount that the subscriber agrees to pay for each share that the subscriber is specified as having agreed to take.

(3) Without prejudice to section 21, the memorandum may contain a statement specifying the purposes for which the company is established or the business, activities or transactions which the company is permitted to undertake or the restrictions (if any) upon such purposes, business, activities or transactions for which the company is established.

6 Power to prescribe model articles

(1) Regulations may prescribe model articles for each of-

- (a) a company limited by shares;
- (b) a company limited by guarantee;
- (c) a company limited by shares and by guarantee;
- (d) an unlimited company with shares; and
- (e) an unlimited company without shares.

(2) Subject to subsection (4), subsection (3) applies with effect from the date of a company's incorporation in any case where articles ('the proposed articles') were delivered under section 2(1)(b).

(3) If the proposed articles-

- (a) make no provision for a matter for which provision is made by the relevant model articles; and
- (b) do not expressly or by necessary implication exclude that provision of those model articles,

that provision is deemed to be included in the proposed articles, and 'the relevant model articles' here means the relevant model articles as in force at the date of the company's incorporation.

(4) Subsection (3) does not apply where the company is a protected cell company (in respect which there are no relevant model articles).

(5) If any model articles prescribed under subsection (1) are altered by regulations under that subsection, the alteration does not affect the articles of a company incorporated, continued or re-registered (as the case may be) before the alteration takes effect.

7 Effect of memorandum and articles

(1) The memorandum and articles of a company are binding as between-

- (a) the company and each member of the company; and
- (b) each member of the company.

(2) The memorandum and articles of a company have no effect to the extent that they contravene or are inconsistent with this Act.

8 Amendment of memorandum and articles

(1) Subject to subsection (2), the members of a company may, by resolution, amend the memorandum and articles of the company.

(2) The memorandum of a company may include one or more of the following provisions-

- (a) that the memorandum or articles, or specified provisions of the memorandum or articles, may only be amended by a resolution passed by a member or members holding a specified majority of the voting rights exercised in relation thereto; and/or
- (b) that the memorandum or articles, or specified provisions of the memorandum or articles, may be amended only if certain specified conditions are met.

(3) Subject to subsections (2) and (4), the memorandum of a company may authorise the directors, by resolution, to amend the memorandum or articles of the company.

(4) Notwithstanding any provision in the memorandum or articles to the contrary, the directors of a company shall not have the power to amend the memorandum or articles-

- (a) to restrict the rights or powers of the members to amend the memorandum or articles;
- (b) to change the majority of the voting rights of members required to be exercised in order to pass a resolution to amend the memorandum or articles; or

(c) in circumstances where the memorandum or articles cannot be amended by the members,
and any resolution of the directors of a company is void and of no effect to the extent that it contravenes this subsection.

9 Filing of notice of amendment of memorandum or articles

Where the memorandum or articles of a company have been amended, the company shall within one month of the resolution effecting the amendment file for registration-

- (a) a notice of amendment in the prescribed form; and
- (b) a restated memorandum or articles (as the case may be) incorporating the amendment(s) made.

10 Provision of copies of memorandum and articles to members

(1) A copy of the memorandum and articles shall be sent to any member who requests a copy thereof on payment by the member of such amount as the directors may determine to be reasonably necessary to defray the costs of preparing and furnishing them.

(2) A company that fails to comply with such a request commits an offence.

Chapter 3 - Company Names

11 Required part of company name

(1) Subject to subsections (2) to (5), the name of a company specified in section 1, paragraphs (a) to (c), shall end with-

- (a) the word 'Limited', 'Corporation' or 'Incorporated'; or
- (b) the words 'Public Limited Company' or 'public limited company'; or
- (c) the abbreviation 'Ltd', 'Corp', 'Inc', 'PLC' or 'plc'.

(2) The name of an unlimited company may (but need not) end with the word 'Unlimited' or the abbreviation 'Unltd'.

(3) The name of a protected cell company shall include one of the following phrases-

- (a) 'Protected Cell Company' or 'protected cell company'; or
- (b) 'PCC' or 'pcc'.

(4) Where the abbreviation 'Ltd', 'Corp', 'Inc' or 'Unltd' is used, a full stop may be inserted at the end of the abbreviation.

(5) Where the abbreviation 'PLC', 'plc', 'PCC' or 'pcc' is used, full stops may be inserted immediately after each and every character thereof.

12 Restrictions on company names

(1) No company shall be registered, whether on incorporation, continuation, merger or consolidation under a name-

- (a) the use of which would contravene another enactment or any regulations;
- (b) that, subject to section 17-
 - (i) is identical to the name under which a company is or has been registered under this Act or the Companies Acts 1931 to 2004; or
 - (ii) is so similar to the name under which a company is or has been registered under this Act or the Companies Acts 1931 to 2004 that the use of the name would, in the opinion of the Registrar, be likely to confuse or mislead;
- (c) that is identical to a name that has been reserved under section 18 or that is so similar to a name that has been reserved under section 18 that the use of both names by different companies would, in the opinion of the Registrar, be likely to confuse or mislead;
- (d) that contains a restricted word or phrase, unless the Registrar has given its prior written consent to the use of the word or phrase; or
- (e) that, in the opinion of the Registrar, is offensive or, for any other reason, objectionable.

(2) For the purposes of subsection (1)(d), the Registrar may, by notice, specify words or phrases as restricted words or phrases.

13 Foreign character name

(1) A company may have an additional foreign character name approved by the Registrar.

(2) Regulations may provide for the approval, use and change of foreign character names.

[S 13 not in force.]

14 Company may change name

(1) Subject to its articles, a company may make application to the Registrar in the prescribed form to change its name (including the required part of its name (if any) pursuant to section 11) or its foreign character name.

(2) An application under subsection (1) shall be authorised-

- (a) by a resolution of the company's members; or
- (b) unless the articles provide otherwise, by the directors.

(3) If the Registrar is satisfied that the proposed new name or foreign character name of the company complies with section 11 and, if appropriate, section 13 and is a name under which the company could be registered under section 12, the Registrar shall, on receipt of an application under subsection (1)-

- (a) register the company's change of name; and
- (b) issue a certificate of change of name to the company.

15 Registrar may direct change of name

(1) If the Registrar considers, on reasonable grounds, that the name of a company does not comply with section 11, 12 or 13, the Registrar may by written notice direct the company to make application to change its name on or before a date specified in the notice, which shall be not less than 21 days after the date of the notice.

(2) If a company that has received a notice under subsection (1) fails to file an application to change its name to a name acceptable to the Registrar on or before the date specified in the notice, the Registrar may revoke the name of the company and assign it a new name acceptable to the Registrar.

(3) Where the Registrar assigns a new name to a company under subsection (2), the Registrar shall-

- (a) register the company's change of name; and
- (b) issue a certificate of change of name to the company.

16 Effect of change of name

A change of the name of a company under section 14 or 15-

- (a) takes effect from the date of the certificate of change of name issued by the Registrar;
- (b) is deemed not to constitute an amendment of the company's memorandum or articles; and
- (c) does not affect any rights or obligations of the company, or any legal proceedings by or against the company, and any legal proceedings that have been commenced against the company under its former name may be continued against it under its new name.

17 Re-use of company names

Regulations may provide for the re-use of names previously used by companies that are or have been registered under this Act or the Companies Acts 1931 to 2004 that have-

- (a) changed their name;
- (b) been struck off the register; or
- (c) been dissolved.

[S 17 not in force.]

18 Reservation of name

(1) The Registrar shall, upon a request made by a registered agent in the prescribed form, reserve for 12 weeks a name for future adoption by a company under this Act.

(2) The Registrar may refuse to reserve a name if the Registrar is not satisfied that the name complies with this Chapter in respect of the company or proposed company.

19 Use of company name

(1) A company shall ensure that its full name and, if it has one, its foreign character name, is clearly stated in every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company.

(2) A company shall ensure that-

- (a) its full name and, if it has one, its foreign character name;
- (b) its company number in figures;
- (c) its place of incorporation; and
- (d) its registered office,

are clearly stated in every written communication by, or on behalf of, the company.

(3) A company that contravenes subsection (1) or subsection (2) commits an offence.

Chapter 4 - Capacity and Powers

20 Separate legal entity

A company is a legal entity in its own right separate from its members and continues in existence until it is dissolved.

21 Capacity

(1) Notwithstanding any provision to the contrary included in its memorandum or articles, a company has (irrespective of corporate benefit and irrespective of whether or not it is in the best interests of the company to do so), unlimited capacity to carry on or undertake any

business or activity, to do, or to be subject to, any act or to enter into any transaction.

(2) No act of a company and no transfer of an asset by or to a company is beyond its capacity by reason only of the fact that a company has purported to restrict its capacity in any way, whether pursuant to its memorandum or articles or otherwise.

(3) Without limiting subsection (1), the capacity of a company includes the capacity to do any of the following-

- (a) unless it is a company limited by guarantee or an unlimited company without shares-
 - (i) to issue and cancel shares;
 - (ii) to grant options over unissued shares in the company, and
 - (iii) to issue securities that are convertible into shares;
- (b) to issue debentures; and
- (c) to guarantee a liability or obligation of any person and secure any of such person's obligations by mortgage, pledge, charge or other encumbrance, of any of its assets for that purpose.

22 Power of directors to bind the company

(1) In favour of a person who deals with a company in good faith, the power of the directors to bind the company or to authorise others to do so, shall be deemed to be free of any limitations.

(2) For this purpose-

- (a) a person 'deals with' a company if that person is a party to any transaction or other act to which the company is a party; and
- (b) a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) The reference in subsection (1) to limitations on the directors' power include limitations deriving from-

- (a) any statement contained in the memorandum under section 5(3) or any other provision of the memorandum or articles; or
- (b) a resolution of members or any class thereof; or
- (c) any agreement between members or any class thereof.

(4) Subsection (1) does not affect any liability incurred by the directors, or any other person, by reason of the directors exceeding their powers.

23 Personal liability

Subject to section 60(5), no director, officer, agent or liquidator of a company is liable for any liability or default of the company, unless specifically provided in this Act or in any other enactment, and except in so far as that person may be liable for that person's own conduct or acts.

24 Constructive notice

(1) A person is not deemed to have notice or knowledge of any document relating to a company, including the memorandum and articles, or of the provisions or contents of any such document, by reason only of the fact that a document-

- (a) is available to the public from the Registrar; or
- (b) is available for inspection at the registered office of the company or at the office of its registered agent.

(2) Subsection (1) does not apply in relation to a document filed under Part VIII.

PART II

SHARES

Chapter 1 - General

25 Application of this Part

This Part applies to any company incorporated, continued or re-registered as a company limited by shares, a company limited by shares and by guarantee or an unlimited company with shares.

26 Legal nature of shares

A share in a company is personal property.

27 Rights attaching to shares

(1) Subject to subsection (2), a share in a company confers on the holder-

- (a) the right to one vote at a meeting of the company or on any resolution of the members of the company;

- (b) the right to an equal share in any dividend paid in accordance with this Act; and
 - (c) the right to an equal share in the distribution of the surplus assets of the company.
- (2) Subject to contrary provision in its memorandum or articles, a company-
- (a) may issue more than one class of shares; and
 - (b) may issue shares subject to terms that negate, modify or add to the rights specified in subsection (1).

28 Types of shares

- (1) Without limiting section 27(2) but subject to section 30, shares in a company may-
- (a) be convertible, common or ordinary;
 - (b) be redeemable at the option of the shareholder or the company or either of them;
 - (c) confer preferential rights to distributions;
 - (d) confer special, limited or conditional rights, including voting rights;
 - (e) entitle participation only in certain assets; or
 - (f) confer no voting rights,
- or any combination thereof.

(2) Subject to contrary provision in its memorandum or articles, a company may issue bonus shares and nil or partly paid shares.

29 Par value and no par value shares

- (1) Subject to contrary provision in the memorandum or articles of a company-
- (a) a share may be issued with or without a par value;
 - (b) a share with a par value may be issued in any currency; and
 - (c) shares may be numbered or unnumbered.
- (2) The par value of a par value share may be a fraction of the smallest denomination of the currency in which it is issued.

30 Prohibition on bearer shares

- (1) A company has no power to, and shall not-
- (a) issue a bearer share;
 - (b) convert a share to a bearer share; or
 - (c) exchange a share for a bearer share,
- and, accordingly, any such purported issue, conversion or exchange shall be void and of no effect.
- (2) A company that attempts or purports to contravene subsection (1) commits an offence.

31 Fractional shares

(1) Subject to contrary provision in its memorandum or articles, a company may issue fractional shares.

(2) Subject to its memorandum and articles a fractional share in a company has the corresponding fractional rights, obligations and liabilities of a whole share of the same class.

32 Alteration of share capital

Subject to contrary provision in its memorandum or articles, the directors of a company may, by resolution, alter its share capital comprising shares with par value in any way and, in particular but without prejudice to the generality of the foregoing, may-

- (a) consolidate and divide all or any of such shares into shares of a larger amount;
- (b) redenominate all or any of such shares as shares with a par value denominated in another currency on such basis as the directors see fit; or
- (c) sub-divide such shares, or any of them, into shares of smaller amount.

33 Share certificates

(1) Unless contrary provision is made in its memorandum or articles, a company shall issue share certificates in accordance with this section.

(2) Unless contrary provision is made in its memorandum or articles, every member upon becoming the holder of any shares shall be entitled-

- (a) without payment, to one certificate for all the shares of such class held by that member and (upon transferring some of such shares) to a certificate for the balance thereof; or
- (b) to several certificates each for one or more of that member's shares upon payment, for every certificate after the first, of such reasonable sum as the directors may determine,

provided that the company shall not be bound to issue more than one certificate for shares held jointly by several persons and delivery of a certificate to one joint holder shall be delivery to all of them.

(3) Any share certificate issued by a company-

- (a) shall be signed by a person acting under the express or implied authority of the company; or

(b) shall be under the common seal of the company, and the articles may provide for the signatures or common seal to be facsimiles.

(4) A share certificate issued in accordance with subsection (2) specifying a share or shares held by a member of a company is *prima facie* evidence of the entry of that member as the holder of the relevant share or shares in the register of members.

(5) If a share certificate is defaced, worn-out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and payment of the expenses reasonably incurred by the company in investigating evidence as the directors may determine but otherwise free of charge, and (in the case of defacement or wearing out) on delivery up of the old certificate.

Chapter 2 - Issue of Shares

34 Issue of shares

Subject to this Act and to the memorandum and articles, shares in a company may be issued, and options to acquire shares in a company may be granted, at such times, to such persons, for such consideration and on such terms as the directors may determine.

35 Power to pay commissions

(1) Subject to contrary provision in its memorandum or articles, a company may pay commissions at such rates or in such amounts as the directors may determine to any person in consideration of such person 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.

(2) Any commissions referred to in subsection (1) may be satisfied by payment in cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other.

36 Pre-emptive rights

(1) Subsections (2) to (4) apply to a company where the memorandum or articles of the company expressly provide that this section shall apply to the company, but not otherwise.

(2) Before issuing shares that rank or would rank as to voting or distribution rights, or both, equally with or in priority to shares already issued by the company, the directors shall offer the shares to existing shareholders in such a manner that, if the offer was accepted by those shareholders, the existing voting or distribution rights, or both, of those shareholders would be maintained.

(3) Shares offered to existing shareholders under subsection (2) shall be offered at such price and on such terms as the shares are to be offered to other persons.

(4) An offer made under subsection (2) must remain open for acceptance for not less than 14 days from the date that the offer is made.

(5) Nothing in this section prevents the memorandum or articles of a company from modifying the provisions of this section.

37 Consideration for shares

Subject to section 38, a share may be issued for consideration in any form, including money, a promissory note or other written obligation to contribute money or property, real property, personal property (including goodwill and know-how), services rendered, or a contract for future services.

38 Shares issued for consideration other than money

(1) Before issuing shares for a consideration other than money, the directors shall pass a resolution stating-

- (a) the amount to be credited for the issue of the shares;
- (b) their determination of the reasonable present cash value of the non-money consideration for the issue; and
- (c) that, in their opinion, the present cash value of the nonmoney consideration for the issue is not less than the amount to be credited for the issue of the shares.

(2) Subsection (1) shall not apply to the issue of any bonus shares.

39 Consent to issue of shares

The issue by a company of a share that-

- (a) increases a liability of a person to the company; or
- (b) imposes a new liability on a person to the company;

is void if that person, or an authorised agent of that person, does not consent in writing to becoming or remaining the holder of the share.

40 Time of issue

Without prejudice to section 4(b)(i) and section 147(3)(c)(i), a share is deemed to be issued when the name of the shareholder is entered on the register of members.

41 Lien on shares

(1) Subject to contrary provision in its memorandum or articles, a company shall (unless the directors resolve to the contrary in respect of any share) have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) payable at a fixed time or called in respect of that share and the following provision of this section shall apply.

(2) A company may sell in such manner as the directors determine any shares on which the company has a lien if a sum in respect of which the lien exists is presently payable and is not paid within 14 days after notice has been given to the holder of the share or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the shares may be sold.

(3) In order to give effect to a sale under subsection (2) the directors may authorise some person to execute an instrument of transfer of the shares sold to, or in accordance with the directions of, the purchaser.

(4) The title of the transferee to any shares sold under subsection (2) shall not be affected by any irregularity in or invalidity of the proceedings in reference to the sale.

(5) The net proceeds of any sale under subsection (2), after payment of the costs of sale, shall be applied in payment of so much of the sum for which the lien exists as is presently payable, and any residue shall (upon surrender to the company for cancellation of any certificate(s) for the shares sold and subject to a like lien for any moneys not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

42 Calls on shares

(1) Subject to contrary provision in the memorandum or articles of a company and to the terms of issue of any shares in such company, the directors may make calls upon the members in respect of any moneys unpaid on their shares (whether in respect of par value, premium or otherwise) and each member shall (subject to receiving at least 14 days' notice specifying when and where payment is to be made) pay to the company as required by the notice the amount called on such member's shares and the following provisions of this section shall apply.

(2) Where a call is made under subsection (1)-

- (a) such call may be required to be paid by instalments;
- (b) such call may, before receipt by the company of any sum due thereunder, be revoked in whole or part;
- (c) payment of such call may be postponed in whole or part by the company;
- (d) a person upon whom such a call is made shall remain liable for calls made upon such person notwithstanding the subsequent transfer of the shares in respect of which the call was made;
- (e) such call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed; and
- (f) the joint holders of a share shall be jointly and severally liable to pay all such calls in respect thereof.

(3) If a call under subsection (1) remains unpaid after it has become due and payable, the person from whom it is due and payable shall pay interest on the amount unpaid from the day it became due and payable until it is paid at the rate fixed by the terms of allotment of the share or in the notice of the call or, if no rate is fixed, at the rate of 5 per cent per annum, but the directors may waive payment of the interest wholly or in part.

(4) An amount payable in respect of a share on allotment or at any fixed date, whether in respect of par value, premium or otherwise or as an instalment of a call, shall be deemed to be a call and, if it is not paid, the provisions of this Act shall apply as if that amount had become due and payable by virtue of a call.

(5) The directors may make arrangements on the issue of shares for a difference between the holders in the amounts and times of payment of calls on their shares.

43 Forfeiture of shares

(1) Subject to contrary provision in the memorandum or articles of a company and to the terms of issue of any shares in such company, a share in respect of which a call remains unpaid after it has become due and payable may be forfeited in accordance with this section.

(2) Notwithstanding any provision to the contrary in the memorandum or articles of a company or the terms of issue of any shares in such company, a share may only be forfeited if a written notice of forfeiture has been served on the member who defaults in making payment in respect of the share.

(3) The written notice of forfeiture referred to in subsection (2) shall name a date not

earlier than the expiration of 14 days from the date of service of the notice on or before which the payment required by the notice is to be made and shall contain a statement that, in the event of non-payment at or before the time named in the notice the shares, or any of them, in respect of which payment is not made will be liable to be forfeited.

(4) Where a written notice of forfeiture has been issued under this section and the requirements of the notice have not been complied with, the directors may, at any time before tender of payment, forfeit and cancel the shares to which the notice relates.

(5) A company is under no obligation to refund any moneys to the member whose shares have been cancelled pursuant to subsection (4) and that member shall be discharged from any further obligation to the company.

44 Variation of class rights

(1) Subject to any contrary provision in the memorandum or articles of a company whose share capital is divided into shares of different classes, the rights attaching to such a class of shares may not be varied without the sanction of a resolution of the members of such class passed by a member or members holding at least 75 per cent of the voting rights exercised in relation thereto.

(2) For the purposes of this section, any alteration of a provision contained in a company's memorandum or articles for the variation of the rights attached to a class of shares, or the insertion of such provision into the articles, is itself to be treated as a variation of those rights.

(3) In this section and (except where the context otherwise requires) in any provision for the variation of the rights attached to a class of shares contained in a company's memorandum or articles, references to the variation of those rights are to be treated as including references to their abrogation or extinguishment.

