

CHAPTER 308

COMPANIES

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CHAPTER 308

COMPANIES

An Act to revise and amend the laws relating to companies and to provide for related and consequential matters. 1982-54. 1990-28.
1984-7. 1991-2².
1987-7. 1995-9.
1986-4. 1997-14.
1986-11. 2001-30.
1987-9. 2002-6.
1988-11.
1990-1¹.
1990-20.

[1st January, 1985] Commence-
ment.
1984/177.

Citation

1. This Act may be cited as the *Companies Act*. Short title.

Interpretation

2. (1) In this Act Definitions.
- (a) "articles" means, unless qualified
- (i) the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of continuation, articles of re-organisation, articles of dissolution, and articles of revival, and
- (ii) any statute, letters patent, memorandum of association, certificate of incorporation, or other corporate instrument evidencing the existence of a body corporate continued as a company under this Act;

¹ Sections 4 and 5 of Act 1990-1 provide as follows:

4. (1) An external company registered on or after the 1st January, 1985 and before the enactment of this Act shall be deemed to have been validly and lawfully registered under the principal Act.
- (2) A certificate of continuance issued to a former-Act company on or after the 1st January, 1987 and before the enactment of this Act shall be deemed to have been validly and lawfully issued under the principal Act.
5. The principal Act has effect and shall be deemed always to have had effect as amended by this Act.

² Act 1991-2 has effect from 1st January, 1985.

- (b) "company" means a body corporate that is incorporated or continued under this Act;
- (c) "court" means the High Court;
- (d) "former-Act company" means a company described in section 26;
- Cap. 308. (e) "former Act" means the *Companies Act* immediately in force before 1st January, 1985;
- 1991-2. (ee) "individual" means a natural person;
- (f) "officer" in relation to a body corporate means
- (i) the chairman, deputy chairman, president, or vice president of the board of directors;
- (ii) the managing director, the general manager, the comptroller, the secretary or the treasurer; or
- 1991-2. (iii) any other person who performs for the body corporate functions similar to those normally performed by the holder of any office specified in sub-paragraph (i) or (ii);
- (g) "public company" means a company any of whose issued shares or debentures are or were part of a distribution to the public within the meaning of section 443, or are intended for distribution to the public;
- (h) "Registrar" refers to the Registrar of Companies under this Act;
- (i) "unanimous shareholder agreement" means an agreement described in section 133.
- (2) Other words and expressions that are to be read or construed in this Act in a particular sense or in a particular manner are defined or construed for that purpose in Division E of Part V; and, in particular, but without affecting the *Interpretation Act* in other circumstances, the manner in which the auxiliary words "shall", "may" and "must" are used in this Act is set out in that Division.
- Cap. 1.
- 1984-7.

Commercial Enterprise

3. No association, partnership, society, body or other group consisting of more than 20 persons may be formed for the purpose of carrying on any trade or business for gain unless it is incorporated under this Act or formed under some other enactment. Prohibited associations.

PART I

FORMATION AND OPERATION OF COMPANIES

DIVISION A

Incorporation of Companies

4. (1) Subject to subsection (2), one or more persons may incorporate a company by signing and sending articles of incorporation to the Registrar of Companies. Incorporation.

(2) No individual who

(a) is less than 18 years of age;

(b) is of unsound mind and has been so found by a tribunal in Barbados or elsewhere; or

(c) has the status of a bankrupt,

shall form or join in the formation of a company under this Act.

(3) If articles of incorporation submitted to the Registrar are accompanied with a statutory declaration by an attorney-at-law that to the best of his knowledge and belief no signatory to the articles is an individual described in subsection (2), the declaration is, for the purposes of this Act, conclusive of the facts therein declared.

5. (1) Articles of incorporation must follow the prescribed form and set out, in respect of the proposed company Formalities.

(a) the proposed name of the company;

(b) the classes and any maximum number of shares that the company is authorised to issue; and

(i) if there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares; and

- (ii) if a class of shares can be issued in series, the authority given to the directors to fix the number of shares in, or to determine the designation of, and the rights, privileges, restrictions and conditions attaching to, the shares of each series;
 - (c) if the right to transfer shares of the company is to be restricted, a statement that the right to transfer shares is restricted and the nature of those restrictions;
 - (d) the number of directors, or, subject to paragraph (a) of section 67, the minimum and maximum number of directors of the company; and
 - (e) any restrictions on the business that the company may carry on.
- (2) The articles may set out any provisions permitted by this Act or by law permitted to be set out in the by-laws of the company.
- (3) Where the right to transfer any shares is restricted, a notification to that effect shall be given on each share certificate issued in respect of those shares.

Required
votes.

6. (1) Subject to subsection (2), if the articles or any unanimous shareholder agreement require a greater number of votes of directors or shareholders than that required by this Act to effect any action, the provisions of the articles or of the unanimous shareholder agreement prevail.

(2) The articles may not require a greater number of votes of shareholders to remove a director than the number specified in section 70.

Documenta-
tion.

7. An incorporator must send to the Registrar with the articles of incorporation the documents required by subsection (1) of section 66, subsection (1) of section 169 and section 404.

Certificate of Incorporation

Certificate
incorpora-
tion.

8. Upon receipt of articles of incorporation, the Registrar must issue a certificate of incorporation in accordance with section 404; and the certificate is conclusive proof of the incorporation of the company named in the certificate.

9. A company comes into existence on the date shown in its certificate of incorporation. Effective date.

Corporate Name

10. (1) The word "limited", "corporation" or "incorporated" or the abbreviation "ltd.", "corp." or "inc." must be part of the name of every company; but a company may use and may be legally designated by either the full or the abbreviated form. Corporate name.

(2) The Registrar may exempt a body corporate continued as a company under this Act from the requirements of subsection (1).

10.1. (1) A company may be incorporated in a language other than the English language if, and only if, a notarially certified translation of the name of the company is provided. Foreign language name. 1995-9.

(2) Where the other language referred to in subsection (1) uses an alphabet or characters other than the Latin alphabet, the name of the company must be expressed in the Latin alphabet and a translation referred to in subsection (1) provided.

11. A company must not be incorporated with or have a name Reserved name.

(a) that is prohibited or refused under sections 416 to 419; or

(b) that is reserved for another company or intended company under section 415.

12. (1) Where, through inadvertence or otherwise, a company Name change. 1995-9.

(a) comes into existence with a name that contravenes section 11, or

(b) is, upon an application to change its name, granted a name that contravenes section 11,

the Registrar may direct the company to change its name in accordance with section 197.

ss.13-15A

1995-9. (2) Where a company has been incorporated with a name to which objection has been taken and the Registrar is satisfied that the name should be changed, the Registrar shall direct the company to change its name in accordance with section 197.

Continued name. **13.** Notwithstanding sections 11 and 12, a company that is continued under this Act is entitled to be continued with the name it lawfully had before that continuance.

Name revocation. **14.** Where a company has been directed under section 12 to change its name and has not, within 60 days from the service of the direction to that effect, changed its name to a name that complies with this Act, the Registrar may revoke the name of the company and assign to it a name; and, until changed in accordance with section 197, the name of the company is thereafter the name so assigned.

Assigned name. **15.** (1) When a company has had its name revoked and a name assigned to it under section 14, the Registrar must issue a certificate of amendment showing the new name of the company and must forthwith give notice of the change in the *Gazette*.

(2) Upon the issue of a certificate of amendment under subsection (1), the articles of the company to which the certificate refers are amended accordingly on the date shown in the certificate.

Annual Returns

Annual return. 2001-30. **15A.** (1) Subject to this section, every company having a share capital, except an external company to which section 343 applies, shall, not later than 31st January in every year,

(a) file with the Registrar an annual return in the manner and form prescribed; and

(b) at the time of filing under paragraph (a) pay the prescribed fee.

(2) A company that is in default in complying with the requirements of subsection (1) is liable to a penalty of \$10 payable to the Registrar for every day during which the default continues; and every director and officer

of the company who knowingly and wilfully authorises or permits the default is also liable to that penalty.

(3) Pursuant to section 412, the Registrar may strike off the register a company that neglects or refuses to file an annual return required under this section.

(4) The Registrar may issue guidelines or administrative directions for the efficient administration of this section including directions in respect of the submission of the annual return in electronic format.

Pre-Incorporation Agreements

16. (1) Except as provided in this section, a person who enters into a written contract in the name of or on behalf of a company before it comes into existence is personally bound by the contract and is entitled to the benefits of the contract. Pre-incorporation contracts.

(2) Within a reasonable time after a company comes into existence, it may, by any action or conduct signifying its intention to be bound thereby, adopt a written contract made, in its name or on its behalf, before it came into existence.

(3) When a company adopts a contract under subsection (2) 1984-7.

(a) the company is bound by the contract and is entitled to the benefits thereof as if the company had been in existence at the date of the contract and had been a party to it; and

(b) a person, who purported to act in the name of the company or on its behalf ceases, except as provided in subsection (4), to be bound by or entitled to the benefits of the contract.

(4) Except as provided in subsection (5), whether or not a written contract made before the coming into existence of the company is adopted by the company, a party to the contract may apply to the court for an order fixing obligations under the contract as joint or joint and several, or apportioning liability between or among the company and a person who purported to act in the name of the company or on its behalf; and the court may, upon the application, make any order it thinks fit.

(5) If expressly so provided in the written contract, a person who purported to act for or on behalf of a company before it came into existence is not in any event bound by the contract or entitled to the benefits of the contract.

DIVISION B

CORPORATE CAPACITY AND POWERS

17. (1) A company has the capacity, and, subject to this Act, the rights, powers and privileges of an individual. Capacity and powers.

(2) A company has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Barbados to the extent that the laws of Barbados and of that jurisdiction permit.

(3) It is not necessary for a by-law to be passed to confer any particular power on a company or its directors.

(4) This section does not authorise any company to carry on any business or activity in breach of

(a) any enactment prohibiting or restricting the carrying on of the business or activity, or

(b) any provision requiring any permission or licence for the carrying on of the business or activity.

Powers
reduced.

18. A company shall not carry on any business or exercise any power that it is restricted by its articles from carrying on or exercising, nor shall a company exercise any of its powers in manner contrary to its articles.

Validity of
acts.

19. For the avoidance of doubt, it is declared that no act of a company, including any transfer of property to or by a company, is invalid by reason only that the act or transfer is contrary to its articles or this Act.

Notice not
presumed.

20. No person is affected by, or presumed to have notice or knowledge of, the contents of a document concerning a company by reason only that the document has been filed with the Registrar or is available for inspection at any office of the company.

No
disclaimer
allowed.

21. A company or guarantor of an obligation of the company may not assert against a person dealing with the company or with any person who has acquired rights from the company.

- (a) that any of the articles, or by-laws of the company or any unanimous shareholder agreement has not been complied with;
- (b) that the persons named in the most recent notice to the Registrar under section 66 or 74 are not the directors of the company;
- (c) that the place named in the most recent notice sent to the Registrar under section 169 is not the registered office of the company;
- (d) that a person held out by a company as a director, an officer or an agent of the company has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the business of the company or usual for such a director, officer or agent;
- (e) that a document issued by any director, officer or agent of the company with actual or usual authority to issue the document is not valid or not genuine; or

- (f) that the financial assistance referred to in section 53 or the sale, lease, or exchange of property referred to in section 134 was not authorised,

except where that person has, or ought to have by virtue of his position with or relationship to the company, knowledge to the contrary.

22. (1) A contract made according to this section on behalf of a company

Contracts of a company.

- (a) is effective in law in point of form and binds the company and the other party to the contract; and

- (b) may be varied or discharged in the like manner that it is authorised by this section to be made.

(2) A contract that, if made between individuals, would, by law, be required to be in writing under seal may be made on behalf of a company in writing under seal.

(3) A contract that, if made between individual, would, by law, be required to be in writing or to be evidenced in writing by the parties to be charged thereby may be made or evidenced in writing signed in the name or on behalf of the company.

(4) A contract that, if made between individuals, would, by law, be valid although made by parol only and not reduced to writing may be made by parol on behalf of the company.

23. A bill of exchange or promissory note is presumed to have been made, accepted or endorsed, on behalf of the company, if made, accepted or endorsed in the name of the company or if expressed to be made, accepted or endorsed on behalf or on account of the company.

Bills & notes.

24. (1) A company may, by writing under seal, empower any person, either generally or in respect of any specified matter, as its attorney to execute deeds on its behalf in any place within or outside Barbados.

Power of attorney.

(2) A deed signed by a person empowered as provided in subsection (1) binds the company and has the same effect as if it were under the company's seal.

Company
seals.

25. (1) A company must have a common seal with its name engraved thereon in legible characters; but, except when required by any enactment to use its common seal, the company may, for the purpose of sealing any document, use its common seal or any other form of seal.

(2) If authorised by its by-laws, a company may have for use in any country other than Barbados or for use in any district or place not situated in Barbados, an official seal, which must be a facsimile of the common seal of the company with the addition on its face of the name of every country, district or place where it is to be used.

(3) Every document to which an official seal of the company is duly affixed binds the company as if it had been sealed with the common seal of the company.

(4) A company may, by an instrument in writing under its common seal, authorise any person appointed for that purpose to affix the company's official seal to any document to which the company is party in the country, district or place where its official seal can be used.

(5) Any person dealing with an agent appointed pursuant to subsection (4) in reliance on the instrument conferring the authority may assume that the authority of the agent continues during the period, if any, mentioned in the instrument, or, if no period is so mentioned, until that person has actual notice of the revocation or determination of the authority.

(6) A person who affixes an official seal of a company to a document shall, by writing under his hand, certify on the document the date on which, and the place at which, the official seal is affixed.

DIVISION C

SHARE CAPITAL

Shares

Nature of
shares.

26. (1) Shares in a company are personal estate and are not of the nature of real estate; and a share is transferable in the manner provided by this Act.

(2) Shares in a company are to be without nominal or par value.

(3) When a former-Act company is continued under this Act, a share with nominal or par value issued by the company before it was so continued is, for the purposes of subsection (2), deemed to be a share without nominal or par value.

(4) Subject to subsection (5), each share in a company must be distinguished by an appropriate designation.

(5) If at any time all the issued shares in a company, or all the issued shares in a company of a particular class, rank equally for all purposes, none of those shares need thereafter have a distinguishing designation so long as it ranks equally for all purposes with all shares for the time being issued, or, as the case may be, all the shares for the time being issued for the particular class.

(6) For the purposes of this Act, a former-Act company is a body corporate that was

- (a) incorporated under Part II of the former Act;
- (b) registered pursuant to section 56 of the former Act; or
- (c) incorporated or registered under the *Companies Act*, 1982.

27. When a company has only one class of shares, the rights of the holders are equal in all respects, and include If only one class.

- (a) the right to vote at any meeting of shareholders;
- (b) the right to receive any dividend declared by the company;
- (c) the right to receive the remaining property of the company on dissolution.

28. The articles of a company may provide for more than one class of shares; and, if they so provide Share classes.

- (a) the rights, privileges, restrictions and conditions attaching to the shares of each class must be set out in the articles; and
- (b) the rights set out in section 27 must be attached to at least one class of shares, but all of those rights need not be attached to the same class of shares.

Share issue. **29.** (1) Subject to the articles, the by-laws, any unanimous shareholder agreement, and section 34 shares may be issued at such times, and to such persons, and for such consideration, as the directors may determine.

(2) No company may issue bearer shares or bearer share certificates.

Consideration. **30.** (1) A share may not be issued until it is fully paid

- (a) in money, or
- (b) in property or past service that is the fair equivalent of the money that the company would have received if the share had been issued for money.

(2) In determining whether property or past service is the fair equivalent of a money consideration, the directors may take into account reasonable charges and expenses of organisation and reorganisation, and payments for property and past services reasonably expected to benefit the company.

(3) For the purposes of this section, "property" does not include a promissory note or a promise to pay.

Stated capital accounts. **31.** (1) A company must maintain a separate stated capital account for each class and series of shares that it issues.

(2) A company must add to the appropriate stated capital account the full amount of the consideration that it receives for any shares that it issues.

(3) A company may not reduce its stated capital or any stated capital account except in the manner provided by this Act.

(4) A company must not, in respect of a share that it issues, add to a stated capital account an amount greater than the amount of the consideration that it receives for the share.

(5) When a company proposes to add an amount to a stated capital account that it maintains in respect of a class or series of shares, that addition to the stated capital account must be approved by special resolution if

- (a) the amount to be added was not received by the company as consideration for the issue of shares, and
 - (b) the company has issued any outstanding shares of more than one class or series.
- (6) Notwithstanding section 30 and subsection (2)
- (a) when, in exchange for property, a company issues shares
 - (i) to a body corporate that was an affiliate of the company immediately before the exchange, or
 - (ii) to a person who controlled the company immediately before the exchange,

the company, subject to subsection (4), may add to the stated capital accounts that are maintained for the shares of the classes or series issued, the amount agreed, by the company and the body corporate or person, to be the consideration for the shares so exchanged;

- (b) when a company issues shares in exchange for shares of a body corporate that was an affiliate of the company immediately before the exchange, the company may, subject to subsection (4), add to the stated capital accounts that are maintained for the shares of the classes or series issued an

amount that is not less than the amount set out, in respect of the acquired shares of the body corporate, in the stated capital or equivalent accounts of the body corporate immediately before the exchange; or

- (c) when a company issues shares in exchange for shares of a body corporate that becomes, because of the exchange, an affiliate of the company, the company may, subject to subsection (4), add to the stated capital accounts that are maintained for the classes or series issued an amount that is not less than the amount set out, in respect of the acquired shares of the body corporate, in the stated capital or equivalent accounts of the body corporate immediately before the exchange.
- (7) When a former-Act company is continued under this Act
 - (a) then, notwithstanding subsection (2), it is not required to add to a stated capital account any consideration received by it before it was so continued, unless the share in respect of which the consideration is received is issued after the company is continued under this Act;
 - (b) an amount unpaid in respect of a share issued by the former-Act company before it was so continued must be added to the stated capital account that is maintained for the shares of that class or series; and
 - (c) its stated capital account for the purposes of
 - (i) subsection (2) of section 39,
 - (ii) section 44,
 - (iii) paragraph (b) of subsection (2) of section 53, and
 - (iv) paragraph (a) of subsection (2) of section 211,includes the amount that would have been included in stated capital if the company had been incorporated under this Act.

32. Section 31 and any other provision of this Act relating to stated capital do not apply to a company

Open-ended mutual company. 1984-7.

- (a) that is a public company,
- (b) that carries on only the business of investing the consideration it receives for the shares it issues, and
- (c) all or substantially all of whose issued shares are redeemable upon the demand of shareholders.

33. (1) The articles of a company may authorise the issue of any class of shares in one or more series, and may authorise the directors to fix the number of shares in and to determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series, subject to the limitations set out in the articles.

Series shares.

(2) If any cumulative dividends or amounts payable on return of capital in respect of a series of shares are not paid in full, the shares of all series of the same class participate rateably in respect of accumulated dividends and return of capital.

(3) No rights, privileges, restrictions or conditions attached to a series of shares authorised under this section may confer upon the series a priority in respect of dividends or return of capital over any other series of shares of the same class that are then outstanding.

(4) Before the issue of shares of a series authorised under this section, the directors must send to the Registrar articles of amendment in the prescribed form to designate a series of shares.

(5) Upon receipt from a company of articles of amendment designating a series of shares, the Registrar must issue to the company a certificate of amendment in accordance with section 404.

(6) The articles of a company are amended accordingly on the date shown in the certificate of amendment issued under subsection (5).

Pre-emptive rights.

34. (1) If the articles so provide, no shares of a class of shares may be issued unless the shares have first been offered to the shareholders of the company holding shares of that class; and those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at such price and on such terms as those shares are to be offered to others.

(2) Notwithstanding that the articles of a company provide the pre-emptive right referred to in subsection (1), the shareholders of the company have no pre-emptive right in respect of shares to be issued by the company

- (a) for a consideration other than money;
- (b) as a share dividend; or
- (c) pursuant to the exercise of conversion privileges, options or rights previously granted by the company.

Conversion privileges.

35. (1) A company may grant conversion privileges, options or rights to acquire shares of the company, but must set out the conditions thereof in any certificates or other instruments issued in respect thereof.

(2) Conversion privileges, options and rights to acquire shares of a company may be made transferable or non-transferable; and options and rights to acquire shares may be made separable or inseparable from any debentures or shares to which they are attached.

Reserve shares.

36. Where a company

- (a) has granted privileges to convert any debentures or shares issued by the company into shares or into shares of another class or series of shares, or

- (b) has issued or granted options or rights to acquire shares,

if the articles of the company limit the number of authorised shares, the company must reserve and continue to reserve sufficient authorised shares to meet the exercise of those conversion privileges, options and rights.

37. (1) Subject to subsection (2), and except as provided in sections 38 to 41, a company shall not hold shares in itself or in its holding body corporate. Own shares.

(2) A company must cause a subsidiary body corporate of the company that holds shares of the company to sell or otherwise dispose of those shares within 5 years from the date, as the case requires

- (a) that the body corporate became a subsidiary of the company, or
- (b) that the company was continued under this Act.

38. (1) A company may in the capacity of a legal representative hold shares in itself or in its holding body corporate unless it, or the holding body corporate, or a subsidiary of either of them has a beneficial interest in the shares. Exemptions.

(2) A company may hold shares in itself or in its holding body corporate by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

39. (1) Subject to subsection (2) and to its articles, a company may purchase or otherwise acquire shares issued by it. Acquisition of own shares.

(2) A company shall not make any payment to purchase or otherwise acquire shares issued by it, if there are reasonable grounds for believing that

- (a) the company is unable, or would, after that payment, be unable to pay its liabilities as they become due, or
- (b) the realisable value of the company's assets would, after that payment, be less than the aggregate of its liabilities and stated capital of all classes.

40. (1) Notwithstanding subsection (2) of section 45, but subject to subsection (3) and to its articles, a company may purchase or otherwise acquire its own issued shares. Other acquisition.

- (a) to settle or compromise a debt or claim asserted by or against the company;
- (b) to eliminate fractional shares; or
- (c) to fulfil the terms of a non-assignable agreement under which the company has an option or is obligated to purchase shares owned by a director, an officer or an employee of the company.

(2) Notwithstanding subsection (2) of section 39, a company may purchase or otherwise acquire its own issued shares

- (a) to satisfy the claim of a shareholder who dissents under section 213; or
- (b) to comply with an order under section 228.

(3) A company shall not make any payment to purchase or acquire under subsection (1) shares issued by it if there are reasonable grounds for believing that

- (a) the company is unable, or would, after that payment, be unable to pay its liabilities as they become due, or
- (b) the realisable value of the company's assets would, after that payment, be less than the aggregate of its liabilities and the amount required for payment on a redemption or in a liquidation of all shares the holders of which have the right to be paid before the holders of the shares to be purchased or acquired.