45 Offering documents

(1) The directors of a company or (in the case of a company yet to be incorporated) the proposed directors shall ensure that any offering document issued in relation to such company shall-

- (a) contain all material information relating to the offer or invitation contained therein
 - (i) that the intended recipients would reasonably expect to be included therein in order to enable them to make an informed decision as to whether or not to accept the offer or make the application referred to therein; and
 - (ii) of which the directors or proposed directors (as the case may be) were aware at the time of issue of the offering document, or of which they would have been aware had they made such enquiries as would have been reasonable in all the circumstances; and
- (b) set out such information fairly and accurately.

(2) Subject to subsection (3), the company and each of the directors or proposed directors (as the case may be) shall be jointly and severally liable to compensate any intended recipient of an offering document who accepts the offer of securities contained therein, or applies to acquire securities pursuant thereto, in reliance upon a misstatement set out in that offering document against any losses incurred by such person as a result thereof.

(3) A director may be relieved from liability under subsection (2) if it is established that-

- (a) the director did not consent to the issue of the offering document containing the misstatement in question; or
- (b) could not reasonably have been expected to know that the misstatement breached subsection (1).

(4) In this section, the following words and expressions shall have the following meanings respectively-

- (a) 'intended recipients' means, in relation to an offering document, those persons who, taking into account the terms of the offering document and all the circumstances in which the offering document was issued, might reasonably be expected to accept the offer contained therein or to apply to acquire securities pursuant thereto;
- (b) 'misstatement' means any statement included in an offering document which breaches subsection (1) or any statement omitted from an offering document in breach of subsection (1); and
- (c) 'offering document' means, in relation to a company (including a company proposed to be incorporated), any document issued on behalf of that company containing an offer to subscribe for or purchase any securities of that company or an invitation to apply for any such securities.

(5) An offering document may be (but is not required to be) filed on behalf of the

company to which it relates by the company's registered agent.

Chapter 3 - Transfer of Shares

46 Transferability of shares

(1) Subject to any limitations or restrictions on the transfer of shares in the memorandum or articles, a share in a company is transferable.

(2) If a shareholder dies, the survivor or survivors (where such shareholder was a joint holder) or such shareholder's personal representatives (when such shareholder was a sole holder or the last surviving joint holder) shall be the only persons recognised by the company as having any title to that shareholder's interest.

(3) Subsection (2) is without prejudice to any liability of the estate of a deceased shareholder in respect of any share which had been jointly held by such shareholder.

(4) Subject to contrary provision in a company's memorandum and articles, a person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as the directors may reasonably require, elect either-

- (a) to become the registered holder of the share by giving notice to the company to that effect; or
- (b) to have some other person registered as the transferee by executing an instrument of transfer in accordance with section 47 even though that person is not a shareholder at the time of the transfer.

(5) A person becoming entitled to a share in consequence of the death or bankruptcy of a member shall have the rights to which such person would be entitled if that person were the registered holder of the share, except that such person shall not, before being registered as the holder of the share, be entitled to receive notice of, to attend or to vote at any meeting of the members, or any class of members, of the company.

47 Method of transfer of shares

(1) Subject to section 48 shares are transferred by a written instrument of transfer signed by or on behalf of the transferor and containing the name and business or residential address of the transferee.

(2) The instrument of transfer shall also be signed by or on behalf of the transferee if registration as a holder of the share imposes a liability to the company on the transferee or if the articles of the company so require.

(3) The instrument of transfer of a share shall be sent for registration on behalf of the company to the registered agent of the company or such other person as the directors may from time to time appoint.

(4) Subject to the memorandum or articles and to subsection (5), upon receipt of a transfer under subsection (3), the company shall cause the name of the transferee of the share to be entered in the register of members unless the directors refuse or delay the registration of the transfer.

(5) The directors shall not refuse or delay the registration of a transfer unless this Act or the company's memorandum or articles permit them to do so.

(6) Where the directors refuse or delay the registration of a transfer under subsection (4), the company shall, as soon as practicable, send the transferor and the transferee notice of the refusal or delay.

(7) Subject to the memorandum or articles of a company, the directors may refuse or delay the registration of a transfer of shares if the transferor has failed to pay an amount due in respect of those shares.

(8) The transfer of a share is effective when the name of the transferee is entered in the register of members.

(9) If the directors of a company are satisfied that an instrument of transfer has been signed but that the instrument has been lost or destroyed, they may-

- (a) accept such evidence of the transfer of the shares as they consider appropriate; and
- (b) determine that the transferee's name should be entered in the register of members, notwithstanding the absence of the instrument of transfer.

48 Transfer of securities without a written instrument

(1) Regulations may make provisions enabling title to securities to be evidenced and transferred without a written instrument.

(2) In this section-

- (a) 'securities' means shares, stock, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Collective Investment Schemes Act 2008 and other securities of any description;

[Para (a) amended by Collective Investment Schemes Act 2008 Sch 6.]

- (b) 'procedures' means the procedures referred to in subsection (3);
 - (c) references to title to securities include any legal or equitable interest in securities; and
 - (d) references to a transfer of title include a transfer by way of security.
- (3) Regulations may make provision-
- (a) for procedures for recording and transferring title to securities, and
 - (b) for the regulation of those procedures and the persons responsible for or involved in their operation.
- (4) Regulations may contain such safeguards as appear to the Treasury appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented.
- (5) Regulations may for the purpose of enabling or facilitating the operation of the procedures make provision with respect to the rights and obligations of persons in relation to securities dealt with under the procedures.
- (6) Regulations may include provision for the purpose of giving effect to-
- (a) the transmission of title to securities by operation of law;
 - (b) any restriction on the transfer of title to securities arising by virtue of the provisions of any enactment or instrument, court order or agreement;
 - (c) any power conferred by any such provision on a person to deal with securities on behalf of the person entitled.
- (7) Regulations may make provision with respect to the persons responsible for the operation of the procedures-
- (a) as to the consequences of their insolvency or incapacity, or
 - (b) as to the transfer from them to other persons of their functions in relation to the procedures.
- (8) Regulations may for the purposes mentioned above-
- (a) modify or exclude any provision of any enactment or instrument, or any rule of law;
 - (b) apply, with such modifications as may be appropriate, the provisions of any enactment or instrument (including provisions creating criminal offences);
 - (c) require the payment of fees, or enable persons to require the payment of fees, of such amounts as may be specified in the regulations or determined in accordance with them.

PART III

DISTRIBUTIONS

49 Meaning of 'solvency test' and 'distribution'

In this Act, unless the context otherwise requires-

- (a) a company satisfies the solvency test if-
 - (i) the company is able to pay its debts as they become due in the normal course of the company's business; and
 - (ii) the value of the company's assets exceeds the value of its liabilities; and
- (b) '**distribution**' in relation to a distribution by a company to a member, means-
 - (i) the direct or indirect transfer of any assets, other than the company's own shares, to or for the benefit of the member; or
 - (ii) the incurring of a debt to or for the benefit of the member,

in relation to shares held by a shareholder, or the entitlements to distributions of a member who is not a shareholder, and whether by means of the purchase of an asset, the purchase, redemption or other acquisition of shares, a transfer or assignment of indebtedness or otherwise, and includes a dividend.

50 Distributions

Subject to this Act and to the memorandum and articles of the company, the directors of a company (other than a protected cell company) may authorise a distribution by the company to members at such time and of such amount as they think fit if they are satisfied, on reasonable grounds, that the company will, immediately after the distribution, satisfy the solvency test.

51 Recovery of distributions made when company did not satisfy solvency test

(1) Where a distribution has been made to a member by a company and the company did not, immediately after the distribution, satisfy the solvency test, then the distribution (or the value thereof) may be recovered by the company from the member but only if-

- (a) the member received the distribution or the benefit of the distribution (as the case may be) other than in good faith and without knowledge of the company's failure to satisfy the solvency test; and
- (b) the member's position has not been altered by the member relying on the validity of the distribution; and
- (c) it would not be unfair to require repayment in full or at all.

(2) Where a distribution has been made to a member or members by a company and the company did not, immediately after the distribution, satisfy the solvency test, then, a director who failed to take reasonable steps to ensure that the distribution was made in accordance with section 50 (or, in the case of a protected cell company, section 120) shall be personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from members.

(3) If, in an action brought against a director or member under this section, the Court is satisfied that the company could, by making a distribution of a lesser amount, have satisfied the solvency test, the Court may-

- (a) permit the member to retain; or
- (b) relieve the director from liability in respect of;

an amount equal to the value of any distribution that could properly have been made.

52 Company may purchase, redeem or otherwise acquire its own shares

(1) Subject to this Part and to its memorandum and articles, a company may purchase, redeem or otherwise acquire its own shares for any consideration provided that such transaction does not result in the company contravening section 60.

(2) Any shares acquired by a company are deemed to be cancelled immediately on acquisition.

53 Process for purchase redemption or other acquisition of own shares

(1) Subject to subsection (3), a company may only purchase, redeem or otherwise acquire shares issued by the company, pursuant to-

- (a) an offer to all shareholders to purchase, redeem or otherwise acquire shares issued by the company that-
 - (i) would, if accepted, leave the relative rights of the shareholders unaffected; and
 - (ii) affords each shareholder a period of not less than fourteen days within which to accept the offer; or

- (b) an offer to one or more shareholders to purchase, redeem or otherwise acquire shares-
 - (i) to which all shareholders have consented in writing; or

- (ii) that is permitted by the memorandum or articles and is made in accordance with section 54.

(2) Where an offer is made in accordance with subsection (1)(a)-

- (a) the offer may also permit the company to purchase, redeem or otherwise acquire additional shares from a shareholder to the extent that another shareholder does not accept the offer or accepts the offer only in part; and
- (b) if the number of additional shares exceeds the number of shares that the company is entitled to purchase, redeem or otherwise acquire, the number of additional shares shall be reduced rateably.

(3) This section shall not apply to the redemption of any redeemable shares.

(4) Where a company acquires a share under the provisions of section 161-

- (a) the acquisition is deemed not to be a distribution for the purposes of section 50 or section 120 (as the case may be); and
- (b) this section and section 54 do not apply.

54 Offer to one or more shareholders

(1) A company shall not make an offer to one or more shareholders under section 53(1)(b) unless the directors have passed a resolution stating that, in their opinion-

- (a) the purchase, redemption or other acquisition is to the benefit of the remaining shareholders; and
- (b) the terms of the offer and the consideration offered for the shares are fair and reasonable to the company and to the remaining shareholders.

(2) A resolution passed under subsection (1) shall set out the reasons for the directors' opinion.

(3) The directors shall not make an offer to one or more shareholders under section

53(1)(b) if, after the passing of a resolution under subsection (1) and before the making of the offer, they cease to hold the opinions specified in subsection (1).

(4) A shareholder may apply to the Court for an order restraining the proposed purchase, redemption or other acquisition of shares under section 53(1)(b) on the grounds that-

- (a) the purchase, redemption or other acquisition is not in the best interests of the remaining shareholders; or
- (b) the terms of the offer and the consideration offered for the shares are not fair and reasonable to the company or the remaining shareholders.

55 Redemption of shares

(1) If a share is redeemable, then-

- (a) the share is deemed to be cancelled upon redemption; and
- (b) from the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(2) Notwithstanding any right of a holder of any share to have such share redeemed in accordance with the company's memorandum or articles or otherwise, no share shall be redeemed if, following implementation of such redemption, section 60 would be offended.

56 Effect of company's failure to purchase, redeem or acquire own shares

(1) Where a company-

- (a) issues shares on terms that they are or are liable to be redeemed; or
- (b) agrees to purchase, redeem or otherwise acquire any of its own shares;

the following provisions of this section shall apply in relation thereto.

(2) A company shall not be liable in damages in respect of any failure on its part to purchase, redeem or otherwise acquire any of the shares.

(3) Subsection (2) is without prejudice to any right of the holder of any of the shares other than such holder's right to sue the company for damages in respect of its failure; but the Court shall not grant an order for specific performance of the terms of purchase, redemption or acquisition if the company shows that it would, immediately after the purchase, redemption or acquisition, be unable to satisfy the solvency test.

(4) Where the company is wound up and at the commencement of the winding up any of the shares have not been purchased, redeemed or acquired then, subject to the following provisions of this section, the terms of purchase, redemption or acquisition may be enforced against the company and when shares are purchased, redeemed or acquired under this subsection they shall be treated as cancelled.

(5) Subsection (4) shall not apply if-

- (a) the terms of purchase, redemption or acquisition provided for the purchase, redemption or acquisition to take place at a date later than the date of the commencement of the winding up; or
- (b) during the period beginning with the date on which the purchase, redemption or acquisition was to have taken place and ending with the commencement of the winding up the company could not at any time have lawfully made the purchase, redemption or acquisition.

(6) There shall be paid in priority to any amount which the company is liable by virtue of subsection (4) to pay in respect of any shares-

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

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

(7) Where, by virtue of section 23(3) of the Bankruptcy Code 1892 (payment of interest on debts) as applied by section 248 of the Companies Act 1931 (application of bankruptcy rules to insolvent companies), a creditor of a company is entitled to payment of any interest only after payment of all other debts of the company, the company's debts and liabilities shall for the purposes of subsection (6) include the liability to pay that interest.

57 Dividends

Subject to any provision to the contrary in its memorandum or articles, a company may, by a resolution of directors, declare and pay dividends in money, shares or other property, provided the directors are satisfied, on reasonable grounds, that the company will, immediately after the payment of a dividend, satisfy the solvency test.

58 Reduction of share capital

Subject to any provision to the contrary in its memorandum or articles, a company limited by shares or limited by shares and by guarantee may, by a resolution of directors, reduce its share capital in any way and, in particular but without prejudice to the generality of the foregoing, may-

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

provided that they are satisfied, on reasonable grounds, that the company will, immediately after such reduction, satisfy the solvency test.

Treasury shares

58A Power to permit the holding of treasury shares

(1) The Financial Supervision Commission may by regulations make such provision (including provision by way of modification to the provisions of this Act) as it considers appropriate to permit a company -

- (a) to hold its own shares as treasury shares; and
- (b) to deal with those treasury shares in accordance with the provisions of the regulations.

(2) In subsection (1), a reference to a company holding its own shares as treasury shares is to the company holding such shares which -

- (a) were (or are to be treated as having been) purchased by it in circumstances prescribed in the regulations referred to in subsection (1); and
- (b) have been held by the company continuously since they were so purchased (or treated as so purchased).

(3) Regulations under subsection (1) may make such further modification to the provisions of this Act as appear to the Financial Supervision Commission to be reasonably necessary in consequence of any provision made by the regulations.

(4) Regulations under subsection (1) shall not come into operation unless they are approved by Tynwald.

(CAB 2009)

PART IV MEMBERS

59 Meaning of 'shareholder', 'guarantee member' and 'unlimited member'

In this Act, unless the context otherwise requires-

'**guarantee member**', in relation to a company limited by guarantee, a company limited by shares and by guarantee, or an unlimited company without shares means-

- (a) a person whose name is entered in the register of members; and
- (b) on the incorporation of a company, a subscriber whose name appears in the memorandum in accordance with section 5(1)(b), until that person's name is entered in the register of members; and

'**shareholder**', in relation to a company, means-

- (a) a person whose name is entered in the register of members as the holder of one or more shares in the company, and
- (b) on the incorporation of a company, a subscriber who is specified in the memorandum as a person who has agreed to take one or more shares of the company in accordance with section 5(1)(e), until that person's name is entered in the register of members;

'**unlimited member**', in relation to an unlimited company with shares or an unlimited company without shares, means a person whose name is entered in the register of members as a member who has unlimited liability for the liabilities of the company.

60 Company to have one or more members

(1) A company shall at all times have at least one member.

(2) A company limited by shares and by guarantee shall at all times have at least one shareholder.

(3) Notwithstanding any provision to the contrary in the articles, every shareholder of a company limited by shares and by guarantee shall be a guarantee member, but a guarantee member of a company limited by shares and by guarantee need not, but may be, a shareholder.

(4) In the case of an unlimited company at least one of the members of the company

shall be an unlimited member.

(5) If at any time a company fails to comply with this section, any person doing business in the name of, or on behalf of, the company is personally liable for the payment or discharge of all debts and other liabilities of the company arising during that time.

61 Liability of members

(1) A member of a limited company has no liability, as a member, for the liabilities of the company.

(2) The liability of a shareholder to the company, as shareholder, is limited to-

- (a) any amount unpaid on a share held by the shareholder;
- (b) any liability expressly provided for in the memorandum or articles of the company;
- (c) any liability to repay a distribution under section 51(1); and
- (d) any liability for calls made on the shareholder.

(3) The liability of a guarantee member to the company, as guarantee member, is limited to-

- (a) the amount that the guarantee member is liable to contribute as specified in the memorandum in accordance with section 5(1)(i); and
- (b) any other liability expressly provided for in the memorandum or articles of the company, and
- (c) any liability to repay a distribution under section 51(1).

(4) An unlimited member has unlimited liability for the liabilities of the company.

62 Register of members

(1) A company shall cause to be kept a register of members containing-

- (a) in the case of a company limited by shares, a company limited by shares and by guarantee and an unlimited company with shares, the names and business or residential addresses of the persons who hold shares in the company;
- (b) in the case of a company limited by shares, a company limited by shares and by guarantee and an unlimited company with shares, the number of each class of shares held by each shareholder;
- (c) in the case of a company limited by guarantee and a company limited by shares and by guarantee, the names and business or residential addresses of the persons who are guarantee members of the company;
- (d) in the case of an unlimited company, the names and business or residential addresses of the persons who are unlimited members;
- (e) the date on which the name of each member was entered in the register of members; and
- (f) the date on which any person ceased to be a member.

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

(3) The register of members is *prima facie* evidence of any matters required or permitted by this Act to be contained in the register.

(4) A company that contravenes subsection (1) commits an offence.

63 Register of members as evidence of legal title

(1) The entry of the name of a person in the register of members as a holder of a share in a company is *prima facie* evidence that legal title in the share vests in that person.

(2) A company may treat the holder of a share as the only person entitled-

- (a) to exercise any voting rights attaching to the share;
- (b) to receive notices;
- (c) to receive distributions in respect of the share; and
- (d) to exercise other rights and powers attaching to the share.

(3) No notice of any trust, whether express, implied or constructive, shall be entered on the register of members.

(4) Where two or more persons hold one or more shares in a company jointly they shall be treated as a single member.

64 Rectification of register of members

(1) If the directors are satisfied that any information that ought to be entered in the register of members has been omitted therefrom or has been inaccurately entered therein, they may, by resolution, amend the register of members accordingly, provided that any person thereby affected or to whom such amendment relates consents to such amendment being made.

(2) If in the opinion of any person-

- (a) information that ought to be entered in the register of members under section 62 is

omitted from the register or inaccurately entered in the register; or
(b) there is unreasonable delay in entering the information in the register,
such person may apply to the Court for an order that the register be rectified, and the Court may either refuse the application, with or without costs to be paid by the applicant, or order the rectification of the register, and may direct the company to pay all costs of the application and any damages the applicant may have sustained.

(3) The Court may, in any proceedings under subsection (2), determine any question relating to the right of a person who is a party to the proceedings to have that person's name entered in or omitted from the register of members, whether the question arises between-

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

(b) between a member or members or an alleged member or members, and the company;
and generally the Court may, in the proceedings, determine any question that may be necessary or expedient to be determined for the rectification of the register of members.

65 Members' resolutions

Unless otherwise specified in this Act or in the memorandum or articles of a company, the exercise by the members of a company of a power which is given to them under this Act or the memorandum or articles shall be by a resolution-

(a) passed at a meeting of members held pursuant to section 67; or

(b) passed as a written resolution in accordance with section 71.

66 Votes of members

For the purposes of this Act, unless the memorandum or articles make contrary provision-

(a) votes of shareholders shall be counted according to the votes attached to the shares held by the shareholder voting;

(b) a guarantee member is entitled to one vote on any resolution on which such member is entitled to vote.

67 Meetings of members

(1) The following persons may convene a meeting of the members of the company at any time-

(a) the directors of the company; or

(b) such person or persons as may be authorised by the memorandum or articles to call the meeting.

(2) The directors of a company shall call a meeting of the company to consider a resolution if requested in writing to do so by a member or members holding at least 10 per cent (or such smaller percentage as may be specified in the memorandum or articles) of the voting rights in relation thereto.

(3) Subject to a company's memorandum and articles, a meeting of the members of the company may be held at such time and in such place, within or outside the Isle of Man, as the convener of the meeting considers appropriate.

(4) Subject to contrary provision in the memorandum or articles of a company, a member of the company shall be deemed to be present at a meeting of members if-

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

(b) all members participating in the meeting are able to communicate with each other.

(5) Subject to contrary provision in its memorandum or articles, a member of a company may be represented at a meeting of members by a proxy who may speak and vote on behalf of the member.

(6) Subject to the memorandum and articles, the following apply where shares are jointly owned-

(a) if two or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of members and may speak as a member;

(b) if only one of them is present in person or by proxy, that person may vote on behalf of all of them; and

(c) if two or more are present in person or by proxy, they may only vote as one.

(7) Subject to any requirement for a higher majority specified in this Act or in the memorandum or articles, a resolution of the members of a company, or a class of the members of a company, is passed at a meeting of such members if it is approved by a member or members holding a majority of in excess of 50% of the voting rights exercised in relation thereto.