Redeemable
shares.

41. (1) Notwithstanding subsection (2) of section 39 or subsection (3) of section 40, but subject to subsection (2) of this section and to its articles, a company may, at prices not exceeding the redemption price thereof stated in its articles or calculated according to a formula stated in its articles, purchase or redeem any redeemable shares issued by it.

(2) A company shall not make any payment to purchase or redeem any redeemable shares issued by it if there are reasonable grounds for believing that

- (a) the company is unable or would, after that payment, be unable to pay its liabilities as they become due, or
- (b) the realisable value of the company's assets would, after that payment, be less than the aggregate of
 - (i) its liabilities, and
 - (ii) the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or in a liquidation, rateably with or before the holders of the shares to be purchased or redeemed.

42. Subject to section 46, a company may accept from any shareholder a share of the company surrendered to it as a gift, but may not extinguish or reduce a liability in respect of any amount unpaid on any such share except in accordance with section 44. Donated shares.

43. A company holding shares in itself or in its holding body corporate shall not vote or permit those shares to be voted thereon unless the company Voting thereon.

- (a) holds the shares in the capacity of a legal representative, and
- (b) has complied with section 144.

44. (1) Subject to subsection (3), a company may by special resolution reduce its stated capital by Stated capital reduction.

- (a) extinguishing or reducing a liability in respect of an amount unpaid on any share,
- (b) returning any amount in respect of consideration that the company received for an issued share, whether or not the company purchases, redeems or otherwise acquires any share or fraction thereof that it issued, and
- (c) declaring its stated capital to be reduced by an amount that is not represented by realisable assets.

(2) A special resolution under this section must specify the stated capital account or accounts from which the reduction of stated capital effected by the special resolution will be deducted.

(3) A company shall not reduce its stated capital under paragraph (a) or (b) of subsection (1) if there are reasonable grounds for believing that

- (a) the company is unable, or would, after that reduction, be unable, to pay its liabilities as they become due, or
- (b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.

(4) A company that reduces its stated capital under this section must, not later than 30 days after the date of the passing of the resolution, serve notice of the resolution on all persons who on the date of the passing of the resolution were creditors of the company.

(5) A creditor may apply to the court for an order compelling a shareholder or other recipient

- (a) to pay to the company an amount equal to any liability of the shareholder that was extinguished or reduced contrary to this section, or
- (b) to pay or deliver to the company any money or property that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of capital made contrary to this section.

(6) An action to enforce a liability imposed by this section may not be commenced after 2 years from the date of the act complained of.

(7) This section does not effect any liability that arises under section 83 or 84.

45. (1) Upon a purchase, redemption or other acquisition by a company under section 39, 40, 41, 57 or 213 or paragraph (f) of subsection (3) of section 228, of shares or fractions thereof issued by it, the company must deduct, from the stated capital account maintained for the class or series of shares purchased, redeemed or otherwise acquired, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series or fractions thereof purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

Stated
capital
adjustment.

(2) A company must deduct the amount of a payment made by the company to a shareholder under paragraph (g) of subsection (3) of section 228 from the stated capital account maintained for the class or series of shares in respect of which the payment was made.

(3) A company must adjust its stated capital accounts in accordance with any special resolution referred to in subsection (2) of section 44.

(4) Upon a conversion of issued shares of a class into shares of another class, or upon a change under section 197, 223 or 228 of issued shares of a company into shares of another class or series, the company must

- (a) deduct, from the stated capital account maintained for the class or series of shares changed or converted, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series changed or converted, divided by the number of issued shares of that class or series immediately before the change or conversion; and
- (b) add the result obtained under paragraph (a), and any additional consideration received by the company pursuant to the change, to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been changed or converted.

(5) For the purposes of subsection (4), when a company issues 2 classes of shares and there is attached to each of the classes a right to convert a share of the one class into a share of the other class, then, if a share of one class is converted into a share of the other class, the amount of stated capital attributable to a share in either class is the aggregate of the stated capital of both classes divided by the number of issued shares of both classes immediately before the conversion.

Cancellation
of shares.

46. Shares or fractions of shares issued by a company and purchased, redeemed or otherwise acquired by the company must be cancelled, or, if the articles of the company limit the number of authorised shares, the shares or fractions may be restored to the status of authorised, but unissued, shares.

Presumption
re own
shares.

47. For the purposes of sections 45 and 46, a company holding shares in itself as permitted by section 38 is deemed not to have purchased, redeemed or otherwise acquired those shares.

Changing
share class.

48. (1) Shares issued by a company and converted or changed under section 197, 223 or 228 into shares of another class or series become issued shares of the class or series of shares into which the shares have been converted or changed.

(2) Where its articles limit the number of authorised shares of a class or series of shares of a company and issued shares of that class or series have become, pursuant to subsection (1), issued shares of another class or series, the number of unissued shares of the first-mentioned class or series must, unless the articles of amendment or reorganisation otherwise provide, be increased by the number of shares that, pursuant to subsection (1), became shares of another class or series.

Effect of
purchase
contract.

49. (1) A contract with a company providing for the purchase of shares of the company is specifically enforceable against the company except to the extent that the company cannot perform the contract without thereby being in breach of section 39 or 40.

(2) In any action brought on a contract referred to in subsection (1), the company has the burden of proving that performance of the contract is prevented by section 39 or 40.

(3) Until the company has fully performed a contract referred to in subsection (1), the other party retains the status of a claimant who is entitled

(a) to be paid as soon as the company is lawfully able to do so, or

(b) to be ranked in a liquidation subordinate to the rights of creditors but in priority to the shareholders.

50. The directors of a company acting honestly and in good faith with a view to the best interests of the company may authorise the company to pay a commission to any person in consideration of his purchasing or agreeing to purchase shares of the company from the company or from any other person, or procuring or agreeing to procure purchasers for any such shares. Commission for share purchase.

51. A company shall not declare or pay a dividend if there are reasonable grounds for believing that Prohibited dividend.

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

(b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities and stated capital of all classes.

52. (1) A company may pay a dividend by issuing fully paid shares of the company, and, subject to subsection (2) and section 51, a company may pay a dividend in money or property. Payment of dividend.

(2) A company shall not pay a dividend out of unrealised profits.

(3) If shares of a company are issued in payment of a dividend, the value of the dividend stated as an amount in money must be added to the stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend.

Illicit loans
by company.

53. (1) When circumstances prejudicial to the company exist, the company or any company with which it is affiliated shall not, except as permitted by section 54, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise

- (a) to a shareholder, director, officer or employee of the company or affiliated company, or to an associate of any such person for any purposes, or
- (b) to any person for the purpose of, or in connection with, a purchase of a share issued or to be issued by the company or a company with which it is affiliated.

(2) Circumstances prejudicial to the company exist in respect of financial assistance mentioned in subsection (1) when there are reasonable grounds for believing that

- (a) the company is unable or would, after giving the financial assistance, be unable to pay its liabilities as they become due, or
- (b) the realisable value of the company's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee, would, after giving the financial assistance, be less than the aggregate of the company's liabilities and stated capital of all classes.

Permitted
loans.

54. Notwithstanding section 53, a company may give financial assistance to any person by means of a loan, guarantee or otherwise

- (a) in the ordinary course of business, if the lending of money is part of the ordinary business of the company;
- (b) on account of expenditures incurred or to be incurred on behalf of the company;
- (c) to a holding body corporate if the company is a wholly-owned subsidiary of the holding body corporate;
- (d) to a subsidiary body corporate of the company; and

- (e) to employees of the company or any of its affiliates
- (i) to enable or assist them to purchase or erect living accommodation for their own occupation,
 - (ii) in accordance with a plan for the purchase of shares of the company or any of its affiliates to be held by a trustee, or
 - (iii) to enable or assist them to improve their education or skills, or to meet reasonable medical expenses.

55. A contract made by a company contrary to section 53 may be enforced by the company or by a lender for value in good faith without notice of the contravention.

Enforcement
of illicit
loans.

56. The shareholders of a company are not, as shareholders, liable for any liability, act or default of the company except under subsection (5) of section 44, subsection (2) of section 133 or subsection (5) of section 384.

Immunity of
shareholders.

57. (1) Subject to this Act, the articles of a company may provide that the company has a lien on a share registered in the name of a shareholder or his legal representative for a debt of that shareholder to the company including an amount unpaid in respect of a share issued by a company on the date it was continued under this Act.

Lien on
shares.

(2) A company may enforce a lien referred to in subsection (1) in accordance with its by-laws.

DIVISION D

MANAGEMENT OF COMPANIES

The Directors

58. (1) Subject to any unanimous shareholder agreement, the directors of a company must

Duty to
manage
company.

- (a) exercise the powers of the company directly or indirectly through the employees and agents of the company, and

(b) direct the management of the business and affairs of the company.

(2) The directors of a public company must take all reasonable steps to ensure that the secretary or each joint secretary of the company is a person who appears to the directors to have the requisite knowledge and experience to discharge the functions of a secretary of a public company.

(3) For the purposes of this section, a person

(a) who, on 1st January, 1985, held the office of secretary, assistant secretary, or deputy secretary of a public company,

(b) who, for at least 3 years of the 5 years immediately preceding his appointment as secretary, held the office of secretary of a public company,

(c) who is a member in good standing of the Institute of Chartered Accountants of Barbados, the Institute of Chartered Secretaries and Administrators, or the Chartered Institute of Public Finance and Accountancy,

(d) who is an attorney-at-law, or

(e) who, by virtue of his holding or having held any other position or having been a member of any other body, appears to be capable of discharging the functions of a secretary of a public company,

may be assumed by a director of a public company to have the requisite knowledge and experience to discharge the functions of a secretary of the public company, if the director does not know otherwise.

Number of directors.

59. A company must have at least 1 director, but a public company must have no fewer than 3 directors, at least 2 of whom are not officers or employees of the company or any of its affiliates.

Restricted powers.

60. If the powers of the directors of a company to manage the business and affairs of the company are in whole or in part restricted by

the articles of the company, the directors have all the rights, powers and duties of the directors to the extent that the articles do not restrict those powers; but the directors are thereby relieved of their duties and liabilities to the extent that the articles restrict their powers.

61. (1) Unless the articles, by-laws or an unanimous shareholder agreement otherwise provide, the directors of a company may by resolution make, amend, or repeal any by-laws for the regulation of the business or affairs of the company. ^{By-law powers.}

(2) The directors of a company must submit a by-law, or any amendment or repeal of a by-law, made under subsection (1) to the shareholders of the company at the next meeting of shareholders after the making, amendment or repeal of the by-law; and the shareholders may, by ordinary resolution, confirm, amend or reject the by-law, amendment or repeal.

(3) A by-law, or any amendment or repeal of a by-law, is effective from the date of the resolution of the directors making, amending or repealing the by-law until

- (a) the by-law, amendment or repeal is confirmed, amended or rejected by the shareholders pursuant to subsection (2), or
- (b) the by-law, amendment or repeal ceases to be effective pursuant to subsection (4),

and, if the by-law, amendment or repeal is confirmed or amended by the shareholders, it continues in effect in the form in which it was confirmed or amended.

(4) When a by-law, or an amendment or repeal of a by-law is not submitted to the shareholders as required by subsection (2), or is rejected by the shareholders, the by-law, amendment or repeal ceases to be effective; and no subsequent resolution of the directors to make, amend or repeal a by-law having substantially the same purpose or effect is effective until the resolution is confirmed, with or without amendment, by the shareholders.