68 Notice of meetings of members

(1) Subject to a requirement in the memorandum or articles to give longer notice of meetings, a person or persons convening a meeting of members shall give not less than 14 days'

notice of the meeting to those persons whose names, on the date the notice is given, appear as members in the register of members and are entitled to vote at the meeting.

(2) Notwithstanding that a meeting is called by shorter notice than that specified in subsection (1) or in the articles, a meeting of members to consider a resolution is deemed to have been duly called if a member or members holding at least 90 per cent, or such smaller percentage as may be specified in the articles, of the voting rights in relation thereto have waived notice of the meeting and, for this purpose, the presence of a member at the meeting shall be deemed to constitute waiver on the part of such member.

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

(4) The convener or conveners of a meeting of members may fix the date notice is given of a meeting as the record date for determining those members that are entitled to vote at the meeting.

69 Quorum for meetings of members

The quorum for meetings of members for the purposes of a resolution of members is that fixed by the articles but, where no quorum is so fixed, a meeting of members to consider a resolution is properly constituted for all purposes if at the commencement of the meeting there are present in person (in the case of a member who is an individual) or by a duly appointed representative (in the case of a member who is a body corporate) or by proxy (in either case), a member or members holding at least 10 per cent of the voting rights in relation thereto.

70 Court may call meeting of members

(1) The Court may order a meeting of members to be held and to be conducted in such manner as the Court orders if it is of the opinion that-

- (a) it is impracticable to call or conduct a meeting of the members of a company in the manner specified in this Act or in the memorandum and articles of the company; or
- (b) it is in the interests of the members of the company that a meeting of members is held.

(2) An application for an order under subsection (1) may be made by a member or director of the company.

(3) The Court may make an order under subsection (1) on such terms, including as to costs of conducting the meeting and as to the provision of security for those costs, as it considers appropriate.

71 Written resolutions

(1) Any action that may be taken by members of the company at a meeting of members may also be taken by a resolution consented to in writing or by email, telex, fax, or other electronic communication, without the need for any notice-

- (a) by all the members entitled to vote thereon; or
- (b) subject to any requirement specified in this Act for a resolution to be passed by a particular majority, by a member or members holding such percentage of the voting rights in relation thereto as may be specified in the memorandum or articles.

(2) A resolution under subsection (1) may consist of several documents, including electronic communications, in like form each signed or assented to by one or more members and shall be deemed to have been passed on the date on which the resolution is signed or assented to by the last member to sign or assent (as the case may be).

72 Service of notices on members

(1) Any notice, information or written statement required under this Act to be given by a company to members shall be served-

- (a) in the manner specified in the articles, or
- (b) in the absence of a provision in the articles, by personal service or by mail addressed to each member at the address shown in the register of members.

(2) For the purposes of subsection (1)(b), proof that an envelope containing such notice, information or written statement was properly addressed, pre-paid and posted shall be conclusive evidence that it was given by mail and such notice, information or written statement shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted.

PART V COMPANY ADMINISTRATION

Chapter 1 — Registered Office and Registered Agent

73 Registered office

- (1) A company shall, at all times, have a registered office in the Isle of Man.
- (2) The registered office of a company is-

- (a) the place specified as the company's first registered office in the memorandum filed under section 5(1), section 144(1), section 149(1), section 154(2), section 157(3) or section 162(3), as the case may be; or
- (b) if one or more notices of change of registered office have been filed under section 75, the place specified in the last such notice to be registered by the Registrar.

(3) The registered office of a company, whether as specified in the memorandum or in any notice filed under section 75 shall be a physical address in the Isle of Man.

74 Registered agent

(1) A company shall at all times have a registered agent in the Isle of Man.

(2) Unless the last registered agent of the company has resigned in accordance with section 76 or ceased to be the company's registered agent in accordance with section 77, the registered agent of a company is-

- (a) the person specified as the company's first registered agent in the memorandum filed under section 5(1), section 144(1) section 149(1), section 154(2), section 157(3) or section 162(3), as the case may be; or
- (b) if one or more notices of change of registered agent have been filed under section 75, the person specified as the company's registered agent in the last such notice to be registered by the Registrar.

(3) No person shall be, or agree to be, the registered agent of a company unless that person holds a licence granted under the Financial Services Act 2008 which permits that person to undertake the regulated activity of acting as a registered agent.

[Subs (3) amended by Financial Services Act 2008 Sch 6.]

(4) Subject to section 77(6), a person who contravenes subsection (3) commits an offence.

(5) A company that does not have a registered agent commits an offence.

75 Change of registered office or registered agent

(1) A resolution to change the location of a company's registered office or to change a company's registered agent may be passed either by the members of the company or, unless the memorandum or articles provide otherwise, by the directors of the company.

(2) A company wishing to change its registered office or registered agent shall file a notice in the prescribed form.

(3) A notice of change of registered agent shall be endorsed by the new registered agent with the new registered agent's agreement to act as registered agent.

(4) A notice of change of registered office or registered agent may be filed only by such persons as are prescribed by regulations.

(5) A change of registered office or registered agent takes effect on the registration by the Registrar of the notice filed under subsection (2).

(6) A change of registered office or registered agent is deemed not to constitute an amendment of the company's memorandum or articles.

76 Resignation of registered agent

(1) A person may resign as the registered agent of a company only in accordance with this section.

(2) A person wishing to resign as the registered agent of a company shall-

- (a) give not less than 8 weeks' written notice of that person's intention to resign as registered agent of the company on the date specified in the notice to a person specified in subsection (3); and
- (b) file a copy of the notice provided under paragraph (a) within one week of giving notice to the company.

(3) A notice under subsection (2) shall be sent to the company at its registered office and to a director of the company at the director's last known address.

(4) If a company does not change its registered agent in accordance with section 75 on or before the date specified in the notice given under subsection (2), the registered agent may file a notice of resignation as the company's registered agent.

77 Registered agent ceasing to be eligible to act

(1) For the purposes of this section, a person ceases to be eligible to act as a registered agent if the person ceases to hold a licence which permits the person to act as registered agent under the Financial Services Act 2008.

[Subs (1) amended by Financial Services Act 2008 Sch 6.]

(2) Where a person ceases to be eligible to act as a registered agent, the Commission shall direct the Registrar to send to each company of which the person is the registered agent-

- (a) a notice-
 - (i) advising the company that the person concerned is not eligible to be its registered

- agent;
 - (ii) advising the company that the company must appoint a new registered agent within 12 weeks of the date of the notice; and
 - (iii) specifying the date on which the person shall cease to be the registered agent of the company, if the company has not previously changed its registered agent; and
- (b) a list of persons who are licensed under the Financial Services Act 2008 to act as registered agent.

[Para (b) amended by Financial Services Act 2008 Sch 6.]

(3) The date specified by the Registrar under subsection (2)(a)(iii) shall be a date not later than 12 weeks after the date of the notice and, unless the company has previously changed its registered agent, the person concerned shall cease to be the company's registered agent with effect from the date specified by the Registrar.

(4) A company that receives a notice under subsection (2) shall, within 12 weeks of the date of the notice, appoint a new registered agent.

(5) A company that contravenes subsection (4) commits an offence.

(6) A person does not commit an offence under section 74(4) by reason only of the fact that-

- (a) such person ceases to be eligible to act as a registered agent; and
- (b) after ceasing to be eligible to act, such person continues to be the registered agent of a company during the period from the date such person ceases to be eligible to act to the date that the company appoints a new registered agent.

Chapter 2 — Company Records

78 Documents to be kept at office of registered agent

- (1) A company shall keep the following documents at the office of its registered agent-
- (a) copies of the memorandum and articles of the company signed by each of the subscribers;
 - (b) the register of members maintained under section 62 or a copy of the register of members;
 - (c) the register of directors maintained under section 101 or a copy of the register of directors;
 - (d) the register of charges maintained under section 137(1) or a copy of such register of charges;
 - (e) copies of all notices and other documents filed by the company pursuant to this Act in the previous 6 years; **(CAB 2009)**
 - (f) either –
 - (i) originals; or
 - (ii) copies provided in accordance with section 80(4B), of the accounting records that it is required to keep under this Act; and
 - (g) originals of any financial statements prepared.

(CAB 2009)

(2) A company that contravenes subsection (1) commits an offence.

(3) To the extent that a company's register of members and register of directors do not contain a record of the residential address of any member, former member, director or former director, its registered agent shall maintain a separate record of the residential addresses of such persons.

79 Other records to be maintained by company

(1) A company shall keep the following records at the office of its registered agent or at such other place or places, within or outside the Isle of Man, as the directors may determine-

- (a) minutes of meetings and resolutions of members and of classes of members maintained in accordance with section 84; and
- (b) minutes of meetings and resolutions of directors and committees of directors maintained in accordance with section 84.

(2) Where any records specified under section (1) are kept at a place other than at the office of the company's registered agent, the company shall provide the registered agent with a written record of the physical address of the place or places at which the records are kept.

(3) Where the place at which any records specified under subsection (1) is changed, the

company shall provide the registered agent with the physical address of the new location of the records within 14 days of the change of location.

(4) A company that contravenes this section commits an offence.

80 Companies to keep accounting records

(1) A company shall keep reliable accounting records which-

- (a) correctly explain the transactions of the company; and
- (b) enable the financial position of the company to be determined with reasonable accuracy at any time; and
- (c) allow financial statements to be prepared.

(2) deleted

(CAB 2009)

(3) In this section “financial statements” means written accounts of the company which have approved by the directors as financial statements for the purposes of this Act and which include –

- (a) a written statement recording the assets and liabilities of the company on a specific date;
- (b) a written statement recording the receipts, payments and other financial transactions undertaken by the company in respect of the period ending on the date of the statement referred to in paragraph (a); and
- (c) such notes as are necessary for a reasonable understanding of the statements referred to in paragraphs (a) and (b). .

(CAB 2009)

(4) Without prejudice to the requirements of any other enactment, the accounting records of a company shall be maintained by or on behalf of that company for not less than six years from the end of the financial period of the company to which they relate.

(4A) The accounting records shall be kept at the office of the registered agent of the company or at such other place as the directors of the company think fit.

(4B) Where accounting records are kept at a place other than the office of the company’s registered agent, the company shall provide to the registered agent –

- (a) a written record of the physical address of the place or places at which the records are kept; and
- (b) at intervals not exceeding 12 months, copies of the records.

(4C) The copies provided under subsection (4B)(b) must themselves be sufficient so as to satisfy the requirements specified in subsection (1), without requiring sight of the original records.

(4D) Where the place at which the accounting records are kept is changed, the company shall provide the registered agent with the physical address of the new location of the records within 14 days of the change of location.

(4E) The registered agent of the company may –

- (a) at any reasonable time specified by the registered agent inspect the accounting records of the company without charge and make copies of or take extracts from the records;
- (b) require the company to provide originals or copies of the accounting records to the registered agent within 14 days.

(4F) The company shall comply with a request under subsection (4E)

(5) A company that contravenes this section commits an offence.

80A Right to require financial statements to be prepared

(1) If a company has not prepared financial statements for a continuous period of 18 months or more, any member or director of the company may at any time demand that financial statements be prepared for the period since the end of the financial period to which the preceding financial statements relate or, if none, since the incorporation of the company and made up to such date as is specified in the demand, not being later than the date of demand.

(2) A demand under subsection (1) shall be made in writing and deposited at the registered office of the company.

(3) The financial statements must be prepared by the company within 6 months of the date of deposit of the demand.

(4) A company that contravenes subsection (1) commits an offence.

80B Additional provisions concerning presentation of financial statements

- (1) Whenever financial statements are prepared –
- (a) the statement referred to in section 80(3)(a) must give a true and fair view of the state of affairs of the company at the end of the financial period to which it relates; and
 - (b) the statement referred to in section 80(3)(b) must give a true and fair view of the receipts, payments and other financial transactions undertaken by the company for the financial period to which it relates.
- (2) Subsection (1) is subject to subsections (3) and (4).
- (3) Unless regulations made under subsection (4) require compliance with standards or the adoption of practices which are not consistent with generally accepted accounting principles or practice, in determining how amounts are presented within items within the statements referred to in section 80(3)(a) and (b) the directors of a company must have regard to the substance of the reported transaction or arrangement in accordance with generally accepted accounting principles or practice.
- (4) The Financial Supervision Commission may make regulations which, in such circumstances and for such purposes as are prescribed, require compliance with standards or the adoption of practices recommended by a body specified in the regulations, and which may in particular require compliance with standards or the adoption of practices recommended by that body from time to time (that is, after as well as before the making of the regulations).
- (5) Regulations under subsection (4) shall not come into operation unless they are approved by Tynwald.
- (6) In this section, “generally accepted accounting principles or practice” means accounting standards and practices recommended by –
- (a) the International Accounting Standards Board (International Financial Reporting Standards);
 - (b) the Accounting Standards Board (United Kingdom Accounting Standards (UK GAAP)); or
 - (c) the Financial Accounting Standards Board, the Government Accounting Standards Board or the Federal Accounting Standards Advisory Board (US GAAP).

80C Auditor to be qualified

- (1) This section applies where an auditor is to be appointed by a company (whether or not under compulsion of law or other obligation).
- (2) Without prejudice to the generality of subsection (1), a company must appoint an auditor where the company’s securities are listed or admitted to trade on a securities market or exchange.
- (3) Where this section applies, the company must appoint an auditor who is qualified for appointment under this section to audit its financial statements.
- (4) Subject to subsection (6), a person or body shall not be qualified for appointment as auditor of a company (within the meaning of this Act) unless that person or body is qualified for appointment as auditor under sections 14 to 14H of the Companies Act 1982 (c.2) of a company (with the meaning of this Act).
- (5) Without prejudice to the generality of subsection (4), an application may be made under section 14E of the Companies Act 1982 for authorisation under that section to be appointed as auditor of a company (within the meaning of this Act) in the same manner and subject to the same provisions as an application under that section for authorisation to be appointed as auditor of a company (within the meaning of this Act).
- (6) Regulations under section 80E may modify the application of subsection (4).

80D Public oversight

- (1) The Financial Supervision Commission may make regulations (in this section referred to as “public oversight regulations”) requiring auditors of companies to comply with prescribed systems of –
- (a) public oversight;
 - (b) quality assurance; and
 - (c) investigations and penalties.
- (2) Public oversight regulations apply in such circumstances and for such purposes as are prescribed.
- (3) Public oversight regulations may –

- (a) prescribe criteria which systems referred to in subsection (1) must meet;
 - (b) require auditors to comply with prescribed systems to deter, correct and prevent inadequate auditors;
 - (c) appoint one or more bodies (whether or not based in the Island) to perform prescribed functions in respect of any of the matters referred to in subsection (1);
 - (d) make any incidental or consequential provisions which the Financial Supervision Commission considers appropriate.
- (4) Public oversight regulations may require compliance with standards or the adoption of practices recommended by a body specified in the regulations, and may in particular require compliance with standards or the adoption of practices recommended by that body from time to time (that is, as well after as before the making of the regulations).
- (5) Public oversight regulations may require auditors to comply with prescribed conditions requiring auditors –
- (a) to be registered in a register kept by the Financial Supervision Commission in accordance with regulations made under section 14G of the Companies Act 1982;
 - (b) to enter into contracts with bodies appointed to perform prescribed functions in respect of any of the matters referred to in subsection (1);
 - (c) to pay for their services of a body referred to in paragraph (b) insofar as those services relate to the performance of prescribed functions;
 - (d) to agree to be bound by the rules and disciplinary procedures of a body referred to in paragraph (b), including rules and disciplinary procedures imposed by that body from time to time (that is, as well after as before the making of the regulations).
- (6) Public oversight regulations may require bodies carrying out prescribed functions to provide reports to the Financial Supervision Commission in such circumstances and on such occasions as are prescribed and in respect of such matters as are prescribed.
- (7) The Financial Supervision Commission may pay for the services of a body appointed to perform prescribed functions in respect of any of the matters referred to in subsection (1) insofar as –
- (a) those services relate to the performance of prescribed functions; and
 - (b) those services have not been paid for by the auditor concerned.
- (8) Subsections (3) to (6) are without prejudice to the generality of subsection (1).
- (9) Regulations under subsection (1) shall not come into operation unless they are approved by Tynwald.

80E Regulations concerning accounts and audit

- (1) The Financial Supervision Commission may by regulations (in this section referred to as “accounting regulations”) make such provisions as appear to it to be appropriate in connection with the accounting records and financial statements of companies to which this Act applies and their audit.
- (2) Accounting regulations may make provision as to –
- (a) the keeping of accounting records and financial statements;
 - (b) the form, preparation, publication and certification of financial statements;
 - (c) the accounting standards to be complied with when preparing financial statements;
 - (d) the form, preparation and publication of statements of, and information relating to, the financial statements;
 - (e) the time at which, and the manner and form in which, the financial statements and information relating to them shall be provided to the auditor;
 - (f) the qualifications of auditors;
 - (g) the jurisdictions in which auditors must or may be based or resident;
 - (h) the duties of auditors;
 - (i) the practices to be adopted by auditors; and
 - (j) the time within which the financial statements must be prepared.
- (3) Accounting regulations may appoint one or more bodies (whether or not based in the Island) to perform prescribed functions in respect of any of the matters referred to in subsections (1) or (2).
- (4) Accounting regulations may require compliance with standards or the adoption of practices recommended by a body specified in the regulations, and may in particular require compliance with standards or the adoption of practices recommended by that body from time to time (that is, as well after as before the making of the regulations).
- (5) Accounting regulations may add to, modify or repeal provisions of this Act and may provide for any such provision to have effect subject to such adaptations and

modifications as appear to the Financial Supervision Commission to be appropriate.

(6) Accounting regulations may contain such supplementary, incidental and transitional provisions as appear to the Financial Supervision Commission to be appropriate.

(7) Subsection (2) and (6) are without prejudice to the generality of subsection (1).

(8) Regulations under subsection (1) shall not come into operation unless they are approved by Tynwald.

(CAB 2009)

81 Form of records

The records required to be kept by a company under this Act shall be kept-

- (a) in written form; or
- (b) either wholly or partly as electronic records complying with the requirements of the Electronic Transactions Act 2000.

82 Inspection of records

(1) A director of a company is entitled, on giving reasonable notice, to inspect the documents and records of the company in written or electronic form without charge and at any reasonable time specified by such director and to make copies of or take extracts from the documents and records.

(2) A member is entitled, on giving written notice to the company, to inspect-

- (a) copies of the memorandum and articles;
- (b) the register of members or a copy thereof;
- (c) the register of directors or a copy thereof;
- (d) the register of charges maintained under section 137 or a copy thereof; and

(CAB 2009)

(2A) In any circumstances specified in subsection (2B), a member is entitled, on giving written notice to the company –

- (a) to inspect the accounting records maintained under section 80, or a copy thereof; and
- (b) to make copies of or take extracts from the documents and records.

(2B) These are the circumstances referred to in subsection (2A) –

- (a) the articles of the company expressly provide for the inspection by the member of the accounting records and for the making of copies of or the taking of extracts from such documents and records;
- (b) a demand has been made under section 80A(1) and the company has failed to prepare financial statements within the period specified in section 80A(3); or
- (c) the member has requested the permission of the directors to inspect the accounting records and the directors have agreed to allow the member to inspect such records.

(CAB 2009)

(3) Officers of the Commission and the Attorney General (or any person authorised in writing by the Attorney General) shall also have the rights of inspection set out in subsection (1) and in addition shall have the right to inspect any records maintained by the registered agent under section 78(3).

83 Service of process etc. on company

(1) A document may be served on a company by leaving it at, or by sending it by post addressed to the company-

- (a) at its registered office; or
- (b) at the office of its registered agent.

(2) Service of a document on a company may be proved by showing that-

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

84 Records and common seal

(1) A company shall keep-

- (a) minutes of all meetings of-
 - (i) directors;
 - (ii) members;
 - (iii) committees of directors; and
 - (iv) classes of members; and

- (b) copies of all resolutions consented to by-
 - (i) directors;
 - (ii) members;
 - (iii) committees of directors; and
 - (iv) classes of members.

(2) A company may have a common seal and, if it has a seal, an imprint of the seal shall be kept at the office of the registered agent of the company.

(3) A company that wilfully contravenes this section commits an offence.

Chapter 3 - Annual Returns

85 Annual return to be made by a company

(1) An annual return shall be made by a company containing such particulars as may be prescribed.

(2) The annual return must be made up to the company's return date and the registered agent must, within one month after that date, forward a copy to the Registrar.

(3) The company's return date means the anniversary of the company's incorporation or such other date as may be prescribed.

(4) If a company fails to comply with this section it shall be liable to a default fine.

Chapter 4 - General Provisions

86 Contracts and execution of documents

(1) A company may, by affixing its common seal thereto, make or execute any written contract, deed, instrument or other document.

(2) A company need not have a common seal, however, and the following subsections apply whether it does or not.

(3) An oral contract may be made, and a written contract, deed, instrument or other document may be made or executed on behalf of a company by any person acting under its authority, express or implied.

(4) A written contract, deed, instrument or other document made or executed by a company which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon it being so executed.

(5) This section applies to contracts, deeds, instruments and other documents made or executed in the Isle of Man or elsewhere.

87 Contracts before incorporation

(1) A person who enters into a contract or deed in the name of or on behalf of a company before the company is incorporated is personally bound by the contract or deed and is entitled to the benefits of the contract or deed, except where-

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

(2) A company may, by any action or conduct signifying its intention to be bound by a contract or deed entered into in its name or on its behalf before it was incorporated, adopt the contract or deed within such period as may be specified in the contract or deed or, if no period is specified, within a reasonable period after the company's incorporation.

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

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

88 Promissory notes and bills of exchange

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

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

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

89 Power of attorney

(1) Subject to a contrary provision in its memorandum and articles, a company may, by an instrument in writing executed in accordance with section 86(1) or (3), appoint a person as its attorney either generally or in relation to a specific matter.

(2) An act of an attorney appointed under subsection (1) in accordance with the instrument under which such attorney was appointed binds the company.

90 Authentication or attestation of documents

A document requiring authentication or attestation by a company may be authenticated or signed by any person acting under the express or implied authority of the company, and need not be under its common seal.

PART VI DIRECTORS

Chapter 1 - Management by Directors

91 Management by directors

(1) The business and affairs of a company shall be managed by, or under the direction or supervision of, the directors of the company.

(2) The directors of a company have all the powers necessary for managing, and for directing and supervising, the business and affairs of the company.

(3) Subsections (1) and (2) are subject to any modifications or limitations in the memorandum or articles.

(4) Other than during the period between the incorporation of the company and the appointment of the first director under section 95(1) a company must have one or more directors.

(5) Subject to subsection (4), the number of directors of a company may be fixed by, or in the manner provided for in the articles of the company.

(6) Subject to section 93, any individual or any body corporate may be a director of a company.

(7) No body corporate shall be, or agree to be, the director of a company unless it, or another body corporate of which it is a subsidiary-

(a) holds a licence granted under the Financial Services Act 2008 which does not exclude acting as such; or

[Para (a) amended by Financial Services Act 2008 Sch 6.]

(b) is permitted to do so by regulations.

92 Committees of directors

(1) Subject to the memorandum and articles and to subsection (2), the directors may-

(a) designate one or more committees of directors, each consisting of one or more directors; and

(b) delegate any one or more of their powers, including the power to affix the common seal of the company, to the committee.

(2) Subject to the memorandum and articles, any delegation pursuant to subsection (1) may be made subject to any conditions the directors may impose, may be made either collaterally with, or to the exclusion of, their own powers and may be revoked or altered.

(3) Subject to the memorandum and articles and to any conditions imposed pursuant to subsection (2), the proceedings of a committee of directors with two or more members shall be governed by the provisions of this Act regulating the proceedings of directors, so far as they are capable of applying.

Chapter 2 - Appointment, Retirement and Resignation of Directors

93 Persons not permitted to act as directors

(1) The following are not permitted to act as a director of a company-

(a) an individual who is under 18 years of age;

(b) a person who is a disqualified person;

(c) an undischarged bankrupt;

(d) a person who, in respect of a particular company, is disqualified by the memorandum or articles from being a director of the company;

(e) in the case of a director which is a body corporate or other legal person (not being an individual), if the requirements specified in section 91(7) are not met; or

(f) a person who ceases to exist (by way of dissolution or otherwise).

(2) A person who acts as a director of a company whilst not being permitted to act as such under subsection (1) is nevertheless deemed to be a director of the company for the

purposes of any provision of this Act that imposes a duty or obligation on a director.

94 Consent to act as director

A person shall not be appointed as the director of a company unless such person has consented in writing to be a director.

95 Appointment of directors

(1) The members of a company shall, within one month of the date of incorporation of the company, by resolution, appoint one or more persons as the first directors of the company.

(2) Unless the memorandum or articles provide otherwise, a person may be appointed as a director of a company (either to fill any casual vacancy on the board or as an additional director) by either-

- (a) the directors (notwithstanding any vacancy on the board); or
- (b) the members of the company.

(3) A director may be appointed for an indefinite term or for such lesser term as may be specified in the terms of appointment.

(4) Without prejudice to section 93(2), a director holds office until the earliest of the following to occur-

- (a) the cessation of such director's term of office;
- (b) such director's death, resignation or removal;
- (c) such director is no longer permitted to act as a director pursuant to section 93(1).

96 Removal of directors

(1) Notwithstanding anything in its memorandum or articles or in any agreement between a company and any of its directors, a director of a company may be removed from office by resolution of the members of the company.

(2) A resolution under subsection (1) may only be passed-

- (a) at a meeting of the members called for the purpose of removing the director or for purposes including the removal of the director; or
- (b) by a written resolution consented to by a member or members holding at least 75 per cent of the voting rights in relation thereto.

(3) The notice of a meeting called under subsection (2)(a) shall state that the purpose of the meeting is, or the purposes of the meeting include, the removal of a director.

(4) Where expressly permitted by the memorandum or articles of a company, a director of a company may be removed from office by the directors of the company.

97 Resignation of directors

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

98 Liability of former directors

A director who vacates office remains liable under any provisions of this Act that impose liabilities on a director in respect of any acts or omissions or decisions made whilst that person was a director.

99 Power of court to grant relief in certain cases

(1) If in any proceedings for negligence, default, breach of duty or breach of trust against a director it appears to the Court hearing the case that the director is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that such director has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with such director's appointment, that director ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court may relieve that director, either wholly or partly, from such liability on such terms as the Court may think fit.

(2) Where any director has reason to apprehend that any claim will or might be made against that director in respect of any negligence, default, breach of duty or breach of trust, such director may apply to the Court for relief, and the Court on any such application shall have the same power of relief as if the matter had been brought under subsection (1).

100 Validity of acts of director

The acts of a person as a director are valid notwithstanding that-

- (a) the person's appointment as a director was defective; or
- (b) the person is not permitted to act as a director under section 93.

101 Register of directors

(1) A company shall keep a register to be known as a register of directors containing-

- (a) the names and business or residential addresses of the persons who are directors of the company;

- (b) the date on which each person whose name is entered in the register was appointed as a director of the company; and
- (c) the date on which each person named as a director ceased to be a director of the company.

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

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

102 Emoluments and expenses of directors

(1) Subject to the memorandum or articles of a company, the directors may fix their emoluments in respect of services to be rendered in any capacity to the company.

(2) Subject to contrary provision in the memorandum and articles of a company, the directors may be paid all expenses properly incurred in the discharge of their duties.

Chapter 3 - Directors' Interests

103 Directors' appointments and interests

Provided that a director has disclosed any interest in accordance with section 104, a director notwithstanding such director's office-

- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the company or in which the company is otherwise interested;
- (b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the company or in which the company is otherwise interested; and
- (c) shall not, by reason of his office, be accountable to the company for any benefit which such director derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

104 Disclosure of interests

(1) A director of a company shall, forthwith after becoming aware of the fact that such director is interested in a transaction entered into or to be entered into by the company, disclose the interest to the board of the company.

(2) For the purposes of subsection (1), a disclosure to the board to the effect that a director of a company is also a shareholder, director, officer or trustee of another named company or other arrangement and is to be regarded as interested in any transaction which may, after the date of the disclosure, be entered into between the company and that other company or person, is a sufficient disclosure of interest in relation to that transaction.

(3) A disclosure made pursuant to subsection (1) shall be made or brought to the attention of every director on the board, provided that a disclosure shall be deemed to have been so made if it is made at the meeting of the directors at which the transaction was first considered or, if the director in question was not at the date of that meeting interested in the transaction or aware that such director was so interested, at the first meeting of the directors held after the director became so aware or so interested (as the case may be).

(4) A director who contravenes subsection (1) commits an offence.

105 Director disclosing interest may vote and count in quorum

Subject to contrary provision in the memorandum or articles of a company, a director who has disclosed an interest in a transaction in accordance with section 104 shall be counted in the quorum, and may vote, in relation to any resolution of the directors concerning such transaction.

Chapter 4 - Proceedings of Directors and Miscellaneous Provisions

106 Meetings of directors

(1) Subject to the memorandum or articles of a company, the directors of a company may meet at such times and in such manner and places within or outside the Isle of Man as they may determine to be necessary or desirable and shall regulate their proceedings as they see fit.

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

- (a) such director participates by telephone or other electronic means; and
- (b) all directors participating in the meeting are able to communicate with each other.

107 Notice of meetings of directors

(1) Subject to contrary provision in its memorandum and articles, a director of a company shall be given reasonable notice of meetings of directors.

(2) Notwithstanding subsection (1) but subject to the memorandum and articles, a meeting of directors held in contravention of that subsection is valid if all of the directors have waived notice of the meeting and, for this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on the part of such director.

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

108 Quorum for meetings of directors

The quorum for a meeting of directors is that fixed by the memorandum or articles but, where no quorum is so fixed, a meeting of directors is properly constituted for all purposes if at the commencement of the meeting there are two directors present either in person (in the case of a director who is an individual) or by a duly appointed representative (in the case of a corporate director) or by an alternate (in either case) or, in the case of a company having only one director, if at the commencement of the meeting such director is present either in person (in the case of a director who is an individual) or by a duly appointed representative (in the case of a corporate director) or by an alternate (in either case).

109 Resolutions of directors

(1) Unless otherwise specified in this Act or in the memorandum or articles, the exercise by the directors of a company of a power given to them under this Act or the memorandum or articles shall be by a resolution-

- (a) passed at a meeting of directors held under section 106; or
- (b) passed as a written resolution under subsection (3).

(2) Subject to contrary provision in the memorandum or articles, a resolution of directors is passed at a meeting of the directors if it is approved by a majority of the directors who are present at such meeting and (being entitled to do so) vote thereon.

(3) Subject to contrary provision in the memorandum or articles, an action that may be taken by the directors or a committee of directors at a meeting may also be taken by a resolution of directors or a committee of directors consented to in writing or by email, telex, fax, or other electronic communication by all the directors or all the members of a committee of directors (or such specified majority, greater than 50 per cent, thereof as the memorandum or articles may provide), without the need for any notice.

(4) A resolution under subsection (3) may consist of several documents, including electronic communications, in like form each signed or assented to by one or more directors.

110 Alternates for directors

(1) Subject to the memorandum or articles of a company, a director of the company may by a written instrument appoint an alternate who need not be a director.

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

(3) An alternate director shall be deemed for all purposes to be a director and shall alone be responsible for such alternate director's acts and defaults and shall not be deemed to be the agent of such alternate director's appointor.

111 Agents

(1) The directors may appoint any person, including a person who is a director, to be an agent of the company.

(2) Subject to the memorandum or articles of a company, an agent of the company has such powers and authority of the directors, including the power and authority to affix the common seal of the company and otherwise to execute documents as are set forth in the articles or in the resolution of directors appointing the agent.

(3) Where the directors appoint any person to be an agent of the company, they may authorise the agent to appoint one or more substitutes or delegates to exercise some or all of the powers conferred on the agent by the company.

112 Indemnification

(1) Subject to subsection (2) and subject to contrary provision in its articles, a company may indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who-

- (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director of the company; or
- (b) is or was, at the request of the company, serving as a director of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture,

trust or other enterprise.

(2) Subsection (1) does not apply to a person referred to in that subsection unless such person acted honestly and in good faith and in what such person believed to be in the best interests of the company and, in the case of criminal proceedings, had no reasonable cause to believe that the conduct of such person was unlawful.

(3) The termination of any proceedings by any judgment, order, settlement or conviction does not, by itself, create a presumption that the person did not act honestly and in good faith and with a view to the best interests of the company or that the person had reasonable cause to believe that the conduct of such person was unlawful.

(4) If a person referred to in subsection (1) has been successful in defence of any proceedings referred to in subsection (1), the person is entitled to be indemnified against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

(5) A company may not indemnify a person in breach of subsection (2) and any indemnity given in breach of that section is void and of no effect.

113 Insurance

A company may purchase and maintain insurance in relation to any person who is or was a director of the company, or who at the request of the company is or was serving as a director or officer of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under section 112.

PART VII PROTECTED CELL COMPANIES

Chapter 1 - Formation of Protected Cell Companies

114 Interpretation of this Part

In this Part-

'receiver' has the meaning given in section 126(1); and

'receivership order' has the meaning given in section 126(1).

115 Protected cell companies

(1) Subject to subsections (2) and (3), a company limited by shares may be incorporated as a protected cell company under Chapter 1 of Part I of this Act.

(2) The name of a PCC must comply with section 11.

(3) The memorandum of a PCC must comply with section 5(1)(j).

(4) Subject to subsections (2) and (3), a company limited by shares that is not a PCC may apply to the Registrar to be converted into a PCC.

(5) An application pursuant to subsection (4) shall be made in the prescribed form and shall be accompanied by-

- (a) notice pursuant to section 9(a) of an amendment of the company's memorandum to comply with subsection (3) and to adopt new articles;
- (b) a restated memorandum and articles under section 9(b) incorporating the amendments specified in the notice referred to in paragraph (a); and
- (c) an application pursuant to section 14 to amend the name of the company to comply with subsection (2).

(6) Upon receipt of the documents specified in subsection (5), the Registrar shall-

- (a) register the documents; and
- (b) issue a certificate of conversion in the prescribed form to the company.

(7) A certificate of conversion issued pursuant to subsection (6)(b) is conclusive evidence that all the requirements of this Act in respect of conversion have been complied with.

(8) Save insofar as is inconsistent with the provisions of this Part, this Act shall apply in respect of a company that is a PCC as it applies in respect of any other company.

116 Fundamental nature of a PCC

(1) A PCC is a single legal person.

(2) The creation by a PCC of a cell does not create, in respect of that cell, a legal person separate from the company.

Chapter 2 - Cells

117 Creation of cells and cellular and non-cellular assets

(1) A PCC may create one or more cells for the purpose of segregating and protecting cellular assets in the manner provided by this Part.

- (2) Each cell of a PCC must have its own distinct name or designation.
- (3) The assets of a PCC are either cellular assets or noncellular assets.
- (4) The non-cellular assets of a PCC are the assets of the company which are not cellular assets.
- (5) The cellular assets of a PCC are the assets of the company attributable to the cells of the company.

118 Cellular and non-cellular assets: directors' duties

- (1) A PCC shall-
 - (a) keep cellular assets separate and separately identifiable from non-cellular assets; and
 - (b) keep cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells.
- (2) Subsection (1) does not prevent the directors arranging for cellular assets and non-cellular assets to be held by or through a trustee, custodian or nominee.
- (3) There is no default in complying with subsection (1) if cellular assets or non-cellular assets, or a combination of both, are collectively invested, or collectively managed, on behalf of a company if the assets in question remain separately identifiable in accordance with that subsection.
- (4) A PCC that contravenes subsection (1) commits an offence.

Chapter 3 — Cell Share Capital and Distributions

119 Cell share capital

- (1) A PCC may create and issue shares in respect of any of its cells ('cell shares').
- (2) The proceeds of the issue of cell shares ('cell share capital') are cellular assets attributable to the cell in respect of which the cell shares were issued.
- (3) The proceeds of the issue of shares other than cell shares are non-cellular assets.

120 Cellular and non-cellular distributions

- (1) Subject to section 51, the directors of a PCC may authorise a distribution in respect of a cell ('cellular distribution') at any time if they are satisfied, on reasonable grounds, that the PCC will, immediately after the distribution, satisfy the solvency test as it applies by virtue of subsection (2).
- (2) In determining whether a PCC satisfies the solvency test under subsection (1) for the purpose of making a cellular distribution in respect of a cell, no account is to be taken of-
 - (a) the assets and liabilities, attributable to any other cell of the company; or
 - (b) non-cellular assets and liabilities of the company.
- (3) Subject to section 51, the directors of a PCC may authorise a distribution in respect of its non-cellular assets and liabilities (a 'non-cellular distribution') at any time if they are satisfied, on reasonable grounds, that the PCC will, immediately after the distribution, satisfy the solvency test as it applies by virtue of subsection (4).
- (4) In determining whether a PCC satisfies the solvency test under subsection (3) for the purposes of making a non-cellular distribution, no account need be taken of the assets and liabilities of any cell of the PCC, save in the respect of any liability arising under section 122(1)(b).

Chapter 4 - Assets and Liabilities

121 Attribution of non-cellular assets and liabilities

- (1) Liabilities of a PCC not otherwise attributable to any of its cells are to be discharged from the company's non-cellular assets.
- (2) Income, receipts and other property or rights of or acquired by a PCC not otherwise attributable to any cell are to be applied to and comprised in the company's non-cellular assets.

122 Liability of cellular and non-cellular assets

- (1) If any liability arises which is attributable to a particular cell of a PCC-
 - (a) the cellular assets attributable to that cell will be primarily liable;
 - (b) the company's non-cellular assets will be secondarily liable, provided that the cellular assets attributable to the relevant cell have been exhausted; and
 - (c) the liability will not be a liability of any cellular assets not attributable to the relevant cell.
- (2) Subsection (1) is subject to subsections (3) to (8).
- (3) If the company has agreed with the person in respect of whom the liability arises that a liability is the liability solely of-
 - (a) the company's non-cellular assets; or
 - (b) the cellular assets attributable to a particular cell of the company,
 subsection (1) will have effect subject to that agreement.
- (4) In the case of loss or damage which is attributable to a particular cell of a PCC and which is caused by fraud, the loss or damage shall be the liability solely of the company's non-

cellular assets.

(5) Subsection (4) is without prejudice to any liability of any person other than the company.

(6) The fraud referred to in subsection (4) does not include the fraud of any person making a claim against the company or any of its assets or of that person's servants, employees, officers or agents.

(7) The liabilities under subsection (1)(a) of the cellular assets attributable to a particular cell of a PCC will reduce proportionally until the value of the aggregate liabilities equals the value of those assets but this subsection will be disregarded in assessing the existence and extent of any secondary liability under subsection (1)(b).

(8) The liabilities of the company's non-cellular assets will reduce proportionally until the value of the aggregate liabilities equals the value of those assets but this subsection will not apply in any situation in which any of the liabilities of the company's non-cellular assets arises from fraud or by reason of a special agreement such as is referred to in subsection (3).

123 Disputes as to liability attributable to cells

(1) In the event of any dispute as to-

- (a) whether any right is or is not in respect of a particular cell;
- (b) whether any creditor is or is not a creditor in respect of a particular cell;
- (c) whether any liability is or is not attributable to a particular cell;
- (d) the amount to which any liability is limited,

the Court, on the application of the PCC, and without affecting any other right or remedy of any person, may issue a declaration in respect of the matter in dispute.

(2) The Court, on hearing an application for a declaration under subsection (1)-

- (a) may direct that any person shall be heard on the application;
- (b) may make an interim declaration, or adjourn the hearing, conditionally or unconditionally;
- (c) may make the declaration subject to such terms and conditions as it thinks fit;
- (d) may direct that the declaration is binding upon such persons as are specified.

124 Position of creditors

(1) The rights of creditors of a PCC shall correspond with the liabilities provided for in section 122.

(2) No such creditor shall have any rights other than the rights referred to in this section and in sections 122 and 125.

(3) There is implied in every transaction entered into by a PCC (unless expressly excluded in writing) the following terms-

- (a) that no party will seek, whether in any proceedings or by any other means, to make or attempt to make liable any cellular assets attributable to any cell of the company in respect of a liability not attributable to that cell;
- (b) that if any party succeeds by any means in making liable any cellular assets attributable to any cell of the company in respect of a liability not attributable to that cell, that party is liable to the company to pay a sum equal to the value of that benefit; and
- (c) that if any party succeeds in arresting, seizing or attaching by any means, or otherwise levying execution against, any cellular assets attributable to any cell of the company in respect of a liability not attributable to that cell, that party holds those assets or their proceeds on trust for the company and must keep those assets or proceeds separate and identifiable as such trust property.

(4) All sums recovered by a PCC as a result of a trust under subsection (3)(c) will be credited against any concurrent liability imposed pursuant to the implied term set out in subsection (3)(b).

(5) Any asset or sum recovered by a PCC under the implied term set out in paragraphs (b) or (c) of subsection (3) or by any other means in the events referred to in those paragraphs must, after the deduction or payment of any costs of recovery, be applied by the company so as to compensate the cell affected.

(6) In the event of any cellular assets attributable to a cell of a PCC being taken in execution in respect of a liability not attributable to that cell, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the cell affected, the company must-

- (a) certify the value of the assets lost to the cell affected; and
- (b) transfer or pay, from the cellular or non-cellular assets to which the liability was attributable to the cell affected, assets or sums sufficient to restore to the cell affected the value of the assets lost.

(7) Where under subsection (6)(b) a PCC is obliged to make a transfer or payment from cellular assets attributable to a cell of the company, and those assets are insufficient, the company shall so far as possible make up the deficiency from its non-cellular assets.

125 Recourse to cellular assets by creditors

Without prejudice to the provisions of sections 122 and 124, cellular assets attributable to a cell of a PCC-

- (a) are available only to the creditors of the company who are creditors in respect of that cell and who are thereby entitled, in conformity with the provisions of this Part, to have recourse to the cellular assets attributable to that cell;
- (b) are absolutely protected from the creditors of the company who are not creditors in respect of that cell and who accordingly will not be entitled to have recourse to the cellular assets attributable to that cell.