(5) A shareholder who is entitled to vote at an annual meeting of shareholders may, in accordance with sections 112 to 120, make a proposal to make, amend or repeal a by-law.

Organisa-
tional
meetings.

62. (1) After the issue of a certificate of incorporation of a company, a meeting of the directors of the company must be held at which the directors may

- (a) make by-laws;
- (b) adopt forms of share certificates and corporate records;
- (c) authorise the issue of shares;
- (d) appoint officers;
- (e) appoint an auditor to hold office until the first annual meeting of shareholders;
- (f) make banking arrangements; and
- (g) transact any other business.

(2) An incorporator or a director may call the meeting of directors referred to in subsection (1) by giving by post not less than 5 days' notice of the meeting to each director and stating in the notice the time and place of the meeting.

1984-7.

(3) Subsection (1) does not apply to a company to which a certificate of amalgamation has been issued under section 212.

Disqualified
directors.

63. (1) An individual who is prohibited by subsection (2) of section 4 from forming or joining in the formation of a company may not be a director of any company.

(2) When a person is disqualified under section 64 from being a director of a company, that person may not, during that period of disqualification, be a director of any company.

63.1. It is hereby declared that, subject to section 63.2, a company may be director or secretary of another company.

Company may be director or secretary of another company. 1991-2.

63.2. No company shall

- (a) have as secretary to the company a corporation the sole director of which is a sole director of the company,
- (b) have as sole director of the company a corporation the sole director of which is secretary to the company.

Prohibition of certain persons being sole director or secretary. 1991-2.

64. (1) When, on the application of the Registrar, it is made to appear to the court that a person is unfit to be concerned in the management of a public company, the court may order that, without the prior leave of the court, he may not be a director of the company, or, in any way, directly or indirectly, be concerned with the management of the company for such period

Court disqualified directors.

- (a) beginning
 - (i) with the date of the order, or
 - (ii) if the person is undergoing, or is to undergo a term of imprisonment and the court so directs, with the date on which he completes that term of imprisonment or is otherwise released from prison, and
- (b) not exceeding 5 years,

as may be specified in the order.

(2) In determining whether or not to make an order under subsection (1), the court must have regard to all the circumstances that it considers relevant, including any previous convictions of the person in Barbados or elsewhere for an offence involving fraud or dishonesty or in connection with the promotion, formation or management of any body corporate.

(3) Before making an application under this section in relation to any person, the Registrar must give that person not less than 10 days' notice of the Registrar's intention to make the application.

(4) On the hearing of an application made by the Registrar under this section or an application for leave under this section to be concerned with the management of a public company, the Registrar and any person concerned with the application may appear and call attention to any matters that are relevant, and may give evidence, call witnesses and be represented by an attorney-at-law.

No
qualification
required.

65. Unless the articles of a company otherwise provide, a director of the company need not hold shares issued by the company.

Notice of
directors.

66. (1) At the time of sending articles of incorporation of a company to the Registrar, the incorporators must send him, in the prescribed form, a notice of the names of the directors of the company; and the Registrar must file the notice.

(2) Each director named in the notice referred to in subsection (1) holds office as a director of the company from the issue of the certificate of incorporation of the company until the first meeting of the shareholders of the company.

(3) Subject to paragraph (b) of section 67, the shareholders of a company must, by ordinary resolution at the first meeting of the company and at each following annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the third annual meeting of the shareholders of the company following the election.

(4) It is not necessary that all the directors of a company elected at a meeting of shareholders hold office for the same term.

(5) A director who is not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of shareholders following his election.

(6) Notwithstanding subsections (2), (3) and (5), if directors are not elected at a meeting of shareholders, the incumbent directors continue in office until their successors are elected.

(7) If a meeting of shareholders fails, by reason of the disqualification, incapacity or death of any candidates, to elect the number or the minimum number of directors required by the articles of the company, the directors elected at that meeting may exercise all the powers of the directors as if the number of directors so elected constituted a quorum. 1984-7.

(8) The articles of a company or an unanimous shareholder agreement may, for terms expiring not later than the close of the third annual meeting of the shareholders following the election, provide for the election or appointment of directors by the creditors or employees of the company or by any classes of these creditors or employees.

66.1. (1) A meeting of the shareholders of a company may, by ordinary resolution, elect a person to act as a director in the alternative to a director of the company, or may authorise the directors to appoint such alternate directors as are necessary for the proper discharge of the affairs of the company. Alternate Directors. 1988-11.

(2) An alternate director shall have all the rights and powers of the director for whom he is elected or appointed in the alternative, except that he shall not be entitled to attend and vote at any meeting of the directors otherwise than in the absence of that other director.

67. Where the articles of a company provide for cumulative voting, the following rules apply Cumulative voting.

- (a) the articles must require a fixed number, and not a minimum and maximum number of directors;
- (b) each shareholder who is entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by him, multiplied by the number of directors to be elected, and he may cast all his votes in favour of one candidate, or distribute them among the candidates in any manner;

- (c) a separate vote of shareholders must be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting 2 or more persons to be elected by a single resolution;
- (d) if a shareholder vote for more than one candidate without something specifying the distribution of his votes among the candidates, he distributes his votes equally among the candidates for whom he votes;
- (e) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes must be eliminated until the number of candidates remaining equals the number of positions to be filled;
- (f) each director ceases to hold office at the close of the first annual meeting of shareholders following his election;
- (g) a director may not be removed from office if the votes cast against his removal would be sufficient to elect him and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected; and
- (h) the number of directors required by the articles may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected.

Termination
of office.

- 68.** A director of a company ceases to hold office when
- (a) he dies or resigns,
 - (b) he is removed in accordance with section 70,
 - (c) he becomes disqualified under section 63 or 64.

69. The resignation of a director of a company becomes effective at the time his written resignation is sent to the company or at the time specified in the resignation, whichever is later. Resignation of directors.

70. (1) Subject to paragraph (g) of section 67, the shareholders of a company may, by ordinary resolution at a special meeting, remove any directors from office. Removal of director.

(2) Where the holders of any class or series of shares of a company have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series of shares.

(3) Subject to paragraphs (b) to (e) of section 67, a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed, or, if the vacancy is not so filled, it may be filled pursuant to section 72.

71. (1) A director of a company is entitled to receive notice of, and to attend and be heard at, every meeting of shareholders. Right to notice.

(2) A director

(a) who resigns,

(b) who receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office, or

(c) who receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of his resignation or removal, or because his term of office has expired or is about to expire,

may submit to the company a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(3) The company shall forthwith send a copy of the statement referred to in subsection (2) to the Registrar and to every shareholder entitled to receive notice of any meeting referred to in subsection (1).

(4) No company or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (3).

Filling
vacancy.

72. (1) Subject to subsections (3) and (4), a quorum of directors of a company may fill a vacancy among the directors of the company, except a vacancy resulting from an increase in the number or minimum number of directors, or from a failure to elect the number or minimum of directors required by the articles of the company.

(2) If there is no quorum of directors, or if there has been a failure to elect the number or minimum number of directors required by the articles, the directors then in office must forthwith call a special meeting of shareholders to fill the vacancy; and if they fail to call a meeting, or if there are no directors then in office, the meeting may be called by any shareholder.

(3) Where the holders of any class or series of shares of a company have an exclusive right to elect one or more directors and a vacancy occurs among those directors

(a) then, subject to subsection (4), the remaining directors elected by that class or series may fill the vacancy except a vacancy resulting from an increase in the number or minimum number of directors for that class or series, or from a failure to elect the number or minimum number of directors for that class or series, or

(b) if there are no such remaining directors, any holder of shares of that class or series may call a meeting of the holders thereof for the purpose of filling the vacancy.

(4) The articles of a company may provide that a vacancy among the directors be filled only

(a) by a vote of the shareholder, or

(b) by a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors, if the vacancy occurs among the directors elected by that class or series.

(5) A director appointed or elected to fill a vacancy holds office for the unexpired term of his predecessor.

73. The shareholders of a company may amend the articles of the company to increase, or, subject to paragraph (h) of section 67, to decrease, the number of directors, or the minimum or maximum number of directors; but no decrease shortens the term of an incumbent director. Numbers changed.

74. (1) Within 15 days after a change is made among its directors, a company must send to the Registrar a notice in the prescribed form setting out the change; and the Registrar must file the notice. Notice of change.

(2) Any interested person, or the Registrar, may apply to the court for an order to require a company to comply with subsection (1); and the court may so order and make any further order it thinks fit.

75. (1) Unless the articles or by-laws of a company otherwise provide, the directors of a company may meet at any place, and upon such notice as the by-laws require. Directors' meetings.

(2) Subject to the articles or by-laws, a majority of the number of directors or minimum number of directors required by the articles constitutes a quorum at any meeting of directors; and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

76. (1) A notice of a meeting of the directors of a company must specify any matter referred to in subsection (2) of section 80 that is to be dealt with at the meeting; but, unless the by-laws of the company otherwise provide, the notice need not specify the purpose of or the business to be transacted at the meeting. Notice and waiver.

(2) A director may, in any manner, waive a notice of a meeting of directors; and attendance of a director at a meeting of directors is a waiver of notice of the meeting by the director except when he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Adjourned
meeting.

77. Notice of an adjourned meeting of directors need not be given if the time and place of the adjourned meeting is announced at the original meeting.

One director
board.

78. Where a company has only one director that director may constitute a meeting.

Telephone
participa-
tion.

79. (1) Subject to the by-laws of a company, a director may, if all the directors of the company consent, participate in a meeting of directors of the company or of a committee of the directors by means of such telephone or other communication facilities as permit all persons participating in the meeting to hear each other.

(2) A director who participates in a meeting of directors by such means as are described in subsection (1), is, for the purposes of this Act, present at the meeting.

Delegation
of powers.

80. (1) Directors of a company may appoint from their number a managing director or a committee of directors and delegate to the managing director or committee any of the powers of the directors.

(2) Notwithstanding subsection (1), no managing director and no committee of directors of a company may

- (a) submit to the shareholders any question or matter requiring the approval of the shareholders;
- (b) fill a vacancy among the directors or in the office of auditor;
- (c) issue shares except in the manner and on the terms authorised by the director;
- (d) declare dividends;

- (e) purchase, redeem or otherwise acquire shares issued by the company;
- (f) pay a commission referred to in section 50;
- (g) approve a management proxy circular referred to in Division F;
- (h) approve any financial statements referred to in section 147; or
- (i) adopt, amend or repeal by-laws.

81. An act of a director or officer is valid notwithstanding any irregularity in his election or appointment, or any defect in his disqualification. Validity of acts.

82. (1) When a resolution in writing is signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors Resolution in writing.

- (a) the resolution is as valid as if it had been passed at a meeting of directors or a committee of directors, and
- (b) the resolution satisfies all the requirements of this Act relating to meetings of directors or committees of directors.

(2) A copy of every resolution referred to in subsection (1) must be kept with the minutes of the proceedings of the directors or committee of directors.

Liabilities of Directors

83. Directors of a company who vote for or consent to a resolution authorising the issue of a share under section 29 for a consideration other than money are jointly and severally liable to the company to make good any amount by which the consideration received is less than the fair equivalent of the money that the company would have received if the share had been issued for money on the date of the resolution. Liability for share issue.

Liability for
other acts.