Chapter 5 - Receivership Orders

126 Receivership orders in relation to cells

(1) A receivership order is an order directing that the business and cellular assets of, or attributable to, a cell shall be managed by a person specified in the order (“the receiver”) for the purposes of-

- (a) the orderly winding up of the business of or attributable to the cell; and
- (b) the distribution of the cellular assets attributable to the cell to those entitled to have recourse thereto.

(2) If the Court is satisfied-

- (a) that the cellular assets attributable to a particular cell of the company (when account is taken of the company’s non-cellular assets, unless there are no creditors in respect of that cell entitled to have recourse to the company’s non-cellular assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that cell; and
- (b) that the making of an order under this section would achieve the purposes set out in subsection (1),

the Court may make a receivership order under this section in respect of that cell.

(3) A receivership order-

- (a) must not be made if-
 - (i) a liquidator has been appointed to act in respect of the PCC; or
 - (ii) the PCC has passed a resolution for voluntary winding up; and
- (b) shall cease to be of effect upon the appointment of a liquidator to act in respect of the PCC.

(4) A receivership order may be made in respect of one or more cells.

(5) A receivership order does not affect prior acts.

(6) No resolution for the voluntary winding up of a PCC any cell of which is subject to a receivership order shall be effective without leave of the Court.

127 Applications for receivership orders

(1) An application for a receivership order in respect of a cell of a PCC may be made by-

- (a) the company;
- (b) the directors of the company;
- (c) any creditor of the company in respect of that cell;
- (d) any holder of cell shares in respect of that cell; or
- (e) such other person as may be prescribed by regulations.

(2) The Court, on hearing an application-

- (a) for a receivership order; or
 - (b) for leave, under section 126(6), for a resolution for voluntary winding up,
- may make an interim order or adjourn the hearing, conditionally or unconditionally.

(3) Notice of an application to the Court for a receivership order in respect of a cell of a PCC shall be served upon-

- (a) the company;
- (b) such other persons as may be prescribed by regulations; and
- (c) such other persons (if any) as the Court may direct,

who shall each be given an opportunity of making representations to the Court before the order is made.

128 Functions of receiver and effect of receivership order

- (1) The receiver of a cell-
 - (a) shall, within one month from the date of the receivership order, file a certified copy of the order;
 - (b) may do anything necessary for the purposes set out in section 126(1); and
 - (c) has all the functions of the directors in respect of the business and cellular assets of or attributable to the cell.
- (2) The receiver may at any time apply to the Court-
 - (a) for directions as to the extent or exercise of any function or power;
 - (b) for the receivership order to be discharged or varied; or
 - (c) for an order as to any matter arising in the course of the receivership.
- (3) In exercising any functions the receiver is the agent of the PCC, and does not incur personal liability except to the extent that the receiver is fraudulent, reckless or grossly negligent, or acts in bad faith.
- (4) Any person dealing with the receiver in good faith is not concerned to enquire whether the receiver is acting within the receiver's powers.
- (5) When an application has been made for, and during the period of operation of, a receivership order-
 - (a) no proceedings may be instituted or continued by or against the PCC in relation to the cell in respect of which the receivership order was made; and
 - (b) no steps may be taken to enforce any security or in execution of legal process in respect of the business or cellular assets of or attributable to the cell in respect of which the receivership order was made,except by leave of the Court, which may be conditional or unconditional.
- (6) During the period of operation of a receivership order-
 - (a) the functions of the directors shall cease in respect of the business and cellular assets of or attributable to the cell in respect of which the order was made; and
 - (b) the receiver of the cell is deemed to be a director of the PCC in respect of the non-cellular assets of the company, unless there are no creditors in respect of that cell entitled to have recourse to the company's non-cellular assets.
- (7) A person who contravenes subsection 1(a) commits an offence.

129 Discharge and variation of receivership orders

- (1) The Court cannot discharge a receivership order unless the Court is satisfied that the purpose for which the order was made-
 - (a) has been achieved or substantially achieved; or
 - (b) is incapable of achievement.
- (2) The Court, on hearing an application for the discharge or variation of a receivership order, may make any interim order or adjourn the hearing, conditionally or unconditionally.
- (3) Upon the Court discharging a receivership order in respect of a cell of a PCC on the ground that the purpose for which the order was made has been achieved or substantially achieved, the Court may direct that any payment made by the receiver to any creditor of the company in respect of that cell shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that cell; and the creditor's claims against the company in respect of that cell shall be thereby deemed extinguished.
- (4) Subsection (3) shall not affect or extinguish any right or remedy of a creditor against any other person, including any surety of the PCC.
- (5) Subject to the provisions of-
 - (a) this Part and any rule of law as to preferential payments; and
 - (b) any agreement between the PCC and any creditor thereof as to the subordination of the debts due to that creditor to the debts due to the company's other creditors,the company's cellular assets attributable to any cell of the company in relation to which a receivership order has been made must, in the winding up of the business of or attributable to that cell pursuant to the provisions of this Part, be realised and applied proportionately in satisfaction of the company's liabilities attributable to that cell.
- (6) Any surplus must thereafter be distributed (unless the memorandum or articles provide otherwise)-
 - (a) among the holders of the cell shares or the persons otherwise entitled to the surplus; or
 - (b) where there are no cell shares and no such persons, among the holders of the non-cellular shares or the persons otherwise entitled to any surplus non-cellular assets,in each case according to their respective rights and interests in or against the company.

(7) The Court may, upon discharging a receivership order in respect of a cell of a PCC, direct that the cell shall be dissolved on such date as the Court may specify.

(8) On the dissolution of a cell of a PCC, the company may not undertake business or incur liabilities in respect of that cell.

130 Remuneration of receiver

The remuneration of a receiver and any expenses properly incurred by such receiver shall be payable, in priority to all other claims, from-

- (a) the cellular assets attributable to the cell in respect of which the receiver was appointed; and
- (b) to the extent that these may be insufficient, the noncellular assets of the PCC.

Chapter 6 - Liquidation

131 Provisions in relation to liquidation of PCC

(1) Notwithstanding any statutory provision or rule of law to the contrary, in the liquidation of a PCC, the liquidator-

- (a) must deal with the company's assets in accordance with the requirements of section 118(1);
- (b) in discharge of the claims of creditors of the PCC, shall apply the company's assets to those entitled to have recourse thereto in conformity with the provisions of this Part.

(2) Section 235 of the Companies Act 1931 (distribution of property of company) applies, with the necessary modifications, in relation to protected cell companies but subject to this Act.

Chapter 7 - General Provisions

132 Company to inform persons that they are dealing with PCC

(1) A PCC shall-

- (a) inform any person with whom it enters into any transaction in respect of a particular cell that the company is a PCC; and
- (b) for the purposes of that transaction, identify or specify the cell in respect of which that person is transacting.

(2) A PCC that contravenes subsection (1) commits an offence.

133 Security interests in respect of cell assets

(1) A company may create any security interest in respect of assets attributable to a particular cell in relation to-

- (a) any liability attributable to that cell;
- (b) any liability that is not attributable to that cell.

(2) Without affecting the generality of section 116-

- (a) Part VIII; and
- (b) Part VI of the Companies Act 1931 as it applies to companies pursuant to section 182,

apply in respect of each cell of a PCC as if each cell were a separate company.

134 Savings for directors' functions

(1) This Part does not affect the functions of the directors of a PCC in respect of the affairs of the company including the due administration of the affairs of each cell except as expressly provided.

(2) Subsection (1) does not affect the powers of delegation by directors.

135 Saving for internal arrangements

(1) This Part does not prevent, in the ordinary course of business of a PCC, arrangements-

- (a) as between cells; or
- (b) as between cells and the PCC,

in relation to the PCC's business or to the PCC's business attributable to the cells concerned.

(2) In respect of any arrangements of a kind mentioned in subsection (1), the PCC shall make the necessary adjustments to the accounting records of the PCC and those attributable to its cells.

(3) This section does not affect the generality of section 116.

PART VIII

REGISTRATION OF CHARGES

136 Interpretation of this Part

(1) In this Part-

'charge' means any form of security interest, whether fixed or floating, over property, wherever situated, other than an interest arising by operation of law; and

'company property' means property of any nature which is beneficially owned by the company and includes future property.

(2) A reference in this Part to the creation of a charge includes a reference to the acquisition of property, wherever situated, which is the subject of a charge and for this purpose, the date of creation of the charge is deemed to be the date of acquisition of the property.

137 Company to keep register of charges

(1) A company shall keep a register of all charges created by the company over any company property showing-

- (a) if the charge is a charge created by the company, the date of its creation or, if the charge is a charge existing on property acquired by the company, the date on which the property was acquired;
- (b) a short description of the liability secured by the charge;
- (c) a short description of the property charged;
- (d) the name and address of the chargee; and
- (e) as to whether or not there exists any prohibition or restriction contained in the instrument creating the charge on the company creating any future charge ranking in priority to or equally with the charge.

(2) A copy of the register of charges shall be kept at the office of the company's registered agent.

(3) Where-

- (a) there is a variation in the terms of a charge registered in a company's register of charges under this section; or
- (b) a charge registered in a company's register of charges under this section ceases to affect the property of a company,

the company shall amend its register of charges accordingly.

(4) A company that contravenes this section commits an offence.

138 Registration of charges

(1) Where a company creates a charge over any company property an application to the Registrar to register the charge may be made within one month after the date of its creation by such persons as are prescribed by regulations.

(2) An application under subsection (1) is made by filing an application in the prescribed form containing the details specified in paragraphs (a) to (e) of section 137(1).

(3) The Registrar shall keep, with respect to each company, a record of registered charges containing such information as may be prescribed by regulations.

(4) Upon receipt of an application under subsection (1), the Registrar shall forthwith-

- (a) register the details contained in the application form;
- (b) issue a certificate of registration of the charge and send a copy to the applicant; and
- (c) record and state on the certificate of registration the date on which the charge was registered and that it was registered pursuant to this section.

(5) A certificate issued under subsection (4) is conclusive proof that the requirements of this Part as to registration have been complied with and that the charge referred to in the certificate was registered on the date stated in the certificate.

(6) Subject to section 140, any charge created by a company over any company property shall be void against the liquidator and any creditor of the company unless it is registered pursuant to this section.

139 Variation of registered charge

(1) Where there is a variation in the terms of a charge registered under section 138 or 140, an application for the variation to be registered may be made by such persons as are prescribed by regulations.

(2) An application under subsection (1) is made by filing an application in the prescribed form.

(3) Upon receipt of an application under subsection (2), the Registrar shall forthwith-

- (a) register the variation of the charge; and
- (b) issue a certificate of variation and send a copy of the certificate to the applicant.

(4) The Registrar shall record and state on the certificate of variation the date on which a variation of charge was registered.

(5) A certificate issued under subsection (3) is conclusive proof that the variation referred to in the certificate of variation was registered on the date stated in the certificate.

140 Late registration of charges

(1) Where a company creates a charge over any company property and such charge is not registered pursuant to section 138, an application to the Registrar may be made at any time prior to the commencement of the winding up of the company by such persons as are prescribed by regulations.

(2) An application under subsection (1) is made by filing an application in the prescribed form containing the details specified in paragraphs (a) to (e) of section 137(1).

(3) Upon receipt of an application under subsection (2) the Registrar shall forthwith-

- (a) register the details contained in the application form;
- (b) issue a certificate of registration of the charge and send a copy to the applicant; and
- (c) record and state on the certificate of registration the date on which the charge was registered and that it was registered pursuant to this section.

(4) The rights of the chargee under a charge registered pursuant to this section are without prejudice to the rights of any party acquired during the period between the date of creation of the charge and the date of its registration.

(5) Subject to subsection (4), a certificate issued under subsection (3)(b) is conclusive proof that the requirements of this Part as to registration have been complied with and that the charge referred to in the certificate was registered on the date stated in the certificate.

141 Charge ceasing to affect company's property

(1) Where a charge registered under section 138 or 140 ceases to affect any company property a notice in the prescribed form specifying the company property that has ceased to be affected by the charge shall be filed.

(2) A notice filed under subsection (1) shall be filed by the registered agent and shall be accompanied by written consent on the part of the chargee as to the release of the charge to which it relates or by such other evidence of the release satisfactory to the Registrar.

(3) Upon receipt of the documents specified in subsections (1) and (2), the Registrar-

- (a) shall forthwith-
 - (i) register the notice; and
 - (ii) issue a certificate and send a copy of the certificate to the company; and

(b) shall retain a copy of the notice.

(4) The Registrar shall record and state on the certificate issued under subsection (3) the date on which the notice filed under subsection (1) was registered.

(5) From the date stated in the certificate issued under subsection (3), the charge is deemed not to be registered in respect of the company property specified in the notice filed under subsection (1).

142 Registration of enforcement of security

(1) If any person obtains an order for the appointment of a receiver of the property of a company, or appoints such a receiver under any powers contained in any instrument, such person shall within 7 days from the date of the order or of the appointment under the said powers give notice in the prescribed form to the Registrar and the Registrar shall register the notice.

(2) Any person appointed to act as receiver of the property of a company under the powers contained in any instrument who ceases to act as such shall, on so ceasing, give notice in the prescribed form to the Registrar and the Registrar shall register the notice.

(3) Any person who contravenes this section commits an offence.

PART IX RE-REGISTRATION

Chapter 1 - Re-registration of a Company Incorporated under this Act

143 Power of company to re-register

(1) Subject to this Chapter, a company of any type specified in section 1 may make application to the Registrar in the prescribed form to re-register as a company of another type specified in section 1.

(2) This Chapter shall not apply to a company limited by shares that is a protected cell company.

144 Application to re-register

(1) An application pursuant to section 143 shall be accompanied by-

- (a) a statutory declaration in the prescribed form made by all the directors of the company stating that the company satisfies the solvency test;
- (b) a new memorandum; and
- (c) if the articles of the company upon re-registration are to differ from the relevant model

articles, new articles.

(2) The memorandum of a company re-registering under this section shall state-

- (a) the name of the company as at the date of the application;
- (b) the name under which the company proposes to be reregistered (if different from that specified in paragraph (a));
- (c) whether the company will be re-registered as-
 - (i) a company limited by shares;
 - (ii) a company limited by guarantee;
 - (iii) a company limited by shares and by guarantee;
 - (iv) an unlimited company with shares; or
 - (v) an unlimited company without shares;
- (d) the address of the registered office of the company in the Isle of Man upon re-registration;
- (e) the name of the registered agent of the company in the Isle of Man upon re-registration;
- (f) in the case of a company that will be re-registered as a company limited by guarantee or a company limited by shares and by guarantee, the amount which each member of the company upon re-registration is liable to contribute to the company's assets in the event that the company is wound up while such person is a member or within 1 year (or such longer period as may be specified for the purpose in the memorandum) after such person ceased to be a member; and
- (g) in the case of a company limited by guarantee or an unlimited company without shares that, upon reregistration, will be a company limited by shares, a company limited by shares and by guarantee or an unlimited company with shares, the agreement of at least one member to take one or more shares on the reregistration of the company.

(3) The memorandum shall state, in respect of each person agreeing to take one or more shares on the re-registration of the company pursuant to subsection (2)(g)-

- (a) the number of shares that such person agrees to take; and
- (b) the amount that such person agrees to pay for each share that such person is specified as having agreed to take.

(4) Without prejudice to section 21, the memorandum may contain a statement specifying the purposes for which the company is established or the business, activities or transactions which the company is permitted to undertake or the restrictions (if any) upon such purposes, business, activities or transactions for which the company is established.

(5) Where-

- (a) a limited company applies to re-register as an unlimited company pursuant to section 143; or
- (b) an unlimited company applies to re-register as a limited company pursuant to section 143,

the company making the application must change its name upon re-registration to comply with the requirements of section 11.

(6) Subsection (7) applies with effect from the date of a company's re-registration in any case where articles ("the proposed articles") were delivered under subsection (1)(c).

(7) If the proposed articles-

- (a) make no provision for a matter for which provision is made by the relevant model articles; and
- (b) do not expressly or by necessary implication exclude that provision of those relevant model articles,

the provision is deemed to be included in the proposed articles, and "the relevant model articles" here means the relevant model articles as in force at the date of the company's re-registration.

145 Restrictions on re-registration of company with shares

A company limited by shares, a company limited by shares and by guarantee or an unlimited company with shares may only re-register pursuant to section 144 as a company limited by guarantee or an unlimited company without shares if upon reregistration it shall have no shares in issue.

146 Re-registration

(1) Upon receipt of the documents specified in section 144(1), the Registrar shall-

- (a) register the new memorandum and articles (if any) delivered pursuant to section 144(1);

and

(b) issue a certificate of re-registration in the prescribed form.

(2) A certificate of re-registration issued by the Registrar is conclusive evidence of compliance with all requirements of this Act in respect of re-registration.

147 Consequences of re-registration

(1) The re-registration of an unlimited company as a limited company shall not affect the rights or liabilities of the company in respect of any liability incurred, or any contract entered into, by, to, with or on behalf of the company before re-registration.

(2) The re-registration of a company under this Chapter shall not be deemed to operate-

(a) to create a new legal entity; or

(b) to prejudice or affect the continuity of the company.

(3) Upon re-registration of a company under this Chapter-

(a) the new memorandum filed pursuant to section 144(1)(b) shall be the memorandum of the company to the exclusion of the memorandum in force immediately prior to its re-registration;

(b) the articles of the company in force immediately prior to its re-registration shall cease to be the articles of the company and the proposed articles (if any) or the relevant model articles (if no proposed articles have been delivered pursuant to section 144(1)(c)) shall be the articles of the company; and

(c) each person who agreed in the new memorandum to take one or more shares in the company-

(i) is deemed to have been issued with the number of shares that such person is specified in the new memorandum as having agreed to take; and

(ii) becomes liable to pay the amount that such person is specified in the new memorandum as having agreed to pay for those shares.

Chapter 2 - Re-registration of a 1931 Act Company

148 Power of 1931 Act company to re-register

Subject to this Chapter, a 1931 Act company may make application to the Registrar in the prescribed form to re-register as a company incorporated under this Act of such type specified in section 1 as corresponds to its type under the Companies Acts 1931 to 2004.

149 Application to re-register a 1931 Act company

(1) An application pursuant to section 148 shall be filed by the person named in the new memorandum referred to in paragraph (b) as the first registered agent of the company and shall be accompanied by-

(a) certified copies of-

(i) a resolution passed by a member or members holding at least 75 per cent of the voting rights exercised in relation thereto; and

(ii) a resolution of each class of members (if any) passed by a member or members holding at least 75 per cent of the voting rights exercised in relation thereto,

in each case authorising the re-registration of the 1931 Act company as a company incorporated under this Act, adopting a new memorandum of association complying with subsection (2) and (if applicable) adopting new articles;

(b) a new memorandum complying with subsection (2);

(c) if the articles of the company upon re-registration are to differ from the relevant model articles or if the company is to be re-registered as a protected cell company, new articles.

(2) The memorandum of a company re-registering under this section shall state-

(a) the name of the company as at the date of the application;

(b) the name under which the company proposes to be reregistered (if different from that specified in paragraph (a));

(c) whether the company will be re-registered as-

(i) a company limited by shares;

(ii) a company limited by guarantee;

(iii) a company limited by shares and by guarantee;

(iv) an unlimited company with shares; or

- (v) an unlimited company without shares;
- (d) the address of the registered office of the company in the Isle of Man upon re-registration;
- (e) the name of the registered agent of the company in the Isle of Man upon re-registration;
- (f) in the case of a company that will be re-registered as a company limited by guarantee or a company limited by shares and by guarantee, the amount which each member of the company upon re-registration is liable to contribute to the company's assets in the event that the company is wound up while such person is a member or within 1 year (or such longer period as may be specified for the purpose in the memorandum) after such person ceased to be a member; and
- (g) in the case of a 1931 Act company that is a protected cell company for the purposes of the Companies Acts 1931 to 2004, that the company is a protected cell company.

(3) Without prejudice to section 21, the memorandum may contain a statement specifying the purposes for which the company is established or the business, activities or transactions which the company is permitted to undertake or the restrictions (if any) upon such purposes, business, activities or transactions for which the company is established.

(4) Subject to subsection (6), subsection (5) applies with effect from the date of a company's re-registration in any case where articles ('the proposed articles') were delivered under subsection (1)(d).

(5) If the proposed articles-

- (a) make no provision for a matter for which provision is made by the relevant model articles; and
- (b) do not expressly or by necessary implication exclude that provision of those relevant model articles,

the provision is deemed to be included in the proposed articles, and 'the relevant model articles' here means the relevant model articles as in force at the date of the company's re-registration.

(6) Subsection (5) does not apply where the company is to be re-registered as a protected cell company (in respect of which there are no relevant model articles).

150 Re-registration of a 1931 Act company

(1) Upon receipt of the documents specified in section 149(1), the Registrar shall-

- (a) register the new memorandum and articles (if any) delivered pursuant to section 149(1); and
- (b) allot a unique number to the company; and
- (c) issue a certificate of re-registration in the prescribed form.

(2) A certificate of re-registration issued by the Registrar is conclusive evidence of compliance with all requirements of this Act in respect of re-registration.

151 Consequences of re-registration of a 1931 Act company

(1) The re-registration of a 1931 Act company under this Chapter shall not be deemed to operate-

- (a) to create a new legal entity; or
- (b) to prejudice or affect the continuity of the company.