84. Directors of a company who vote for, or consent to, a resolution authorising

- (a) a purchase, redemption or other acquisition of shares contrary to section 39, 40, or 41;
- (b) a commission contrary to section 50;
- (c) a payment of a dividend contrary to section 51 or 52;
- (d) financial assistance contrary to section 53;
- (e) a payment of an indemnity contrary to any of the provisions of sections 213 to 222 or 228,

are jointly and severally liable to restore to the company any amounts so distributed or paid and not otherwise recovered by the company.

Contribution
for
judgment.

85. A director who has satisfied a judgment founded on a liability under section 83 or 84 is entitled to contribution from the other directors who voted for or consented to the unlawful act upon which the judgment was founded.

Recovery by
action.

86. (1) A director who is liable under section 84 may apply to the court for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 39, 40, 41, 50, 51, 52, 53 or 54.

(2) In connection with an application under subsection (1), the court may, if it is satisfied that it is equitable to do so

- (a) order a shareholder or other recipient to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other recipient contrary to any of the provisions of section 39, 40, 41, 50, 51, 52, 53, 54, 97 to 101, 213 to 222 or 228,
- (b) order a company to return or issue shares to a person from whom the company has purchased, redeemed or otherwise acquired shares, or

(c) make any further order it thinks fit.

87. A director of a company is not liable under section 83 if he did not know and could not reasonably have known that the share was issued for a consideration less than the fair equivalent of the money that the company would have received if the share had been issued for money. Defence to liability.

88. An action to enforce a liability imposed under section 83 or 84 may not be commenced after 2 years from the date of the resolution authorising the action complained of. Time limit on liability.

Contractual Interest

89. (1) A director or officer of a company OOOO Interests in contracts.

(a) who is a party to a material contract or proposed material contract with the company, or

(b) who is a director or an officer of any body, or has a material interest in any body, that is a party to a material contract or proposed material contract with the company,

must disclose in writing to the company or request to have entered in the minutes of meetings of directors the nature and extent of his interest.

(2) The disclosure required by subsection (1) must be made, in the case of a director of a company

- (a) at the meeting at which a proposed contract is first considered;
- (b) if the director was not then interested in a proposed contract, at the first meeting after he becomes so interested;
- (c) if the director becomes interested after a contract is made, at the first meeting after he becomes so interested; or
- (d) if a person who is interested in a contract later becomes a director of the company, at the first meeting after he becomes a director.

(3) The disclosure required by subsection (1) must be made, in the case of an officer of a company who is not a director

- (a) forthwith after he becomes aware that the contract or proposed contract is to be considered, or has been considered, at a meeting of directors of the company;
- (b) if the officer becomes interested after a contract is made, forthwith after he becomes so interested; or
- (c) if a person who is interested in a contract later becomes an officer of the company, forthwith after he becomes an officer.

(4) If a material contract or a proposed material contract is one that, in the ordinary course of the company's business, would not require approval by the directors or shareholders of the company, a director or officer of the company must disclose in writing to the company, or request to have entered in the minutes of meetings of directors, the nature and extent of his interest forthwith after the director or officer becomes aware of the contract or proposed contract.

(5) A director of a company who is referred to in subsection (1) may vote on any resolution to approve a contract that he has an interest in, if the contract

- (a) is an arrangement by way of security for money loaned to, or obligations undertaken by him, for the benefit of the company or an affiliate of the company;
- (b) is a contract that relates primarily to his remuneration as a director, officer, employee or agent of the company or affiliate of the company;
- (c) is a contract for indemnity or insurance under sections 97 to 101;
- (d) is a contract with an affiliate of the company; or
- (e) is a contract other than one referred to in paragraphs (a) to (d),

but, in the case of a contract described in paragraph (e), no resolution is valid unless it is approved by not less than two-thirds of the votes of the shareholders of the company to whom notice of the nature and extent of the director's interest in the contract is declared and disclosed in reasonable detail.

90. For the purposes of section 89, a general notice to the directors of a company by a director or an officer of the company declaring that he is a director or officer of, or has a material interest in, another body, and is to be regarded as interested in any contract with that body is a sufficient declaration of interest in relation to any such contract. Interest declaration.

91. A material contract between a company and one or more of its directors or officers, or between a company and another body of which a director or officer of the company is a director or officer, or in which he has a material interest, is neither void nor voidable Avoidance of nullity.

(a) by reason only of that relationship, or

(b) by reason only that a director with an interest in the contract is present at, or is counted to determine the presence of a quorum at, a meeting of directors or a committee of directors that authorised the contract,

if the director or officer disclosed his interest in accordance with subsection (2), (3) or (4) of section 89 or section 90, as the case may be, and the contract was approved by the directors or the shareholders and was reasonable and fair to the company at the time it was approved.

92. When a director or officer of a company fails to disclose, in accordance with section 89 or 90, his interest in a material contract made by the company, the court may, upon the application of the company or a shareholder of the company set aside the contract on such terms as the court thinks fit. Setting aside contract.

Officers of the Company

93. Subject to the articles or by-laws of a company or any unanimous shareholder agreement Designation of offices, etc.

- (a) the directors of the company may designate the offices of the company, appoint as officers persons of full capacity, specify their duties and delegate to them powers to manage the business and affairs of the company, except powers to do anything referred to in subsection (2) of section 80;
- (b) a director may be appointed to any office of the company; and
- (c) two or more offices of the company may be held by the same person.

Borrowing Powers of Directors

Borrowing
powers.

94. (1) Unless the articles or by-laws of, or any unanimous shareholder agreement relating to, the company otherwise provide, the articles of a company are presumed to provide that the directors of the company may, without authorisation of the shareholders

- (a) borrow money upon the credit of the company;
- (b) issue, re-issue, sell or pledge debentures of the company;
- (c) subject to section 53, give a guarantee on behalf of the company to secure performance of an obligation of any person; and
- (d) mortgage, charge, pledge, or otherwise create to secure any obligation of the company a security interest in all or any property of the company that is owned or subsequently acquired by the company.

(2) Notwithstanding subsection (2) of section 80 and paragraph (a) of section 93, unless the articles or by-laws of, or any unanimous shareholder agreement relating to, a company otherwise provide, the directors of the company may by resolution delegate the powers mentioned in subsection (1) to a director, a committee of directors or an officer of the company.

(3) For the purposes of this Act "security interest" means any interest in or charge upon any property of a company, by way of mortgage, bond, lien, pledge or other means, that is created or taken to secure the payment of an obligation of the company.

Duty of Directors and Officers

95. (1) Every director and officer of a company in exercising his powers and discharging his duties must Duty of care.

- (a) act honestly and in good faith with a view to the best interests of the company; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) In determining what are the best interests of a company, a director must have regard to the interests of the company's employees in general as well as to the interests of its shareholder.

(3) The duty imposed by subsection (2) on the directors of a company is owed by them to the company alone; and the duty is enforceable in the same way as any other fiduciary duty owed to a company by its directors.

(4) Every director and officer of a company must comply with this Act and the regulations, and with the articles and by-laws of the company, and any unanimous shareholder agreement relating to the company.

(5) Subject to subsection (2) of section 133, no provision in a contract, the articles of a company, its by-laws or any resolution, relieves a director or officer of the company from the duty to act in accordance with this Act or the regulations, or relieves him from liability for a breach of this Act or the regulation. 1984-7.

96. (1) A director who is present at a meeting of the directors or of a committee of directors consents to any resolution passed or action taken at that meeting, unless Dissenting to resolutions.

- (a) he requests that his dissent be or his dissent is entered in the minutes of the meeting,
- (b) he sends his written dissent to the secretary of the meeting before the meeting is adjourned, or

(c) he sends his dissent by registered post or delivers it to the registered office of the company immediately after the meeting is adjourned.

(2) A director who votes for, or consents to, a resolution may not dissent under subsection (1).

(3) A director who was not present at a meeting at which a resolution was passed or action taken is presumed to have consented thereto unless, within 7 days after he becomes aware of the resolution, he

(a) causes his dissent to be placed with the minutes of the meeting, or

(b) sends his dissent by registered post or delivers it to the registered office of the company.

(4) A director is not liable under section 83, 84 or 95 if he relies in good faith upon

(a) financial statements of the company represented to him by an officer of the company, or

(b) a report of an attorney-at-law, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him.

Indemnities

Indemni-
fying
directors,
etc.

97. (1) Except in respect of an action by or on behalf of a company or body corporate to obtain a judgment in its favour, a company may indemnify

(a) a director or officer of the company,

(b) a former director or officer of the company, or

(c) a person who acts or acted at the company's request as a director or officer of a body corporate of which the company is or was a shareholder or creditor,

and his legal representatives, against all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment) reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of that company or body corporate.

(2) Subsection (1) does not apply unless the director or officer to be so indemnified

- (a) acted honestly and in good faith with a view to the best interests of the company, and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his conduct was lawful.

98. A company may with the approval of the court indemnify a person referred to in section 97 in respect of an action For derivative action.

- (a) by or on behalf of the company or body corporate to obtain a judgment in its favour, and
- (b) to which he is made a party by reason of being or having been a director or an officer of the company or body corporate,

against all costs, charges and expenses reasonably incurred by him in connection with the action, if he fulfills the conditions set out in subsection (2) of section 97.

99. Notwithstanding anything in section 97 or 98, a person described in section 97 is entitled to indemnity from the company in respect of all costs, charges and expenses reasonably incurred by him in connection with the defence of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of the company or body corporate, if the person seeking indemnity Right to indemnity.

- (a) was substantially successful on the merits in his defence of the action or proceeding,

(b) qualified in accordance with the standards set out in section 97 or 98, and

(c) is fairly and reasonably entitled to indemnity.

Insurance of directors, etc.

100. A company may purchase and maintain insurance for the benefit of any person referred to in section 97 against any liability incurred by him under paragraph (b) of subsection (1) of section 95 in his capacity as a director or officer of the company.

Court approval of indemnity.

101. (1) A company or person referred to in section 97 may apply to the court for an order approving an indemnity under section 98; and the court may so order and make any further order it thinks fit.

(2) An applicant under subsection (1) must give the Registrar notice of the application; and the Registrar may appear and be heard in person or by an attorney-at-law.

(3) Upon an application under subsection (1), the court may order notice to be given to any interested person; and that person may appear and be heard in person or by an attorney-at-law.

Remuneration.

102. Subject to its articles or by-laws, or any unanimous shareholder agreement, the directors of a company may fix the remuneration of the directors, officers and employees of the company.

DIVISION E

SHAREHOLDERS OF COMPANIES

Meetings

Place of meetings.

103. (1) Meetings of shareholders of a company must be held at the place within Barbados provided in the by-laws, or, in the absence of any such provision, at the place within Barbados that the directors determine.

(2) Notwithstanding subsection (1), a meeting of shareholders of a company may be held outside Barbados if all the shareholders entitled to vote at the meeting so agree.

(3) A shareholder who attends a meeting of shareholders held outside Barbados agrees to its being so held unless he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

104. Notwithstanding section 103, if the articles of a company so provide, meetings of shareholders of the company may be held outside Barbados at one or more places specified in the articles. Meeting outside Barbados.

105. The directors of a company

(a) must call an annual meeting of shareholders not later than 18 months after the company comes into existence, and subsequently not later than 15 months after holding the last preceding annual meeting; and

(b) may at any time call a special meeting of shareholders. Calling meetings.

106. (1) For the purpose of

(a) determining the shareholders of the company who are

(i) entitled to receive payment of a dividend, or

(ii) entitled to participate in a liquidation distribution, or

(b) determining the shareholders of the company for any other purpose except the right to receive notice of, or to vote at, a meeting, Record date of shareholders.

the directors may fix in advance a date as the record date for the determination of shareholders; but that record date must not precede by more than 50 days the particular action to be taken.