(2) Upon re-registration of a 1931 Act company under this Chapter-

- (a) the new memorandum filed pursuant to section 149(1)(c) shall be the memorandum of the company to the exclusion of the memorandum in force immediately prior to its re-registration; and
- (b) the articles of the company in force immediately prior to its re-registration shall cease to be the articles of the company and the proposed articles (if any) or the relevant model articles (if no proposed articles have been delivered pursuant to section 149(1)(d)) shall be the articles of the company.

(3) On the date of the certificate of re-registration of a 1931 Act company under this

Chapter-

- (a) the company shall cease to be a company incorporated under the Companies Acts 1931 to 2004; and
- (b) the Companies Acts 1931 to 2004 shall cease to apply to the company.

PART X
SCHEMES OF MERGER, CONSOLIDATION AND
ARRANGEMENTS AND RIGHTS OF DISSENTERS
Chapter 1 - Mergers and Consolidations

152 Interpretation of this Part

In this Part-

'**consolidated company**' means the new company incorporated under this Act that results from the consolidation of two or more constituent companies;

'**consolidation**' means the consolidation of two or more constituent companies into a new company;

'**constituent company**' means a company that is participating in a merger or consolidation with one or more other companies;

'**merger**' means the merging of two or more constituent companies into one of the constituent companies;

'**surviving company**' means the constituent company incorporated under this Act into which one or more other constituent companies are merged.

153 Approval of merger or consolidation

(1) Subject to subsection (2), two or more companies may merge or consolidate in accordance with this section.

(2) A constituent company may not participate in a merger or consolidation under this section if-

- (a) it is in liquidation or is subject to insolvency or analogous proceedings in any jurisdiction;
- (b) a receiver or manager has been appointed in relation to any of its assets;
- (c) it has entered into an arrangement with its creditors that has not been concluded;
- (d) an application made to a court in any jurisdiction for the liquidation of the constituent company or for the constituent company to be subject to insolvency or analogous proceedings has not yet been determined; or
- (e) it fails to satisfy the solvency test.

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

- (a) the name of each constituent company and the name of the surviving company or the consolidated company;
- (b) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other assets, or a combination thereof; and
- (c) in respect of a merger, a statement of any amendment to the memorandum or articles of the surviving company to be brought about by the merger.

(4) In the case of a consolidation, the scheme of consolidation shall have annexed to it a form of memorandum for the consolidated company complying with section 155 and (if desired) articles to be adopted by the consolidated company.

(5) For the avoidance of doubt, the terms and conditions of any proposed merger or consolidation may provide that the manner and basis of converting shares in any constituent company may vary as between holders of shares of different classes and between holders of shares of the same class.

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

- (a) the scheme of merger or consolidation shall be authorised by a resolution passed by a member or members holding at least 75 per cent of the voting rights exercised in relation thereto;
- (b) the scheme of merger or consolidation shall also be authorised by a resolution passed by a member or members holding at least 75 per cent of the voting rights exercised in relation thereto by each class-
 - (i) that is entitled pursuant to the memorandum or articles to vote thereon as a class; and
 - (ii) that if the scheme contains any provisions that, if contained in a proposed amendment to the memorandum or articles, would entitle the class to vote thereon as a class;
- (c) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the scheme of merger or consolidation, shall be given to each member, whether or not entitled to vote on the merger or consolidation; and
- (d) if it is proposed to obtain the written consent of members, a copy of the scheme of merger or consolidation shall be given to each member, whether or not entitled to

consent to the scheme of merger or consolidation.

154 Registration of merger or consolidation

(1) On approval of the scheme of merger or consolidation by the directors and members of each constituent company, the scheme of merger or consolidation shall be executed by each constituent company.

(2) The scheme of merger or consolidation executed pursuant to subsection (1) shall be filed by the registered agent with the Registrar together with-

- (a) certified copies of all resolutions of members specified by section 153(6)(a) and (b);
- (b) statutory declarations by all the directors of each constituent company that such constituent company complies with the requirements of section 153(2);
- (c) a copy of a notice sent to each member of the company and published in such manner as may be prescribed by regulations at least 21 days prior to the filing to the effect that the company intends to participate in the proposed merger or consolidation stating that the scheme of merger or consolidation may be inspected at such office of the registered agent of each constituent company at such reasonable times as may be specified;
- (d) the written consent to the making of the filing by the holders of all charges for the time being registered in respect of each constituent company; and
- (e) in the case of a consolidation, the memorandum for the consolidated company complying with section 155 and the articles (if any) to be adopted by the consolidated company.

(3) If the Registrar is satisfied that the proposed name of the surviving company or consolidated company complies with section 11 and, if appropriate, section 13 and is a name under which the company could be registered under section 12, upon receipt of the documents specified in subsection (2) the Registrar shall-

- (a) register the scheme of merger or consolidation on the file of each constituent company;
- (b) issue a certificate of merger or consolidation in the prescribed form;
- (c) in the case of a merger, register any amendment to the memorandum or articles of the surviving company;
- (d) in the case of a consolidation-
 - (i) register the memorandum and articles (if any) of the consolidated company;
 - (ii) allot a unique number to the consolidated company; and
 - (iii) issue a certificate of incorporation of the consolidated company.

(4) A certificate of merger or consolidation issued by the Registrar is conclusive evidence of compliance with all requirements of this Act in respect of the merger or consolidation.

155 Memorandum of consolidated company

(1) The memorandum of a consolidated company under this Act shall state-

- (a) the name of the consolidated company;
- (b) whether the consolidated company is-
 - (i) a company limited by shares;
 - (ii) a company limited by guarantee;
 - (iii) a company limited by shares and by guarantee;
 - (iv) an unlimited company with shares; or
 - (v) an unlimited company without shares;
- (c) the address of the first registered office of the consolidated company in the Isle of Man;
- (d) the name of the first registered agent of the consolidated company in the Isle of Man;
- (e) in the case of a consolidated company limited by guarantee and a consolidated company limited by shares and by guarantee, the amount which each member of the consolidated company is liable to contribute to the company's assets in the event that the consolidated company is wound up while such person is a member or within 1 year (or such longer period as may be specified for the purpose in the memorandum) after such person ceased to be a member; and
- (f) in the case of a protected cell company, that the consolidated company is a protected

cell company.

(2) Without prejudice to section 21, the memorandum of a consolidated company may contain a statement specifying the purposes for which the consolidated company is established or the business, activities or transactions which the consolidated company is permitted to undertake or the restrictions (if any) upon such purposes, business, activities or transactions for which the consolidated company is established.

156 Effect of merger or consolidation

(1) A merger or consolidation is effective on the date of the certificate of merger or consolidation issued by the Registrar pursuant to section 154(3)(b).

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

- (a) in the case of a merger, the memorandum and articles of the surviving company are automatically amended to the extent, if any, that changes in its memorandum and articles are contained in the scheme of merger;
- (b) in the case of a consolidation, the memorandum and articles (if any) delivered pursuant to section 154(2)(e), are the memorandum and articles of the consolidated company;
- (c) assets of every description, including choses in action and the business of each of the constituent companies, immediately vest in the surviving company or the consolidated company (as the case may be); and
- (d) the surviving company or the consolidated company (as the case may be) is liable for all claims, debts, liabilities and obligations of each of the constituent companies.

(3) Where a merger or consolidation occurs-

- (a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause of action existing, against a constituent company or against any member, director, officer or agent thereof, is released or impaired by the merger or consolidation; and
- (b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any member, director, officer or agent thereof, are abated or discontinued by the merger or consolidation, but-
 - (i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, officer or agent thereof, as the case may be; or
 - (ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.

(4) The Registrar shall strike off the register of companies-

- (a) any constituent company that is not the surviving company in a merger; or
- (b) any constituent company that participates in a consolidation.

(5) If a company has been struck off the register of companies under subsection (4) it shall thereupon be deemed to have been dissolved.

Chapter 2 - Arrangements

157 Power to enter into arrangements

(1) In this Chapter, the expression '**arrangement**' includes, without limitation, the following-

- (a) any compromise;
- (b) any reorganisation or reconstruction of a company including, without limitation any reorganisation of its share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both of those methods;
- (c) any amalgamation of two or more companies;
- (d) any merger or consolidation of two or more companies;
- (e) a separation of two or more businesses carried on by a company;
- (f) any sale, transfer, exchange or other disposition of any part of the assets or business of a company to any person in exchange for shares, debt obligations or other securities of that person, or money or other assets, or a combination thereof;
- (g) a dissolution of a company incorporated under this Act; and
- (h) any combination of any of the things specified in paragraphs (a) to (g).

(2) Where an arrangement is proposed between two or more companies or between a company and its creditors or any class of them, or between the company and its members or any class of them, or between any of the foregoing, the directors of each company that proposes to participate in the arrangement shall approve a written scheme of arrangement containing, as the

case requires-

- (a) the name of each company that proposes to participate in the arrangement and, where the arrangement involves a merger or consolidation, the name of the surviving company or the consolidated company;
- (b) the terms and conditions of the proposed arrangement; and
- (c) where the arrangement involves a merger, a statement of any amendment to the memorandum or articles of the surviving company to be brought about by the merger.

(3) In the case of an arrangement which involves a consolidation, the scheme of arrangement shall have annexed to it-

- (a) a form of memorandum for the consolidated company complying with section 155 and (if desired) articles to be adopted by the consolidated company; and
- (b) a document in the prescribed form signed by the person named in the memorandum referred to in paragraph (a) as the registered agent signifying such person's consent to act as registered agent.

(4) The Court may, on the application of any person referred to in subsection (2), or, in the case of a company that proposes to participate in the arrangement and which is in the course of being wound up, the liquidator thereof, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, of any company that proposes to participate in the arrangement to be summoned in such manner as the Court directs.

(5) If a majority in number representing 75 per cent in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting at the meeting, agree to any arrangement, the arrangement shall, if sanctioned by order of 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 companies or, in the case of a company in the course of being wound up, on the liquidator and contributories of such company.

158 Provisions for facilitating arrangements

(1) Where an application is made to the Court under section 157 for an order sanctioning an arrangement proposed between any such persons as are mentioned in that section, and it is shown to the Court that the arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation, merger or consolidation of any two or more companies, and that under the scheme-

- (a) the whole or any part of the undertaking or the property of any company concerned in the scheme ('a transferor company') is to be transferred to another company ('the transferee company'); or
- (b) any such companies are to be merged or consolidated

the Court may, either by the order sanctioning the arrangement or by any subsequent order, make provision for all or any of the matters specified in subsection (2).

(2) An order made under subsection (1) may provide for all or any of the following matters-

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the 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 merger of any two or more companies;
- (e) the consolidation of any two or more companies;
- (f) the dissolution, without winding-up, of any transferor company or any constituent company that is not the surviving company in a merger or any constituent company that participates in a consolidation;
- (g) the provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the arrangement under section 161;
- (h) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction, amalgamation, merger or consolidation shall be fully and effectively carried out.

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

arrangement to cease to have effect.

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

159 Registration of Court orders

(1) Where an order is made under section 157 or 158, each company to which the arrangement relates shall file a certified copy thereof, together with a copy of the scheme of arrangement and all documents required to be annexed thereto (if any), with the Registrar within 7 days after the making of the order.

(2) A company that contravenes subsection (1) commits an offence.

(3) Upon receipt of a certified copy of an order under subsection (1), the Registrar shall-

- (a) register the documents specified in subsection (1) on the file of each company to which the arrangement relates;
- (b) in the case of an arrangement involving a merger or consolidation, issue a certificate of merger or consolidation in the prescribed form;
- (c) in the case of an arrangement involving a merger, register any amendment to the memorandum or articles of the surviving company;
- (d) in the case of an arrangement involving a consolidation-
 - (i) register the memorandum and articles (if any) of the consolidated company;
 - (ii) allot a unique number to the consolidated company; and
 - (iii) issue a certificate of incorporation of the consolidated company;
- (e) strike off the register of companies-
 - (i) any transferor company that is ordered to be dissolved pursuant to the order;
 - (ii) in the case of an arrangement involving a merger, any constituent company that is not the surviving company; and
 - (iii) in the case of an arrangement involving a consolidation, any constituent company that participates therein.

(4) If a company has been struck off the register of companies under subsection (3)(e) it shall thereupon be deemed to have been dissolved.

(5) An order made under section 157 or 158 shall have no effect until the requirements of this section have been complied with in full.

Chapter 3 - Dissenting Shareholders

160 Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.

(1) This section applies where, under a scheme or contract (which expression shall include a series of contracts) involving the transfer of shares or any class of shares in a company ('the transferor company') to another person ('the transferee'), the scheme has within 16 weeks after the making of the offer in respect thereof been approved by the holders of not less than 90 per cent in value of the shares affected.

(2) Where this section applies, the transferee may, at any time within 8 weeks after the transferee has acquired or contracted to acquire shares necessary to satisfy the minimum specified in subsection (1), give notice in the prescribed form to any dissenting shareholder that it desires to acquire such dissenting shareholders' shares.

(3) Where a notice is given under subsection (2), the transferee shall, unless on an application made to the Court 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 or such terms as may be permitted by a variation under subsection (7).

(4) Where a notice has been given by the transferee under subsection (2) and-

- (a) the Court has not, on an application made by the dissenting shareholder, ordered to the contrary and on the expiration of one month from the date on which the notice was given, or
- (b) any pending application to the Court by the dissenting shareholder has been disposed of,

the transferee shall send a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the

transferee for the shares which by virtue of subsection (3) the transferee is entitled to acquire. The transferor company shall thereupon register the transferee as the holder of those shares.

(5) Any sums received by the transferor company under subsection (4) 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 person or persons entitled to the shares in respect of which such sums or other consideration were received.

(6) In this section the expression 'dissenting shareholder' includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer such shareholder's shares to the transferee in accordance with the scheme or contract.

(7) This section shall not be prevented from applying in relation to a scheme or contract by reason only of the fact that the terms under which the shares affected are to be acquired vary as between shareholders, provided that such variation meets the following requirements, namely-

- (a) the law of a country or territory outside the Isle of Man precludes an offer of consideration in the form of any of the terms specified in the terms in question or precludes it except after compliance by the transferee with conditions under which the transferee is unable to comply or which the transferee regards as unduly onerous;
- (b) the variation is such that the persons to whom an offer of consideration in that form is precluded are able to receive consideration otherwise than in that form but of substantially equivalent value.

161 Rights of dissenters

(1) A member of a company is entitled to payment of the fair value of such member's shares upon dissenting from-

- (a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;
- (b) a consolidation, if the company is a constituent company; and
- (c) an arrangement, if permitted by the Court.

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

(3) Within 21 days immediately following the date on which the vote of members authorising the action is taken, or the date on which written consent of members without a meeting is obtained, the company shall give written notice of the authorisation or consent to each member who gave written objection or from whom written objection was not required, except those members who voted for, or consented in writing to, the proposed action.

(4) A member to whom the company was required to give notice under subsection (3) may, within 21 days immediately following the date on which the notice referred to in subsection (3) is given, give to the company a written election to dissent from the action.

(5) A member who dissents under subsection (4) may only do so in respect of all shares that such member holds in the company.

(6) Within 7 days immediately following the date of the expiration of the period within which members may give their notice of election to dissent, or within 7 days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company shall make a written offer to each dissenting member to acquire that member's shares at a specified price that the company determines to be their fair value.

(7) If, within one month immediately following the date on which an offer is made under subsection (6), the company making the offer and the dissenting member agree upon the price to be paid for that member's shares, the company shall pay to the member the amount in money upon the surrender of any certificates representing such shares.

(8) If the company and a dissenting member fail, within the period of one month referred to in subsection (7), to agree on the price to be paid for the shares owned by the member, within 21 days immediately following the date on which the period of one month expires, the following shall apply-

- (a) the company and the dissenting member shall each designate an appraiser;
- (b) the two designated appraisers together shall designate an appraiser;
- (c) the three appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorising the action was taken or the date on which written consent of

- members without a meeting obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and
- (d) the company shall pay to the member the amount in money upon the surrender by the member of any certificates representing that member's shares.
- (9) Shares acquired by the company pursuant to subsection (7) or (8) shall be cancelled.

Chapter 4 – Takeovers and mergers

161A. Regulations concerning takeovers and mergers

- (1) The Registrar may by regulations make provision -
- (a) for or in connection with the regulation of -
- (i) takeover bids;
 - (ii) merger transactions; and
 - (iii) transactions (not falling within sub-paragraph (i) or (ii)) that have or may have, directly or indirectly, an effect on the ownership or control of companies;
- (b) for or in connection with the regulation of things done in consequence of, or otherwise in relation to, any such bid or transaction;
- (c) about cases where -
- (i) any such bid or transaction is, or has been, contemplated or apprehended; or
 - (ii) an announcement is made denying that any such bid or transaction is intended.
- (2) Regulations under subsection (1) shall not come into operation unless they are approved by Tynwald.

(CAB 2009)

PART XI CONTINUATION

Chapter 1 - Continuation of Foreign Companies

162 Application for consent to be continued in the Isle of Man

- (1) Subject to subsection (2), a foreign company may apply to the Registrar under this Chapter of this Part for consent to be continued as a company incorporated under this Act.
- (2) A foreign company may not apply to be continued as a company incorporated under this Act if-
- (a) it is in liquidation or is subject to insolvency or analogous proceedings in any jurisdiction;
 - (b) a receiver or manager has been appointed in relation to any of its assets;
 - (c) it has entered into an arrangement with its creditors that has not been concluded;
 - (d) the laws of the jurisdiction in which it is incorporated for the time being do not permit it to be continued in the Isle of Man;
 - (e) an application made to a court in any jurisdiction for the liquidation of the foreign company or for the foreign company to be subject to insolvency or analogous proceedings has not yet been determined; or
 - (f) the foreign company fails to satisfy the solvency test.
- (3) An application for consent to be continued in the Isle of Man shall be in the prescribed form by the person named in the memorandum referred to in paragraph (a) as the first registered agent of the company and shall be accompanied by-
- (a) a memorandum complying with subsection (4);
 - (b) if the articles of the company that are to apply to it upon continuance in the Isle of Man are to differ from the relevant model articles or if the company is a protected cell company; articles;
 - (c) a statutory declaration in the prescribed form made by the person making the application stating that, in such person's opinion, the foreign company complies with the requirements of subsection (2);
 - (d) proof to the satisfaction of the Registrar that the foreign company has obtained all necessary authorisations required under the laws of the country in which it was incorporated to enable it to make the application;
 - (e) particulars in the form prescribed by section 138(2) of all charges (if any) created by the foreign company to which section 137 would apply if the company had been incorporated under this Act as at the dates of their respective creation;
 - (f) the written consent to the making of the application by the holders of all charges

referred to in paragraph (e).

- (4) The memorandum of a company continuing under this Part shall state-
- (a) the name of the company as at the date of the application;
 - (b) the name under which the company proposes to be continued in the Isle of Man (if different from that specified in paragraph (a));
 - (c) the jurisdiction in which the company is incorporated at the date of its application;
 - (d) the date on which it was incorporated in the jurisdiction specified in paragraph (c);
 - (e) whether the company is-
 - (i) a company limited by shares;
 - (ii) a company limited by guarantee;
 - (iii) a company limited by shares and by guarantee;
 - (iv) an unlimited company with shares; or
 - (v) an unlimited company without shares;
 - (f) the address of the first registered office of the company in the Isle of Man;
 - (g) the name of the first registered agent of the company in the Isle of Man;
 - (h) in the case of a company limited by guarantee and a company limited by shares and by guarantee, the amount which each member of the company is liable to contribute to the company's assets in the event that the company is wound up while such person is a member or within 1 year (or such longer period as may be specified for the purpose in the memorandum) after such person ceased to be a member; and
 - (i) in the case of a protected cell company, that the company is a protected cell company.

(5) Without prejudice to section 21, the memorandum may contain a statement specifying the purposes for which the company is established or the business, activities or transactions which the company is permitted to undertake or the restrictions (if any) upon such purposes, business, activities or transactions for which the company is established.

(6) In this Part, a foreign company which is continued in the Isle of Man in accordance with this Chapter is referred to as '**a continued company**'.

163 Consent

(1) If the Registrar is satisfied that the proposed name of the company complies with section 11 and, if appropriate, section 13 and is a name under which the company could be registered under section 12, upon receipt of the documents specified in section 162(3), the Registrar shall grant written consent in the prescribed form.

(2) A consent under subsection (1) shall, subject to there being no material change in the information contained in the documents submitted with the application, be valid for a period of 12 weeks from the date of the consent being granted.

164 Registration

(1) During the period mentioned in section 163(2) and subject to the provisions of that subsection, a foreign company may deliver to the Registrar a statutory declaration in the prescribed form (dated not more than 7 days before such delivery) made by the person making the application that there has been no material change in the information contained in the documents submitted with the application.

- (2) On delivery of the statutory declaration under subsection (1), the Registrar shall-
- (a) register the memorandum and articles (if any) delivered pursuant to section 162(3);
 - (b) allot a unique number to the company;
 - (c) issue a certificate of continuation in such form as may be prescribed by regulations; and
 - (d) record under section 138 the particulars of charges delivered under section 162(3)(f) and issue a certificate under section 138 in respect of each such charge.