(2) For the purpose of determining shareholders who are entitled to receive notice of a meeting of shareholders of the company, the directors of the company may fix in advance a date as the record date for the determination of shareholders; but the record date must not precede by more than 50 days or by less than 21 days the date on which the meeting is to be held.

Statutory
date.

107. If no record date is fixed

- (a) the record date for determining the shareholders who are entitled to receive a notice of a meeting of the shareholders is
 - (i) the close of business on the date immediately preceding the day on which the notice is given,
 - (ii) if no notice is given, the day on which the meeting is held; and
- (b) the record date for the determination of shareholders for any purpose other than the purpose specified in paragraph (a) is the close of business on the day on which the directors pass the resolution relating to that purpose.

Notice of
record date.

108. If a record date is fixed under section 106, notice thereof must, not less than 7 days before the date so fixed, be given by advertisement in a newspaper published in Barbados.

Notice of
meeting.

109. (1) Notice of the time and place of a meeting of shareholders must be sent not less than 21 days nor more than 50 days before the meeting

- (a) to each shareholder entitled to vote at the meeting;
- (b) to each director; and
- (c) to the auditor of the company.

(2) A notice of a meeting of shareholders of a company is not required to be sent to shareholders of the company who were not registered on the records of the company or its transfer agent on the record date determined under section 106 or 107, as the case may be; but failure to receive notice does not deprive a shareholder of the right to vote at the meeting.

(3) If a meeting of shareholders is adjourned for less than 30 days, it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned.

(4) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of 30 days or more, notice of the adjourned meeting must be given as for an original meeting; but, unless the meeting is adjourned by one or more adjournments for an aggregate of more than 90 days, subsection (1) of section 139 does not apply.

110. (1) All business transacted at a special meeting of shareholders, and all business transacted at an annual meeting of shareholders, is special business, except

- (a) the consideration of the financial statements,
- (b) the auditor's report,
- (c) the election of directors, and
- (d) the re-appointment of the incumbent auditor.

(2) Notice of a meeting of shareholders at which special business is to be transacted must state

- (a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment thereon; and
- (b) the text of any special resolution to be submitted to the meeting.

111. A shareholder and any other person who is entitled to attend a meeting of shareholders may in any manner waive notice of the meeting; and the attendance of any person at a meeting of shareholders is a waiver of notice of the meeting by that person, unless he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Proposals and Proxies

112. A shareholder of a company who is entitled to vote at an annual meeting of the shareholders may

- (a) submit to the company notice of any matter that he proposes to raise at the meeting, in this Division referred to as a "proposal", and
- (b) discuss at the meeting any matter in respect of which he would have been entitled to submit a proposal.

Proxy
circular.

113. (1) A company that solicits proxies must set the proposal out in the management proxy circular required by section 140 or attach the proposal to that circular.

(2) If so requested by a shareholder who submits a proposal to a company, the company must include in the management proxy circular, or attach to it, a statement by the shareholder of not more than 200 words in support of the proposal, and the name and address of the shareholder.

Nomination
in proposal.

114. A proposal may include nominations for the election of directors if the proposal is signed by one or more holders of shares who represent in the aggregate not less than

(a) five percent of the shares of the company, or

(b) five percent of shares of a class of shares of the company,

entitled to vote at the meeting to which the proposal is to be presented; but this subsection does not preclude nominations made at a meeting of shareholders of a company that is not required to solicit proxies under section 139.

Non-
compliance
with proxy
solicitation.
1984-7.

115. A company is not required to comply with section 113 if

(a) the proposal is not submitted to the company at least 90 days before the anniversary date of the previous annual meeting of shareholders of the company;

(b) it clearly appears that the proposal is submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the company or its directors, officers, shareholders or debenture holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;

(c) the company, at the shareholder's request, included a proposal in a management proxy circular relating to a meeting of shareholders held within 2 years preceding the receipt of that request and the shareholder failed to present the proposal, in person or by proxy, at the meeting;

- (d) substantially the same proposal was submitted to shareholders in a management proxy circular or a dissident's proxy circular relating to a meeting of shareholders held within 2 years preceding the receipt of the shareholder's request and the proposal was defeated; or
- (e) the rights conferred by that subsection are being abused to secure publicity.

116. No company, or person acting on its behalf, incurs any liability by reason only of circulating a proposal or statement in compliance with this Act. Publishing immunity.

117. When a company refuses to include a proposal in a management proxy circular, the company must, within 10 days after receiving the proposal, notify the shareholder submitting the proposal of its intention to omit the proposal from the management proxy circular; and the company must send him a statement of the reasons for its refusal. Refusal notice.

118. Upon application to the court by a shareholder of a company who is claiming to be aggrieved by the company's refusal under section 117 to include a proposal in a management proxy circular, the court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit. Restraining meeting.

119. A company or any person claiming to be aggrieved by a proposal submitted to the company may apply to the court for an order permitting the company to omit the proposal from its management proxy circular; and the court may, if it is satisfied that section 115 applies, make such order as it thinks fit. Right to omit proposal.

120. An applicant under section 118 or 119 must give the Registrar notice of the application, and the Registrar may appear and be heard in person or by an attorney-at-law. Registrar's notice.

Shareholder Lists

List of
share-
holders.

121. (1) A company must

- (a) not later than 10 days after the record date is fixed under subsection (2) of section 106, if a record date is so fixed, or
- (b) if no record date is fixed
 - (i) at the close of business on the date immediately preceding the day on which the notice is given, or
 - (ii) if no notice is given, as of the day on which the meeting is held,

prepare a list of its shareholders who are entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each shareholder.

(2) When a company fixes a record date under subsection (2) of section 106, a person named in the list prepared under paragraph (a) of subsection (1) is, subject to subsection (3), entitled, at the meeting to which the list relates to vote the shares shown opposite his name.

(3) Where a person has transferred the ownership of any of his shares in a company after the record date fixed by the company, if the transferee of those shares

- (a) produces properly endorsed share certificates to the company or otherwise establishes to the company that he owns the shares, and
- (b) demands, not later than 10 days before the meeting of the shareholders of the company, that his name be included in the list of shareholders before the meeting,

the transferee may vote his shares at the meeting.

(4) When a company does not fix a record date under subsection (2) of section 106, a person named in a list of shareholders prepared under paragraph (b) of subsection (1) may, at the meeting to which the list relates, vote the shares shown opposite his name.

122. A shareholder of a company may examine the list of its shareholders Examination of list.

- (a) during usual business hours at the registered office of the company or at the place where its register of shareholders is maintained, and
- (b) at the meeting of shareholders for which the list was prepared.

Quorum

123. (1) Unless the by-laws otherwise provide, a quorum of shareholders is present at a meeting of shareholders if the holders of a majority of the shares entitled to vote at the meeting are present in person or represented by proxy. Quorum at meetings.

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(3) If a quorum is not present within 30 minutes of the time appointed for a meeting of shareholders, the meeting stands adjourned to the same day 2 weeks thereafter, at the same time, and place; and, if at the adjourned meeting, a quorum is not present within 30 minutes of the appointed time, the shareholders present constitute a quorum.

(4) When a company has only one shareholder, or has only one shareholder of any class or series of shares, that shareholder present in person or by proxy constitutes a meeting.

Voting the Shares

124. Unless the articles of the company otherwise provide, on a show of hands a shareholder or proxy holder has one vote; and upon a poll a shareholder or proxy holder has one vote for every share held. Right to vote share.

125. (1) When a body corporate or association is a shareholder of a company, the company must recognise any individual authorised by a resolution of the directors or governing body of the body corporate or association to represent it at meetings of shareholders of the company. Representative of other body.

(2) An individual who is authorised as described in subsection (1) may exercise, on behalf of the body corporate or association that he represents, all the powers it could exercise if it were an individual shareholder.

Joint share-
holders.

126. Unless the by-laws otherwise provide, if 2 or more persons hold shares jointly, one of those holders present at a meeting of shareholders may, in the absence of the other, vote the shares; but if 2 or more of those persons who are present, in person or by proxy, vote, they must vote as one on the shares jointly held by them.

Voting
method at
meetings.

127. (1) Unless the by-laws otherwise provide, voting at a meeting of shareholders must be by a show of hands, except when a ballot is demanded by a shareholder or proxy holder entitled to vote at the meeting.

(2) A shareholder or proxy holder may demand a ballot either before or after any vote by show of hands.

Resolution
in writing.

128. (1) Except where a written statement is submitted by a director under section 71 or an auditor under section 163

- (a) a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders, and
- (b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of shareholders.

(2) A copy of every resolution referred to in subsection (1) must be kept with the minutes of the meetings of shareholders.

Compulsory Meeting

129. (1) The holders of not less than 5 percent of the issued shares of a company that carry the right to vote at a meeting sought to be held by them may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition. Requisitioned shareholders meeting.

(2) The requisition referred to in subsection (1), which may consist of several documents of like form, each signed by one or more shareholders of the company, must state the business to be transacted at the meeting and must be sent to each director and to the registered office of the company.

(3) Upon receiving a requisition referred to in subsection (1), the directors must call a meeting of shareholders to transact the business stated in the requisition, unless

- (a) a record date has been fixed under subsection (2) of section 106 and notice thereof has been given under section 108;
- (b) the directors have called a meeting of shareholders and have given notice thereof under section 109; or
- (c) the business of the meeting as stated in the requisition includes matters described in paragraphs (b) to (e) of section 115.

(4) If, after receiving a requisition referred to in subsection (1), the directors do not call a meeting of shareholders within 21 days after receiving the requisition, any shareholder who signed the requisition may call the meeting.

(5) A meeting called under this section must be called as nearly as possible in the manner in which meetings are to be called pursuant to the by-laws, this Division and Division F.

(6) Unless the shareholders otherwise resolve at a meeting called under subsection (4), the company must reimburse the shareholders who requisitioned the meeting the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

Court-called
meeting.

130. (1) Upon the application to the court by a director of a company or a shareholder of the company who is entitled to vote at a meeting of the shareholders, or by the Registrar, the court may

- (a) when for any reason it is impracticable
 - (i) to call a meeting of shareholders in the manner in which meetings of shareholders can be called, or
 - (ii) to conduct the meeting in the manner prescribed by the by-laws and this Act, or
- (b) for any other reason thought fit by the court,

order a meeting of shareholders to be called, held and conducted in such manner as the court may direct.

(2) Without restricting the generality of subsection (1), the court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

(3) A meeting of the shareholders of a company called, held and conducted pursuant to this section is for all purposes a meeting of shareholders of the company duly called, held and conducted.

Controverted Affairs

Court review
controversy.

131. (1) A company or a shareholder or director thereof may apply to the court to determine any controversy with respect to an election or appointment of a director or auditor of the company.

(2) Upon an application made under this section, the court may make any order it thinks fit including

- (a) an order restraining a director or auditor whose election or appointment is challenged from acting, pending determination of the dispute;
- (b) an order declaring the result of the disputed election or appointment;

- (c) an order requiring a new election or appointment, and including in the order directions for the management of the business and affairs of the company until a new election is held, or appointment made; and
- (d) an order determining the voting rights of shareholders and of persons claiming to own shares.

Shareholder Agreements

132. A written agreement between 2 or more shareholders of a company may provide that in exercising voting rights the shares held by them will be voted as provided in the agreement. Pooling agreement.

133. (1) An otherwise lawful written agreement among all the shareholders of a company, or among all the shareholders and a person who is not a shareholder, that restricts, in whole or in part, the powers of the directors of the company to manage the business and affairs of the company is valid. Unanimous shareholder agreement.

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

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

(4) Where any unanimous shareholder agreement is executed or terminated, written notice of that fact, together with the date of the execution or termination thereof, must be filed with the Registrar within 15 days after the execution or termination.

Shareholder Approvals

Extra-ordinary transaction.

134. (1) A sale, lease or exchange of all, or substantially all, the property of a company other than in the ordinary course of business of the company requires the approval of the shareholders in accordance with this section.

(2) A notice of a meeting of shareholders complying with section 109 must be sent in accordance with that section to each shareholder and must

(a) include or be accompanied by a copy or summary of the agreement of sale, lease or exchange, and

(b) state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 213,

but failure to make the statement referred to in paragraph (b) does not invalidate a sale, lease or exchange referred to in subsection (1).

(3) At the meeting referred to in subsection (2) the shareholders may authorise the sale, lease or exchange of the property, and may fix or authorise the directors to fix any of the terms and conditions of the sale, lease or exchange.

(4) Each share of the company carries the right to vote in respect of a sale, lease or exchange referred to in subsection (1), whether or not it otherwise carries the right to vote.

(5) The shareholders of a class or series of shares of the company are entitled to vote separately as a class or series in respect of a sale, lease or exchange referred to in subsection (1) only if the class or series is affected by the sale, lease or exchange in a manner different from the shares of another class or series.

(6) A sale, lease or exchange referred to in subsection (1) is adopted when the shareholders of each class or series of shares who are entitled to vote thereon have, by special resolution, approved of the sale, lease or exchange.

(7) The directors of a company, if authorised by the shareholders approving a proposed sale, lease or exchange, may, subject to the rights of third parties, abandon the sale, lease or exchange without any further approval of the shareholders.

DIVISION F

PROXIES

135. (1) In this Part

Definitions.

- (a) "form of proxy" means a written or printed form that, upon completion and signature by or on behalf of a shareholder, becomes a proxy;
- (b) "proxy" means a completed and signed form of proxy by means of which a shareholder appoints a proxy holder to attend and act on his behalf at a meeting of shareholders;
- (c) "registrant" means a broker or dealer required to be registered to trade or deal in shares or debentures under the law of any jurisdiction;
- (d) "solicit" or "solicitation" includes, subject to subsection (2),
 - (i) a request for a proxy, whether or not accompanied with or included in a form of proxy;
 - (ii) a request to execute or not to execute a form of proxy or to revoke a proxy;
 - (iii) the sending of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy; and
 - (iv) the sending of a form of proxy to a shareholder under section 139;
- (e) "solicitation by or on behalf of the management of a company" means a solicitation by any person pursuant to a resolution or instructions of, or with the acquiescence of, the directors or a committee of directors of the company concerned.

- (2) The term "solicit" or "solicitation" does not include
- (a) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a shareholder;
 - (b) the performance of administrative acts or professional services on behalf of a person soliciting a proxy;
 - (c) the sending by a registrant of the documents referred to in section 144; or
 - (d) a solicitation by a person in respect of shares of which he is the beneficial owner.

Proxy Holders

Proxy
appoint-
ment.

136. (1) A shareholder who is entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxy holder, or one or more alternate proxy holders, none of whom need be shareholders, to attend and act at the meeting in the manner and to the extent authorised by the proxy and with the authority conferred by the proxy.

(2) A proxy must be executed in writing by the shareholder or his attorney authorised in writing.

(3) A proxy is valid only at the meeting in respect of which it is given or any adjournment of that meeting.

Revocation
of proxy.

137. A shareholder of a company may revoke a proxy

- (a) by depositing an instrument in writing executed by him or by his attorney authorised in writing
 - (i) at the registered office of the company at any time, up to and including the last business day preceding the day of the meeting, or any adjournment of that meeting, at which the proxy is to be used, or
 - (ii) with the chairman of the meeting on the day of the meeting or any adjournment of that meeting, or

(b) in any other manner permitted by law.

138. (1) The directors of a company may specify in a notice calling a meeting of the shareholders of the company a time not exceeding 48 hours preceding the meeting or an adjournment of the meeting before which time proxies to be used at the meeting must be deposited with the company or its agent. Deposit of proxy.

(2) In the calculation of time for the purposes of subsection (1), Saturdays and holidays are to be excluded.

139. (1) Subject to subsection (2), the management of a company must, concurrently with the giving of notice of a meeting of shareholders, send a form of proxy in the prescribed form to each shareholder who is entitled to receive notice of the meeting. Mandatory solicitation of proxy.

(2) Where a company has fewer than 15 shareholders, 2 or more joint shareholders being counted as one, the management of the company need not send a form of proxy under subsection (1).

140. A person shall not solicit proxies unless there is sent to the auditor of the company, to each shareholder whose proxy is solicited and to the company if the solicitation is not by or on behalf of the management of the company; or Prohibited solicitation.

(a) a management proxy circular in the prescribed form, either as an appendix to, or as a separate document accompanying the notice of the meeting, when the solicitation is by or on behalf of the management of the company; or

(b) a dissident's proxy solicitation, in the prescribed form stating the purposes of the solicitation, when the solicitation is not by or on behalf of the management of the company.

141. A person required to send a management proxy circular or dissident's proxy circular must concurrently send a copy thereof to the Registrar, together with a copy of the notice of the meeting, form of proxy and any other documents for use in connection with the meeting. Documents for Registrar.

Exemption
by Registrar.

142. Upon the application of an interested person, the Registrar may, on such terms as he thinks fit, exempt that person from any of the requirements of section 139 or 140; and the exemption may be given retroactive effect by the Registrar.

Proxy
attending
meeting.

143. (1) A person who solicits a proxy and is appointed proxy holder must

- (a) attend in person, or cause an alternate proxy holder to attend, the meeting in respect of which the proxy is given, and
- (b) comply with the directions of the shareholder who appointed him.

(2) A proxy holder or an alternate proxy holder has the same rights as the shareholder who appointed him

- (a) to speak at the meeting of shareholders in respect of any matter,
- (b) to vote by way of ballot at the meeting, and
- (c) except when a proxy holder or an alternate proxy holder has conflicting instructions from more than one shareholder, to vote at the meeting in respect of any matter by way of any show of hands.

Share Registrants

Registrant's
duty.

144. (1) Shares of a company that are registered in the name of a registrant or his nominee and not beneficially owned by the registrant may not be voted unless the registrant forthwith after receipt thereof sends to the beneficial owner

- (a) a copy of the notice of the meeting, financial statements, management proxy circular, dissident's proxy circular and any other documents sent to shareholders by or on behalf of any person for use in connection with the meeting, other than the form of proxy, and

(b) except where the registrant has received written voting instructions from the beneficial owner, a written request for voting instructions.

(2) A registrant may not vote or appoint a proxy holder to vote shares registered in his name or in the name of his nominee that he does not beneficially own unless he receives voting instructions from the beneficial owner of the shares.

(3) A person by or on behalf of whom a solicitation is made must, at the request of a registrant, forthwith furnish to the registrant at that person's expense the necessary number of copies of the documents referred to in paragraph (a) of subsection (1).

(4) A registrant must vote or appoint a proxy holder to vote any shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

(5) If requested by a beneficial owner of shares of a company, the registrant of those shares must appoint the beneficial owner or a nominee of the beneficial owner as proxy holder for those shares.

(6) The failure of a registrant to comply with this section does not render void any meeting of shareholders or any action taken at the meeting.

145. Nothing in section 144 gives a registrant the right to vote shares that he is otherwise prohibited from voting. Governing prohibition.

Remedial Powers

146. (1) If a form of proxy, management proxy circular or dissident's proxy circular Restraining order.

(a) contains an untrue statement of a material fact, or

(b) omits to state a material fact required therein or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made,

an interested person or the Registrar may apply to the court.

(2) On an application under this section the court may make any order it thinks fit, including any or all of the following orders

- (a) an order restraining the solicitation or the holding of the meeting or restraining any person from implementing or acting upon any resolution passed at the meeting to which the form of proxy, management proxy circular or dissident's proxy circular relates;
- (b) an order requiring correction of any form of proxy or proxy circular and a further solicitation; or
- (c) an order adjourning the meeting.

(3) An applicant under this section other than the Registrar must give the Registrar notice of the application; and the Registrar may appear and be heard in person or by an attorney-at-law.

DIVISION G

FINANCIAL DISCLOSURE

Comparative Financial Statements

Annual
financial
returns.

147. (1) Subject to this section and to section 148, the directors of a company must place before the shareholders at every annual meeting of the shareholders of the company

- (a) comparative financial statements, as prescribed, relating separately to
 - (i) the period that began on the date the company came into existence and ended not more than 12 months after that date, or, if the company has completed a financial year, the period that began immediately after the end of the last period for which financial statements were prepared and ended not more than 12 months after the beginning of that period, and

- (ii) the immediately preceding financial year;
- (b) the report of the auditor, if any; and
- (c) any further information respecting the financial position of the company and the results of its operations required by the articles of the company, its by-laws, or any unanimous shareholder agreement.

(2) The financial statements required by subparagraph (ii) of paragraph (a) of subsection (1) may be omitted if the reason for the omission is set out in the financial statements, or in a note thereto, to be placed before the shareholders at an annual meeting.

(3) The Registrar may in any particular case adjust the period relating to which comparable financial statements are to be placed before the shareholders at any annual meeting.

148. Upon the application of a company for authorisation to omit from its financial statements any prescribed item, or to dispense with the publication of any particular prescribed financial statement, the Registrar may, if he reasonably believes that disclosure of the information therein contained would be detrimental to the company, permit its omission on such reasonable conditions as he thinks fit.

Exemption
for
information.

149. (1) A company must keep at its registered office a copy of the financial statements of each of its subsidiary bodies corporate the accounts of which are consolidated in the financial statements of the company.

Consolidated
financial
returns.

(2) Shareholders of a company and their agents and legal representatives may, upon request therefor, examine the statements referred to in subsection (1) during the usual business hours of the company, and may make extracts from those statements, free of charge.

(3) A company may, within 15 days of a request to examine statements under subsection (2), apply to the court for an order barring the right of any person to examine those statements; and the court may, if it is satisfied that the examination would be detrimental to the company or a subsidiary body corporate, bar that right and make any further order the court thinks fit.

(4) A company must give the Registrar and the person asking to examine statements under subsection (2) notice of any application under subsection (3); and the Registrar and that person may appear and be heard in person or by an attorney-at-law.

Approval of
directors

150. (1) The directors of a company must approve the financial statements referred to in section 147, and the approval must be evidenced by the signature of one or more directors.

(2) A company shall not issue, publish or circulate copies of the financial statements referred to in section 147 unless the financial statements are

- (a) approved and signed in accordance with subsection (1), and
- (b) accompanied by a report of the auditor of the company, if any.

Copies to
share-
holders.

151. Not less than 21 days before each annual meeting of the shareholders of a company, or before the signing of a resolution under paragraph (b) of subsection (1) of section 128 in lieu of its annual meeting, the company must send a copy of the documents referred to in section 147 to each shareholder, except to a shareholder who has informed the company in writing that he does not want a copy of those documents.

Registrar's
copies.

152. (1) A company

- (a) that is a public company, or
- (b) the gross revenue of which, as shown in the most recent financial statements referred to in section 147, exceed \$1 000 000 or the assets of which as shown in those financial statements exceed \$1 000 000,

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shall send a copy of the documents referred to in section 147 to the Registrar, not less than 21 days before each annual meeting of the shareholders or forthwith after the signing of a resolution under paragraph (b) of subsection (1) of section 128 in lieu of the annual meeting, and in any event not later than 15 months after the last date when the last preceding annual meeting should have been held or a resolution in lieu of the meeting should have been signed.