(3) A continued company shall, within 14 days of the date of the certificate of continuation issued under subsection (2)(c), forward a copy of it to the competent authority in the country or territory from which the body corporate has been continued.

165 Effect of continuance

(1) On the date of the certificate of continuation under section 164(2)(c) the foreign company will become a company to which this Act and all other laws of the Isle of Man apply as if it was incorporated under this Act.

(2) The provisions of this Act relating to a certificate of incorporation shall, with the necessary modifications, apply to a certificate of continuation under section 164(2)(c).

(3) Without prejudice to the generality of subsection (1), where particulars of an existing

charge have been delivered to the Registrar under section 162(3)(f), that charge shall be deemed to have been registered in compliance with section 138.

166 Consequences of continuance of foreign company

- (1) Upon continuance of a foreign company as a company under this Act-
- (a) the property of the foreign company continues to be the property of the continued company;
 - (b) the continued company continues to be liable for the obligations of the foreign company;
 - (c) any existing cause of action, claim or liability to prosecution in respect of the foreign company is unaffected;
 - (d) any civil, criminal or administrative action or proceeding pending by or against the foreign company is unaffected; and
 - (e) any conviction against, or any ruling, order or judgment in favour of or against the foreign company may be enforced by or against the continued company.
- (2) The continuance of a foreign company 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 company and becomes a continued company.
- (3) The Court 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 the Isle of Man a claim that existed prior to the date of continuance and which could have been pursued under the laws then governing the foreign company.
- (4) Notwithstanding section 1 of the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968, Part I of that Act applies in respect of judgments of any court outside the Island if-
- (a) the judgment debtor is a foreign company which has become a continued company; and
 - (b) the judgment is given (whether before or after the commencement of this section) in proceedings in respect of a cause of action arising before the date of the certificate of continuance issued in respect of the continued company under section 164(2)(c); and
 - (c) at the time when the cause of action arose, the company was incorporated in, or had its principal place of business in the country of the relevant court; and
 - (d) the judgment is final and conclusive as between the parties to it; and
 - (e) there is payable under the judgment a sum of money.
- (5) For the purposes of subsection (4)(d), a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.
- (6) Subsection (4) applies in respect of judgments for taxes or other charges of a like nature or in respect of a fine or other penalty as it applies in respect of any other judgment under which there is payable a sum of money.
- (7) Except as provided by subsection (8), section 1 of the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 shall not apply in respect of any judgment to which subsection (4) applies.
- (8) Where, apart from this section, Part I of the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 applies to a judgment of any court, this section shall be treated as additional to and not in derogation of such application of that Part.

Chapter 2 - Discontinuation of Isle of Man Companies

167 Application for consent to discontinuance

- (1) Subject to subsection (2), a company may apply to the Registrar for consent to be continued in a country or territory outside the Isle of Man as if it had been incorporated under the laws of that other country or territory and to be discontinued under this Act.
- (2) A company may not apply to discontinue as a company incorporated under this Act if-
- (a) it is in liquidation or is subject to insolvency or analogous proceedings in any jurisdiction;
 - (b) a receiver or manager has been appointed in relation to any of its assets;
 - (c) it has entered into an arrangement with its creditors that has not been concluded;
 - (d) an application made to a court in any jurisdiction for the liquidation of the company or for the company to be subject to insolvency or analogous proceedings has not yet been determined; or
 - (e) the company fails to satisfy the solvency test.

(3) An application for consent to discontinue in the Isle of Man shall be made by the registered agent in the prescribed form and shall be accompanied by-

- (a) certified copies of-
 - (i) a resolution passed by a member or members holding at least 75 per cent of the voting rights exercised in relation thereto; and
 - (ii) a resolution of each class of members (if any) passed by a member or members holding at least 75 per cent of the voting rights exercised in relation thereto,

in each case, authorising the continuance of the company in a named country or territory outside the Isle of Man;

- (b) statutory declarations in the prescribed form made by all the directors of the company that the company complies with the requirements of subsection (2);
- (c) a copy of a notice sent to each member of the company and published in such manner as may be prescribed by regulations at least 21 days prior to the application to the effect that the company intends to cease to be incorporated in the Isle of Man, to continue in the named country or territory outside the Isle of Man;
- (d) the written consent to the making of the application by the holders of all charges for the time being registered under section 138.

(4) The company may abandon an application for consent under this section.

168 Grant of consent

(1) Upon receipt of the documents specified in section 167(3) the Registrar shall grant written consent in the prescribed form.

(2) The consent of the Registrar shall expire 12 weeks after the date of the grant unless within that period the Isle of Man company is continued under the laws of the named country or territory outside the Isle of Man.

169 Documents to be filed

(1) The company shall deliver to the Registrar a certified copy of the instrument of continuance issued to it by the competent authorities in the country or territory under the laws of which the Isle of Man company is to be continued not later than 14 days after the date of issue of such instrument of continuance.

(2) The Registrar shall file the instrument of continuance and issue a certificate of discontinuance in the prescribed form.

(3) A certificate of discontinuance given by the Registrar in respect of any company shall be conclusive evidence that all the requirements of this Chapter in respect of discontinuance and of matters precedent and incidental thereto have been complied with, and that the company is duly discontinued under this Chapter.

170 Effect of discontinuance

(1) On the date of the certificate of discontinuance the company shall cease to be incorporated as a company under this Act.

(2) This Act shall cease to apply to the company on the date upon which it is continued under the laws of the other country or territory as stated in the instrument of continuance.

(3) Where a company is continued under the laws of a country or territory outside the Isle of Man service of legal process may be effected upon the company and any director of the company holding office immediately prior to its discontinuance in the Isle of Man in any proceeding arising out of actions or omissions occurring prior to the discontinuance by serving the same upon the registered agent of the company who delivered the application pursuant to section 167(1) at its registered office for the time being.

171 Restrictions on discontinuance of Isle of Man company

A company shall not be eligible for continuation as a body corporate under the laws of any other country or territory unless at the time of the application under section 167(1), the laws of that country or territory provide, in effect, that when a company is continued as a body corporate in that country or territory-

- (a) the property of the company continues to be the property of the body corporate;
- (b) the body corporate continues to be liable for the obligations of the company;
- (c) any existing cause of action, claim or liability to prosecution in respect of the company is unaffected; and
- (d) any conviction against, or any ruling, order or judgment in favour of or against the company may be enforced by or against such body corporate.

172 Consequences of discontinuance of company

The discontinuance of a company under this Chapter and its continuation in a country or territory outside the Isle of Man shall not be deemed to operate-

- (a) to create a new legal entity; or
- (b) to prejudice or affect the continuity of the body corporate which was formerly a company subject to this Act.

PART XII MEMBERS' REMEDIES

173 Interpretation of this Part

In this Part 'member', in relation to a company, means-

- (a) a shareholder or a personal representative of a shareholder;
- (b) a guarantee member of a company limited by guarantee or limited by shares and by guarantee; and
- (c) an unlimited member of an unlimited company.

174 Restraining compliance order

(1) If a company or a director of a company engages in, or proposes to engage in, conduct that contravenes this Act or the memorandum or articles of the company, the Court may, on the application of a member or a director of the company, make an order-

- (a) directing the company or director to comply with; or
- (b) restraining the company or director from engaging in conduct that contravenes, this Act or the memorandum or articles.

(2) If the Court makes an order under subsection (1), it may also grant such consequential relief as it thinks fit.

(3) The Court may at any time before the final determination of an application under subsection (1), make, as an interim order, any order that it could make as a final order under that subsection.

175 Derivative actions

(1) Subject to subsection (3), the Court may, on the application of a member of a company, grant leave to that member-

- (a) to bring proceedings in the name and on behalf of that company; or
- (b) to intervene in proceedings to which the company is a party for the purpose of continuing, defending or discontinuing the proceedings on behalf of the company.

(2) Without limiting subsection (1), in determining whether to grant leave under that subsection, the Court shall take the following matters into account-

- (a) whether the member is acting in good faith;
- (b) whether the derivative action is in the interests of the company taking into account the view of the company's directors on commercial matters;
- (c) whether the proceedings are likely to succeed;
- (d) the costs of the proceedings in relation to the relief likely to be obtained; and
- (e) whether an alternative remedy to the derivative claim is available.

(3) Leave to bring or intervene in proceedings may be granted under subsection (1) only if the Court is satisfied that-

- (a) the company does not intend to bring, diligently continue or defend, or discontinue the proceedings, as the case may be; or
- (b) it is in the interests of the company that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders or members as a whole.

(4) Unless the Court otherwise orders, not less than one month's notice of an application for leave under subsection (1) shall be served on the company and the company is entitled to appear and be heard at the hearing of the application.

(5) The Court may grant such interim relief as it considers appropriate pending the determination of an application under subsection (1).

(6) Except as provided in this section, a member is not entitled to bring or intervene in any proceedings in the name of or on behalf of a company.

176 Costs of derivative action

(1) If the Court grants leave to a member to bring or intervene in proceedings under section 175, it shall, on the application of the member, order that the whole of the reasonable costs of bringing or intervening in the proceedings shall be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.

(2) If the Court on an application made by a member under subsection (1), considers that it would be unjust or inequitable for the company to bear the whole of the reasonable costs of bringing or intervening in the proceedings, it may order-

- (a) that the company bear such proportion of the costs as it considers to be reasonable; or
- (b) that the company shall not bear any of the costs.

177 Powers of Court where leave granted under section 175

(1) The Court may, at any time after granting a member leave under section 175, make any order it considers appropriate in relation to proceedings brought by the member or in which the member intervenes, including-

- (a) an order authorising the member or any other person to control the proceedings;
- (b) an order giving directions for the conduct of the proceedings;
- (c) an order that the company or its directors provide information or assistance in relation to the proceedings; and
- (d) an order directing that any amount ordered to be paid by a defendant in the proceedings shall be paid in whole or in part to former and present members of the company instead of to the company.

178 Compromise, settlement or withdrawal of derivative actions

No proceedings brought by a member or in which a member intervenes with the leave of the Court under section 175 may be settled or compromised or discontinued without the approval of the Court.

179 Personal actions by members

A member of a company may bring an action against the company for breach of a duty owed by the company to such member in that capacity.

180 Prejudiced members

(1) A member of a company who considers that the affairs of the company have been, are being or are likely to be, conducted in a manner that is, or any act or acts of the company have been, or are, likely to be oppressive or unfairly prejudicial to such member in that capacity, may apply to the Court for an order under this section.

(2) If, on an application under this section, the Court considers that it is just and equitable to do so, it may make such order as it thinks fit, including, without limiting the generality of this subsection, one or more of the following orders-

- (a) requiring the company or any other person to acquire the shareholder's shares;
- (b) requiring the company or any other person to pay compensation to the applicant;
- (c) regulating the future conduct of the company's affairs;
- (d) amending the memorandum or articles of the company;
- (e) appointing a receiver of the company;
- (f) making a winding up order in respect of the company under section 165 of the Companies Act 1931 on the grounds specified in section 162(6) of that Act;
- (g) directing the rectification of the records of the company;
- (h) setting aside any decision made or action taken by the company or its directors in breach of this Act or the memorandum or articles of the company.

(3) No order may be made against the company or any other person under this section unless the company or that person is a party to the proceedings in which the application is made.

181 Representative actions

Where a member of a company brings proceedings against the company and other members have the same or substantially the same interest in relation to the proceedings, the Court may appoint that member to represent all or some of the members having the same interest and may, for that purpose, make such order as it thinks fit, including an order-

- (a) as to the control and conduct of the proceedings;
- (b) as to the costs of the proceedings; and
- (c) directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the members represented.

PART XIII LIQUIDATION AND RECEIVERSHIP, STRIKING-OFF, DISSOLUTION AND RESTORATION

Chapter 1 - Liquidation and Receivership

182 Application of the Companies Act 1931

Sections 155 to 272 (inclusive) and 277 to 282 (inclusive) of the Companies Acts 1931 to 2004 shall apply to a company incorporated under this Act as if it were a company incorporated under the Companies Act 1931 and for such purposes references therein to the Financial Supervision Commission shall be construed as references to the Registrar and as if references therein to a 'special resolution' were references to a resolution.

Chapter 2 - Striking-Off

183 Striking company off register

- (1) The Registrar may strike the name of a company off the register of companies if-
- (a) the company-
 - (i) fails to have a registered agent under section 74(1) or 77(4); or
 - (ii) fails to file any return, notice or document required to be filed under this Act; or
 - (b) the Registrar is satisfied that the company has ceased to carry on business; or
 - (c) the company fails to pay its annual fee or any late payment penalty by the due date.
- (2) Before striking a company off the register of companies on the grounds specified in subsection (1)(a) or (1)(b), the Registrar shall-
- (a) send the company a notice stating that, unless the company shows cause to the contrary, it will be struck from the register of companies on a date specified in the notice which shall be no less than 12 weeks after the date of the notice; and
 - (b) publish a notice of the Registrar's intention to strike the company off the register in such manner as may be prescribed by regulations.
- (3) After the expiration of the time specified in the notice, unless the company has shown cause to the contrary, the Registrar may strike the name of the company off the register of companies.
- (4) The Registrar shall publish a notice of the striking-off of a company from the register of companies in such manner as may be prescribed by regulations.
- (5) The striking of a company off the register of companies is effective from the date of the notice published under subsection (4).
- (6) The striking-off of a company shall not be affected by any failure on the part of the Registrar to serve a notice on the registered agent or to publish a notice under subsection (4).

184 Appeal

- (1) Any person who is aggrieved by the striking of a company off the register of companies under section 183 may, within 12 weeks of the date of the notice published in such manner as may be prescribed by regulations, appeal to the Court.
- (2) Notice of an appeal to the Court under subsection (1) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.
- (3) The Registrar may, pending an appeal under subsection (1) of any person aggrieved by the striking of a company off the register of companies, suspend the operation of the striking-off upon such terms as the Registrar considers appropriate, pending the determination of the appeal.

185 Effect of striking-off

- (1) Where a company has been struck off the register of companies under section 183, the company and the directors, members and any liquidator or receiver thereof, may not, subject to subsections (2) and (3)-
- (a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;
 - (b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the company; or
 - (c) act in any way with respect to the affairs of the company.
- (2) Notwithstanding subsection (1), where a company has been struck off the register of companies under section 183, the company, or a director, member, liquidator or receiver thereof, may-
- (a) make application for restoration of the company to the register of companies;
 - (b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and
 - (c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.
- (3) The fact that a company is struck off the register of companies does not prevent-
- (a) the company from incurring liabilities; or
 - (b) any creditor from making a claim against the company and pursuing the claim through to judgment or execution;

and does not affect the liability of any of its members, directors, officers or agents.

186 Dissolution of company struck off the register

If a company has been struck off the register of companies under section 183 and remains struck off continuously for a period of 6 years, the company shall be deemed to have been dissolved.

187 Restoration of name of company to register by Registrar

(1) Where a company has been struck off the register of companies under section 183, but not dissolved, the Registrar may, upon receipt of an application in the prescribed form and upon payment of all outstanding fees, restore the company to the register of companies and issue a certificate of restoration to the register of companies.

(2) Where the company has been struck off the register of companies under section 183, the Registrar shall not restore the company to the register of companies unless-

- (a) the Registrar is satisfied that a person meeting the requirements of section 74(3) has agreed to act as registered agent of the company; and
- (b) the Registrar is satisfied that it would be fair and reasonable for the name of the company to be restored to the register of companies.

(3) An application to restore a company to the register of companies under subsection (1) may be made by the company, or a creditor, member or liquidator of the company and shall be made within 6 years of the date of the notice published under section 183(4).

(4) The company, a creditor, a member or a liquidator thereof may, within 12 weeks, appeal to the Court from a refusal of the Registrar to restore the company to the register of companies and, if the Court is satisfied that it would be just for the company to be restored to the register of companies, the Court may direct the Registrar to do so upon such terms and conditions as it may consider appropriate.

(5) Notice of an appeal under subsection (4) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(6) Where a company is restored to the register of companies under this section, the company is deemed never to have been struck off the register of companies.

188 Restoration of name of company to register by Court

(1) Where a company has been dissolved pursuant to this Chapter, application may be made to the Court to restore the company to the register of companies by the company, or any creditor, member or liquidator of the company, and shall be made within 12 years of the date of the dissolution under section 186.

(2) On an application under subsection (1), the Court may restore the company to the register of companies subject to such conditions as it considers just.

(3) Where a company is restored to the register of companies under this section, the company is deemed never to have been struck off the register of companies.

189 Appointment of liquidator of company struck off

(1) Where a company has been struck off the register of companies under section 183, the Registrar may apply to the Court for an order that the company be wound up.

(2) Where the Court makes an order under subsection (1)-

- (a) the company is restored to the register of companies; and
- (b) the liquidator is deemed to have been appointed by the Court under the Companies Act 1931.

Chapter 3 - Alternative Procedure for Dissolving Solvent Companies

190 Alternative procedure for dissolving solvent companies

(1) Where a company has ceased to operate and has discharged all its debts and liabilities (other than those owed to its members in their capacities as such) such persons as are prescribed by regulations may apply to the Registrar for a declaration of dissolution of the company.

(2) An application under this section shall be in the prescribed form and shall be accompanied by a statutory declaration made by a director stating that the company has ceased to operate and that to the best of such director's knowledge and belief and having made full enquiry into the affairs of the company, the director is satisfied that the company has discharged all its debts and liabilities (other than those owed to members in their capacities as such).

(3) Upon receipt of an application under subsection (1) the Registrar shall publish a notice in such manner as may be prescribed by regulations to the effect that the applicant has applied to the Registrar for a declaration of dissolution of the company and that, unless written objection is made to the Registrar within one month of the date of publication of the notice, the Registrar may dissolve the company.

(4) Before making an application to the Registrar under this section, the applicant shall ensure that there has been sent by pre-paid post to each director, to the registered agent and to each member of the company at the last business or residential address of which the company has notice, a notice to the effect that the applicant proposes to apply to the Registrar for a

declaration of dissolution of the company and that, unless written objection is made to the Registrar within one month of the date the notice was posted, the Registrar shall dissolve the company.

(5) The Registrar shall not make a declaration of dissolution of a company earlier than one month after the date of the publication of the notice required by subsection (3).

(6) On receipt of any written objection to the dissolution of the company, the Registrar shall notify the applicant for the declaration of dissolution of the receipt of the objection and of the identity of the objector.

(7) Where a person has objected to the dissolution of the company, the Registrar shall not declare the dissolution of the company unless-

- (a) the objection is withdrawn; or
- (b) the Registrar decides that the objection is without justification and-
 - (i) the objector has not appealed against the Registrar's decision to the Court within 21 days after the date of the decision; or
 - (ii) the Court has upheld the Registrar's decision.

(8) If the Registrar is not prevented from declaring the dissolution of a company pursuant to this section, the Registrar shall notify the company that, subject to the company's memorandum and articles, it is entitled to distribute its surplus assets among its members according to their respective rights and, notwithstanding any other provision of this Act or any rule of law, the company may distribute its surplus assets accordingly.

(9) Subject to subsection (10), on receipt of notification from a company-

- (a) that its surplus assets have been distributed in accordance with subsection (8); or
- (b) that the company, having carried out full inquiry, is unable to distribute its surplus assets,

the Registrar shall publish a notice in such manner as may be prescribed by regulations which declares that the company is dissolved and, on the publication of the notice, the company shall be dissolved and any surplus assets which have not been distributed shall be deemed to be *bona vacantia* in accordance with section 193.

(10) Notwithstanding the dissolution of the company-

- (a) the liability, if any, of every director and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) notwithstanding that a company has been dissolved, or that its surplus assets have been distributed in accordance with this section, the Court may wind up the company as if it had not been dissolved, or its surplus assets had not been distributed, as the case may be.

191 Restoration of dissolved companies by the Court

(1) Where a company has been dissolved pursuant to section 190, section 156(5) or section 159(4), the Court, on an application made by the Registrar or any director, member or creditor of the company before the expiration of 12 years from the publication of the notice of dissolution, may, if satisfied that at the time of dissolution of the company it was in operation or had not discharged all its debts and liabilities or otherwise that it is fair and reasonable that the dissolution of the company be revoked, order that the dissolution of the company be revoked, and upon a certified copy of the order being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if it had not been dissolved, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved.

(2) An order under subsection (1) may be made on such terms and conditions as the Court thinks fit.

192 Alternative procedure for restoration of dissolved companies

(1) A company or, any director, member or creditor thereof who feels aggrieved by the company having been dissolved under section 186 or 190 may, before the expiration of 12 years from the date of dissolution pursuant to section 186 or the publication of a notice under section 190(9) (as the case may be), make application to the Registrar for a direction under this section.

(2) An application under subsection (1) shall be in the prescribed form and shall be accompanied by a copy of the notice given under subsection (3).

(3) Before making an application to the Registrar under subsection (1), the applicant shall ensure that there has been sent by pre-paid post to each director, to the registered agent and to each member of the company as at the date of dissolution at the last business or residential address of which the company has notice, a notice to the effect that the applicant proposes to

apply to the Registrar for a direction restoring the company to the register of companies and that unless written objection is made to the Registrar within one month of the date of publishing or posting, as the case may be, the Registrar shall make such direction.

(4) Upon receipt of an application under subsection (1) the Registrar shall, within a reasonable time, publish notice of the application in such manner as may be prescribed by regulations and shall maintain a current list of applications.

(5) The Registrar shall not make a direction under this section earlier than one month after the date of posting of the last notice posted for the purposes of subsection (3).

(6) On receipt of any written objection to the restoration of the company, the Registrar shall forthwith notify the applicant of the receipt of the objection and of the identity of the objector.

(7) The Registrar shall not make a direction under this section unless-

- (a) there are no objections to the restoration of the company under this section; or
- (b) all objections are withdrawn; or
- (c) the Registrar decides that the objections are without justification and-
 - (i) the objector has not appealed against the Registrar's decision within 21 days after the date of the decision; or
 - (ii) the Court has upheld the Registrar's decision,

(8) Subject to subsection (7), on receipt of an application under this section the Registrar shall direct the name of the company to be restored to the register of companies.

(9) Upon the Registrar making a direction for registration pursuant to subsection (8), the company shall be deemed to have continued in existence as if it had not been dissolved.

(10) This section is without prejudice to the powers of the court under sections 188 and 191.

Chapter 4 - Property of Dissolved Companies

193 Property of dissolved company to be *bona vacantia*

(1) Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (but not including property held by the company on trust for any other person) shall be deemed to be *bona vacantia* and shall accordingly vest in the Treasury in trust for the Crown and may be dealt with in the same manner as other *bona vacantia* accruing to the Crown.

(2) Except as provided by section 195 below, this section shall have effect subject and without prejudice to any order made by the Court under section 191.

194 Power to disclaim title to property vesting under section 193

(1) Where any property vests in the Treasury under section 193, the Treasury's title thereto under that section may be disclaimed by a notice by the Treasury.

(2) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Treasury under section 193, and subsections (2) and (6) of section 252 of the Companies Act 1931 shall apply in relation to the property as if it had been disclaimed under subsection (1) of the said section 252 immediately before the dissolution of the company.

(3) The right to execute a notice of disclaimer under this section may be waived by the Treasury either expressly or by taking possession or other act evincing that intention.

195 Disposal of property vesting under section 193

(1) Where a company is dissolved and any property or right vested in or held on trust for that company immediately before its dissolution vests as *bona vacantia* accruing to the Treasury by virtue of section 193, the Treasury may dispose of, or of an interest in, that property or right notwithstanding that an order may be made under section 272(1) of the Companies Act 1931, section 191 or section 192 in relation to that company; and where any such order is made-

- (a) it shall not affect that disposition (but without prejudice to that order so far as it relates to any other property or right previously vested in or held on trust for the company); and
- (b) the Treasury shall pay to the company an amount equal to the amount of any consideration received for the property or right, or interest therein, or to the value of any such consideration at the time of the disposition, or, if no consideration was received, an amount equal to the value of the property, right or interest disposed of, as at the date of the disposition.

INVESTIGATION OF COMPANIES

196 Definition of 'inspector'

In sections 197 to 202, 'inspector' means an inspector appointed by an order made under section 197(2).

197 Investigation order

(1) A member may apply to the Court *ex parte* or upon such notice as the Court may require, for an order directing that an investigation be made of a company and any of its associated companies.

(2) If, upon an application under subsection (1), it appears to the Court that-

- (a) the business of a company or any of its associated companies is or has been carried on with intent to defraud any person;
- (b) a company or any of its associated companies was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (c) persons concerned with the incorporation, business or affairs of a company or any of its associated companies have in connection therewith acted fraudulently or dishonestly,

the Court may make any order it thinks fit with respect to an investigation of that company and any of its associated companies by an inspector, who may be the Commission.

(3) If a member makes an application under subsection (1), such member shall give the Registrar reasonable notice of it, and the Registrar is entitled to appear and be heard at the hearing of the application.

198 Court's powers

(1) An order made under section 197(2) shall include an order appointing an inspector to investigate the company and an order fixing the inspector's remuneration.

(2) An order made under section 197(2) may-

- (a) replace the inspector;
- (b) determine the notice to be given to any interested person, or dispensing with notice to any person;
- (c) authorise the inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;
- (d) require any person to produce documents or records to the inspector;
- (e) authorise the inspector to conduct a hearing, administer oaths or affirmations and examine any person upon oath or affirmation, and prescribe rules for the conduct of the hearing;
- (f) require any person to attend a hearing conducted by the inspector and to give evidence upon oath or affirmation;
- (g) give directions to the inspector or any interested person on any matter arising in the investigation;
- (h) require the inspector to make an interim or final report to the Court;
- (i) determine whether a report of the inspector should be published, and, if so, ordering the inspector to publish the report in whole or in part, or to send copies to any person the Court designates; and
- (j) require an inspector to discontinue an investigation; and
- (k) require the company to pay the costs of the investigation in part or in full.

(3) The inspector shall deliver a copy of every report made by such inspector under this section to the Registrar and the Financial Supervision Commission.

(CODA 2009)

(4) A report received by the Registrar and the Financial Supervision Commission under subsection (3) shall not be disclosed to any person other than in accordance with an order of the Court made under subsection (2)(i).

(CODA 2009)

199 Inspector's powers

An inspector-

- (a) has the powers set out in the order appointing such inspector; and
- (b) shall upon request produce to any interested person a copy of the order.

200 Hearing in camera

(1) An application under this Part and any subsequent proceedings, including

applications for directions in respect of any matter arising in the investigation, shall be heard in camera unless the Court orders otherwise.

(2) No person shall publish anything relating to any proceedings under this Part except with the authorisation of the Court.

201 Incriminating evidence

No person is excused from attending and giving evidence and producing documents and records to an inspector appointed by the Court under this Part by reason only that the evidence tends to incriminate that person or subject that person to any proceeding or penalty, but the evidence may not be used or received against that person in any proceeding thereafter instituted against that person, other than a prosecution for perjury in giving the evidence.

202 Absolute privilege

An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

PART XV

ADMINISTRATION AND GENERAL

203 Optional registration of register of members

(1) A company may elect to file a copy of its register of members for registration by the Registrar.

(2) A company that has elected to file a copy of its register of members for registration shall register any changes therein with the Registrar within one month of such changes being made unless and until an election to cease such filing has been made under subsection (3).

(3) A company that has elected to file a copy of its register of members for registration by the Registrar may elect to cease registration by so filing a notice in the prescribed form.

204 Optional registration of register of directors

(1) A company may elect to file a copy of its register of directors for registration by the Registrar.

(2) A company that has elected to file a copy of its register of directors for registration shall register any changes therein with the Registrar within one month of such changes being made unless and until an election to cease such filing has been made under subsection (3).

(3) A company that has elected to file a copy of its register of directors for registration by the Registrar may elect to cease registration by so filing a notice in the prescribed form.

205 Registrar of Companies

(1) The Treasury shall appoint a suitably experienced person to be Registrar of Companies.

(2) Subject to the control of the Treasury, the Registrar is responsible for the administration of this Act.

206 Register of companies

(1) The Registrar shall maintain a register of companies incorporated, re-registered or continued under this Act.

(2) The registers maintained by the Registrar and the information contained in any document filed may be kept in such manner as the Registrar considers fit including, either wholly or partly, by means of a device or facility-

- (a) that records or stores information magnetically, electronically or by other means; and
- (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(3) Regulations may provide for the keeping of registers by the Registrar in electronic form, the filing of documents in both paper and electronic form, including the approval by the Registrar of systems and the inspection of registers kept in electronic form.

207 Filing of documents

(1) Where a document is required to be filed under this Act, it shall be filed by such persons as are prescribed by regulations.

(2) Regulations may provide for the electronic filing of any document under this Act.

208 Power of Registrar to refuse to register documents

(1) The Registrar may refuse to accept for registration any document filed under this Act or any regulations if-

- (a) it does not comply with this Act or any regulations;
- (b) it has not been duly completed;
- (c) it contains any material error;
- (d) it is not legible; or
- (e) it is not accompanied by any applicable fee, duty or penalty.

(2) If the Registrar refuses to accept a document under subsection (1), the Registrar shall return the document to the person who submitted it together with a notice in the prescribed form specifying the grounds upon which such document has been rejected.

(3) A document validly rejected by the Registrar under subsection (1) shall be deemed not have been filed for the purposes of this Act and any regulations.

(4) Any person who is aggrieved by the rejection of a document by the Registrar under subsection (1) may appeal to the Court within one month after the date of the rejection or such further time as the Court may allow.

(5) On hearing an appeal under subsection (4), the Court may confirm the rejection or make such determination in the matter as the Court sees fit.

208A Appeals from decisions of Registrar

(1) Any person who is aggrieved by a decision of the Registrar under this Act may appeal to the Court within one month after the date of the decision or such further time as the Court may allow.

(2) On hearing an appeal under subsection (1), the Court may confirm the decision or make such determination in the matter as the Court sees fit.

(CAB 2009)

209 Inspection and evidence of registers

(1) A person may-

- (a) inspect the documents kept by the Registrar pursuant to this Act; and
- (b) require a certificate of incorporation, merger, consolidation, continuation, discontinuance, dissolution, re-registration, restoration or good standing of a company incorporated under this Act, or a copy or an extract of any document or any part of a document of which the Registrar has custody, to be certified by the Registrar; and a certificate of incorporation, merger, consolidation, continuation, discontinuance, dissolution, re-registration or good standing or a certified copy or extract is conclusive evidence of the matters contained therein.

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

210 Form of certificate

Any certificate or other document required to be issued by the Registrar under this Act shall be in the prescribed form.

211 Certificate of good standing

(1) The Registrar shall, upon request by any person, issue a certificate of good standing certifying that a company is of good standing if the Registrar is satisfied that-

- (a) the company is on the register of companies; and
- (b) the company has paid all fees, annual fees and penalties due and payable.

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

- (a) there are documents on the company file relating to winding up or dissolution of the company or the appointment of a receiver in respect of any of its assets; or
- (b) any proceedings to strike the name of the company off the register of companies have been instituted.

212 Fees and penalties

(1) Regulations may prescribe the fees, duties and penalties which are to be paid under this Act or in relation to any function undertaken by the Registrar under this Act or any regulations.

(2) Fees, duties and penalties payable under this Act and any regulations shall form part of the General Revenue of the Isle of Man.

213 Company struck off liable for fees, etc.

A company continues to be liable for all fees, duties and penalties payable under this Act notwithstanding that the name of the company has been struck off the register of companies.

214 Fees payable to Registrar

The Registrar may refuse to take any action required of the Registrar under this Act for which a fee, duty or penalty is prescribed by regulations until all fees, duties and penalties have been paid.

215 Companies regulations

(1) The Registrar may, after consulting with the Treasury, make regulations generally for

giving effect to this Act and specifically in respect of anything required or permitted to be prescribed or provided for by this Act.

(2) Regulations may make different provisions in relation to different persons, circumstances or cases.

(3) Regulations under this section shall be laid before Tynwald as soon as is practicable after they are made, and if Tynwald at the sitting at which the regulations are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.

216 Approval of forms by Registrar

(1) The Registrar may prescribe by regulations forms and templates in written or electronic form which shall be used when submitting information required to be submitted under this Act.

(2) Where a form or template is required to be in a 'prescribed form', it shall-

- (a) contain the information required to be specified in it; and
- (b) have attached to it such documents as may be required by it.

PART XVI MISCELLANEOUS PROVISIONS

217 Declaration by Court

(1) A company may, without the necessity of joining any other party, apply to the Court, by petition supported by an affidavit, for a declaration on any question of interpretation of this Act or of the memorandum or articles of the company.

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

218 Interpretation

In this Act, unless the context otherwise requires-

'**1931 Act company**' means a company incorporated under the Companies Acts 1931 to 2004;

'**articles**' means the original, amended or restated articles of association of a company;

'**asset**' includes money, goods, things in action, land and every description of property wherever situated and obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

'**associated company**' means, in relation to any company-

- (a) any company of which that company is a director;
- (b) any company which is a director of that company;
- (c) any subsidiary of that company;
- (d) any holding company of that company; and
- (e) any subsidiary of any such holding company;

'**bearer share**' means a share represented by a certificate which states that the bearer of the certificate is the owner of the share and includes a share warrant to bearer;

'**board**', in relation to a company, means-

- (a) the board of directors, committee of management, council or other governing authority of the company acting together; or
- (b) if the company has only one director, that director;

'**cell**' means a cell created by a PCC for the purpose of segregating and protecting cellular assets in the manner provided by Part VII;

'**cell share capital**' has the meaning given in section 119;

'**cell shares**' has the meaning given in section 119;

'**cellular assets**' has the meaning given in section 117(5);

'**cellular distribution**' has the meaning given in section 120(1);

'**class**', in relation to shares, means a class of shares each of which has identical rights, privileges, limitations and conditions attached to it;

'**Commission**' means the Financial Supervision Commission;

'**company**' has the meaning specified in section 219(1);

'**company number**' means the number allotted to the company by the Registrar-

- (a) on its incorporation under section 3(1);
- (b) on its continuation under section 162;
- (c) on its re-registration under Chapter 2 of Part IX; or
- (d) on its consolidation under section 154 or 159;

'**continued**' means continued under section 162;

'continued company' has the same meaning specified in section 162(6);

'corporate director' means a director or a person who is proposed to be a director (as the case may be) who is not an individual;

'Court' means the High Court of Justice of the Isle of Man;

'creditor' includes present, future and contingent creditors;

'director' has the meaning specified in section 221;

'disqualified person' means a person who for the time being is subject to an order disqualifying that person from acting as a director or liquidator or a receiver or manager of a company's property or from being concerned in the promotion, formation or management of a company.

'distribution' has the meaning specified in section 49;

'document' means a document in any form and includes-

- (a) any writing or printing on any material;
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium or device, including discs and tapes;
- (c) books and drawings; and
- (d) a photograph, film, tape, negative, facsimile or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced,

and, without limiting the generality of the foregoing, includes any court application, order and other legal process and any notice;

'to file' shall have the meaning prescribed by regulations. Where the document to be filed records a resolution, it shall be treated for the purposes of any time limit for filing, as having been created on the date of the resolution;

'foreign company' has the meaning specified in section 219(3);

'guarantee member' has the meaning specified in section 59;

'liability' includes any debt or obligation, whether actual, prospective or contingent;

'limited company' means a company of a type specified in section 1 paragraphs (a), (b) and (c);

'member', in relation to a company, means a person who is-

- (a) a shareholder;
- (b) a guarantee member; or
- (c) an unlimited member;

'memorandum' means the original, amended or restated memorandum of association of a company;

'non-cellular assets' has the meaning give in section 117(4);

'non-cellular distribution' has the meaning given in section 120(3);

'one month' from any particular date means the period ending on the close of business on the same date of the subsequent month, save that where such date in the subsequent month does not exist the period shall end on the close of business on the last day of that subsequent month;

'prescribed' means prescribed by regulations;

'prescribed form' means a form prescribed by the Registrar in accordance with section 216;

'protected cell company' or **'PCC'** means a company that has been incorporated or continued as, or has been converted into, a protected cell company for the purposes of Part VII;

'register', in relation to an act done by the Registrar, means to retain (where appropriate) and to register in the register of companies;

'register of companies' means the register of companies maintained by the Registrar in accordance with section 206(1);

'registered agent' means the person who is the company's registered agent in accordance with section 74;

'registered office' has the meaning specified in section 73(2);

'Registrar' means the Registrar of Companies appointed under section 205;

'regulations' means regulations made under section 215;

'relevant model articles' has the meaning specified in section 6(1);

'resolution'-

- (a) in relation to the members of a company, has the meaning specified in section 65; and
- (b) in relation to the directors of a company, has the meaning specified in section 109;

'restated articles' means a single document that incorporates the articles together with all amendments made thereto;

'restated memorandum' means a single document that incorporates the memorandum together with all amendments made thereto;

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

'shareholder' has the meaning specified in section 59;

'solvency test' has the meaning specified in section 49;

'statutory declaration' means-

- (a) if made in the Isle of Man, a declaration made under the Evidence Act 1871; and
- (b) if made in a country or territory outside the Isle of Man, a declaration made before a justice of the peace, notary public or other person having authority therein under any law for the time being in force to take or receive a declaration;

'subscriber' means a person who signs the original memorandum and articles (if any) of a company under section 2(1);

'transaction' means anything (including, without limitation, any agreement, arrangement, dealing, disposition, circumstance, event or relationship) whereby any liability arises or is imposed;

'unlimited company' means a company of a type specified in section 1(d) or (e);

'unlimited member' has the meaning specified in section 59; and

'voting rights' means, in relation to a resolution of the members of a company, or a class of members of a company, all the rights to vote on such resolution conferred on the members of the company.

219 Meaning of 'company' and 'foreign company'

(1) Unless this Act expressly provides otherwise,

'company' means-

- (a) a company incorporated under section 3,
- (b) a company re-registered under Part IX;
- (c) a company continued under section 165; or
- (d) a 1931 Act company that has re-registered under Part IX,

but excludes a company that has been dissolved and a company that has continued as a company incorporated under the laws of a jurisdiction outside the Isle of Man in accordance with section 170.

(2) In Part X, of this Act **'company'** may include a 1931 Act company provided that any merger, consolidation or arrangement includes at least one company incorporated under this Act.

(3) In this Act, **'foreign company'** means a body corporate incorporated, registered or formed outside the Isle of Man but excludes a company within the meaning of subsection (1).

(4) Regulations may prescribe types of bodies, associations and entities that, although not a body corporate, are to be treated as a bodies corporate for the purposes of subsection (2).

220 Meaning of 'subsidiary' and 'holding company'

(1) A company (the first company) is a subsidiary of another company (the second company), if-

(a) the second company-

- (i) holds a majority of the voting rights in the first company;
- (ii) is a member of the first company and has the right to appoint or remove a majority of its board; or
- (iii) is a member of the first company and controls alone, or pursuant to an agreement with other members, a majority of the voting rights of the first company; or

(b) the first company is a subsidiary of a company which is itself a subsidiary of the second company.

(2) A company is the holding company of another company if that other company is its subsidiary.

(3) For the purposes of subsections (1) and (2), 'company' includes a foreign company and any other body corporate.

221 Meaning of 'director'

(1) Under this Act, **'director'** in relation to a company, a foreign company and any other body corporate means a person occupying or acting in the position of director by whatever name called.

(2) For the purposes of section 104 a person is deemed to be a director of a company if that person is-

- (a) a person in accordance with whose directions or instructions a director or the board of the company may be required or is accustomed to act; or
- (b) a person who exercises, or is entitled to exercise, or who controls, or is entitled to control, the exercise of powers which, apart from the memorandum or articles, would fall to be exercised by the board.

(3) Notwithstanding subsection (2), a person is not to be regarded as a director of a company for the purposes of section 104-

- (a) by reason only that a director or the board act on advice given by that person in a professional capacity; or
- (b) by virtue of that person acting-
 - (i) as a receiver of the company;
 - (ii) as the liquidator of the company.

222 Application of Companies Acts 1931 to 2004

Save as expressly provided in this Act, the provisions of the Companies Acts 1931 to 2004 shall not apply to a company incorporated or contained under this Act.

223 Offences

- (1) Any person guilty of an offence under any provision of this Act shall be liable-
- (a) on summary conviction, to a fine not exceeding £5,000;
 - (b) on conviction on information, to a fine.

(2) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager or other officer of the body corporate, or its registered agent, or a person who was purporting to act in any such capacity, such person, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly.

224 Repeals and amendments

(1) The enactments specified in Schedule 1 are amended in accordance with that Schedule.

(2) The enactments specified in Schedule 2 are repealed to the extent set out in column 3 of that Schedule.

225 Short title and commencement

(1) This Act may be cited as the Companies Act 2006.

(2) The provisions of this Act shall come into operation on such a day or days as the Treasury may by order appoint and different days may be so appointed for different provisions and for different purposes.

(3) An order under subsection (2) may-

- (a) make such transitional adaptations to or modifications of the provisions brought into force by the order as the Treasury considers expedient, including different adaptations or modifications for different provisions and for different purposes;
- (b) include such transitional provisions and saving provisions modifying the application of any provision of any enactment pending the commencement of, or pending the doing of anything under, a provision of this Act as the Treasury considers expedient;
- (c) repeal or amend any provision of any enactment passed before this Act that appears to the Treasury to be inconsistent with, or to have become unnecessary or to require modification in consequence of, this Act.

(4) An order under subsection (2) shall be laid before Tynwald as soon as practicable after it is made.

[ADO (whole Act *except* ss 13 and 17 and the repeal of the Prevention of Fraud (Investments) Act 1968 in Sch 2) 17/10/2006 (SD745/06); (repeal of the Prevention of Fraud (Investments) Act 1968 in Sch 2) 29/8/2007 (SD713/07).]

Schedule 1

Amendment of Enactments

[Sch 1 amended by Collective Investment Schemes Act 2008 Sch 7, and amends the following Acts- Companies Act 1931 q.v.

(CODA 2009)

Corporate Service Providers Act 2000 q.v.]

Schedule 2

Enactments Repealed

[Sch 2 repeals the following Act wholly- Prevention of Fraud (Investments) Act 1968 and the following Act in part- Companies Act 1931.]