(2) For the purposes of paragraph (b) of subsection (1), the gross revenues and assets of a company include the gross revenues and assets of its affiliates.

(3) Upon the application of a company, the Registrar may exempt the company from the application of subsection (1) in the prescribed circumstances.

(4) If a company referred to in subsection (1)

(a) sends interim financial statements or related documents to its shareholders, or

(b) is required to file interim financial statements or related documents with, or to send them to, a public authority or a recognised stock exchange,

the company shall forthwith send copies thereof to the Registrar.

(5) A subsidiary company is not required to comply with this section if ^{1984-7.}

(a) the financial statements of its holding company are in consolidated or combined form and include the accounts of the subsidiary, and

(b) the consolidated or combined financial statements of the holding company are included in the documents sent to the Registrar by the holding company in compliance with this section.

Company Auditor

Auditor's
qualifica-
tions.

153. (1) Subject to section 154, individuals only who qualify under subsection (2) are qualified for appointment as auditors of a company.

(2) An individual qualifies for appointment as auditor, if

(a) he is a member of the Institute of Chartered Accountants of Barbados, in this section called the "Institute", and holds a practising certificate of the Institute, or

(b) he is for the time being authorised to be appointed as an auditor of companies under subsection (3).

(3) The Minister may, after consultation with the Institute, authorise, by instrument in writing, any person to be appointed as an auditor of companies, if that person

(a) is in the opinion of the Minister suitably qualified for such an appointment by reason of his knowledge and experience, and

(b) was in practice in Barbados as an auditor on the 1st January, 1985.

(4) An application for an authorisation to be appointed as an auditor of companies under subsection (3) must be made to the Minister not later than 12 months after 1st January, 1985.

Disquali-
fying
auditor.

154. (1) Subject to subsection (7), an individual is not qualified to be an auditor of a company if he is not independent of the company, its affiliated companies, and of the directors and officers of the company and its affiliated companies.

(2) For the purposes of this section, whether or not an individual is independent is a question of fact to be determined having regard to all the circumstances.

(3) An individual is presumed not to be independent of a company if he or his business partner

- (a) is a business partner, a director, an officer or an employee of the company or any of its affiliates, or a business partner of any director, officer or employee of any such company or its affiliates,
- (b) beneficially owns or controls, directly or indirectly, a material interest in the shares or debentures of the company or any of its affiliates, or
- (c) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the company or any of its affiliates within 2 years of his proposed appointment as auditor of the company.

(4) The provision of secretarial services by or on behalf of an individual or his business partner does not by itself deprive an individual or his business partner of his independence for the purposes of this section.

(5) An auditor who becomes disqualified under this section must, subject to subsection (7), resign forthwith after he becomes aware of his disqualification.

(6) An interested person may apply to a court for an order declaring an auditor disqualified under this section and the office of auditor vacant.

(7) An interested person may apply to the court for an order exempting an auditor from disqualification under this section; and the court may, if it is satisfied that an exemption would not adversely affect the shareholders, make an exemption order on such terms as it thinks fit; and the order may be given retroactive effect.

155. (1) Subject to section 156, the shareholders of a company must, by ordinary resolution, at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

Appoint-
ment of
auditor.

(2) An auditor appointed under section 62(1)(e) is eligible for appointment under subsection (1).

(3) Notwithstanding subsection (1), if an auditor is not appointed at a meeting of shareholders, the incumbent auditor continues in office until his successor is appointed.

(4) The remuneration of an auditor may be fixed by ordinary resolution of the shareholders, or if not so fixed, it may be fixed by the directors.

Dispensing
with auditor.
1984-7.

156. (1) The shareholders of a company other than a company mentioned in subsection (1) of section 152 may resolve not to appoint an auditor.

(2) A resolution under subsection (1) is valid only until the next succeeding annual meeting of shareholders.

(3) A resolution under subsection (1) is not valid unless it is consented to by all the shareholders, including shareholders not otherwise entitled to vote.

Cessation
of office.

157. (1) An auditor of a company ceases to hold office when

(a) he dies or resigns, or

(b) he is removed pursuant to section 158.

(2) A resignation of an auditor becomes effective at the time a written resignation is sent to the company, or at the time specified in the resignation, whichever is the later date.

Removal of
auditor.

158. (1) The shareholders of a company may by ordinary resolution at a special meeting remove an auditor other than an auditor appointed by a court order under section 160.

(2) A vacancy created by the removal of an auditor may be filled at the meeting at which the auditor is removed, or, if the vacancy is not so filled, it may be filled under section 159.

Filling
auditor
vacancy.

159. (1) Subject to subsection (3), the directors must forthwith fill a vacancy in the office of auditor.

(2) If there is not a quorum of directors, the directors then in office must, within 21 days after a vacancy in the office of auditor occurs, call a special meeting of shareholders to fill the vacancy; and if they fail to call a meeting, or if there are no directors, the meeting may be called by any shareholder.

(3) The articles of a company may provide that a vacancy in the office of auditor be filled only by vote of the shareholders.

(4) An auditor appointed to fill a vacancy holds office for the unexpired term of his predecessor.

160. (1) If a company does not have an auditor, the court may, upon the application of a shareholder or the Registrar, appoint and fix the remuneration of an auditor, and the auditor holds office until an auditor is appointed by the shareholders.

Court appointed auditor.

(2) Subsection (1) does not apply if the shareholders have resolved under section 156 not to appoint an auditor.

161. The auditor of a company is entitled to receive notice of every meeting of the shareholders of the company, and, at the expense of the company, to attend and be heard at the meeting on matters relating to his duties as auditor.

Auditor rights to notices.

162. (1) If a shareholder of a company, whether or not he is entitled to vote at the meeting, or a director of a company gives written notice to the auditor of the company, not less than 10 days before a meeting of the shareholders of the company, to attend the meeting, the auditor shall attend the meeting at the expense of the company and answer questions relating to his duties as auditor or former auditor of the company.

Required attendance.

(2) A shareholder or director who sends a notice referred to in subsection (1) shall, concurrently, send a copy of the notice to the company.

(3) Subsection (1) applies *mutatis mutandis* to any former auditor of the company.

Right to
comment.

163. (1) An auditor who

- (a) resigns,
- (b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office,
- (c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed to fill the office of auditor, whether because of the resignation or removal of the incumbent auditor or because his term of office has expired or is about to expire, or
- (d) receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 156 is to be proposed,

may submit to the company a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(2) When it receives a statement referred to in subsection (1), the company must forthwith send a copy of the statement to every shareholder entitled to receive notice of any meeting referred to in section 161 and to the Registrar, unless the statement is included in, or attached to, a management proxy circular required by section 140.

(3) No individual may accept appointment, consent to be appointed, or be appointed as auditor of a company if he is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire, until the individual has requested and received from the former auditor a written statement of the circumstances and the reasons why, in that auditor's opinion, he is to be replaced.

(4) Notwithstanding subsection (3), an individual otherwise qualified may accept appointment or consent to be appointed as auditor of a company if, within 15 days after making the request referred to in that subsection, he does not receive a reply to it.

164. (1) An auditor of a company must make the examination that is in his opinion necessary to enable him to report in the prescribed manner on the financial statements required by this Act to be placed before the shareholders, except such financial statements or parts thereof that relate to the immediately preceding financial year referred to in subparagraph (ii) of paragraph (a) of subsection (1) of section 147. Examination by auditor.

(2) Notwithstanding section 165, an auditor of a company may reasonably rely upon the report of an auditor of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the company.

(3) For the purpose of subsection (2) reasonableness is a question of fact.

(4) Subsection (2) applies whether or not the financial statements of the holding company reported upon by the auditor are in consolidated form.

165. (1) Upon the demand of an auditor of a company, the present or former directors, officers, employees or agents of the company must furnish to the auditor Right to inspect.

(a) such information and explanations, and

(b) such access to records, documents, books, accounts and vouchers of the company or any of its subsidiaries,

as are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 164 and that the directors, officers, employees or agents are reasonably able to furnish.

(2) Upon the demand of an auditor of a company, the directors of the company must

(a) obtain from the present or former directors, officers, employees or agents of any subsidiary of the company the information and explanations that the directors, officers, employees and agents are reasonably able to furnish, and that are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 164, and

(b) furnish the information and explanations so obtained to the auditor.

Detected
error.

166. (1) A director or an officer of a company shall forthwith notify the company's auditor of any error or mis-statement of which the director or officer becomes aware in a financial statement that the auditor or a former auditor of the company has reported upon.

(2) When the auditor or a former auditor of a company is notified or becomes aware of an error or mis-statement in a financial statement upon which he has reported to the company and in his opinion, the error or mis-statement is material, he shall inform each director of the company accordingly.

(3) When under subsection (2) the auditor or a former auditor of a company informs the directors of an error or mis-statement in a financial statement of the company, the directors shall

(a) prepare and issue revised financial statements, or

(b) otherwise inform the shareholders of the error or mis-statement,

and, if the company is a public company or one that is required to comply with section 152, inform the Registrar of the error or mis-statement in the same manner as the directors inform the shareholders of the error or mis-statement.

Privilege
of auditor.

167. An auditor is not liable to any person in an action for defamation based on any act done or not done, or any statement made by him in good faith in connection with any matter he is authorised or required to do under this Act.

DIVISION H

CORPORATE RECORDS

Registered Office of Company

Registered
office.

168. (1) A company must at all times have a registered office in Barbados.

(2) The directors of the company may change the address of the registered office.

169. (1) At the time of sending articles of incorporation, the incorporators must send to the Registrar, in the prescribed form, notice of the address of the registered office of the company; and the Registrar must file the notice. Notice of address.

(2) A company shall within 15 days of any change of the address of its registered office, send to the Registrar a notice in the prescribed form of the change, which the Registrar must file.

Company Registers and Records

170. (1) A company shall prepare and maintain at its registered office records containing Records of company.

- (a) the articles and the by-laws, and all amendments thereto, and a copy of any unanimous shareholder agreement and amendments thereto;
- (b) minutes of meetings and resolutions of shareholders; and
- (c) copies of all notices required by section 66, 74 or 169.

(2) A company shall maintain a register of shareholders showing

- (a) the name and the latest known address of each person who is a shareholder;
- (b) a statement of the shares held by each shareholder;
- (c) the date on which each person was entered on the register as a shareholder, and the date on which any person ceased to be a shareholder.

(3) A company that issues debentures shall maintain a register of debenture holders showing

- (a) the name and the latest known address of each debenture holder;
- (b) the principal of the debentures held by each holder;

- (c) the amount or the highest amount of any premium payable on redemption of the debentures;
- (d) the issue price of the debentures and the amount paid up on the issue price;
- (e) the date on which the name of each person was entered on the register as a debenture holder; and
- (f) the date on which each person ceased to be a debenture holder.

(4) A company that grants conversion privileges, options, or rights to acquire shares of the company shall maintain a register showing the name and the latest known address of each person to whom the privileges, options or rights have been granted, and such other particulars in respect thereof as are prescribed.

(5) A company may appoint an agent to maintain the registers required by this section to be maintained by the company; but the registers must be maintained at the registered office of the company or at some other place in Barbados designated by the directors of the company.

Records of Trusts

Trust
notices.

171. (1) Except as provided in this section, notice of a trust, express, implied or constructive, must not be

- (a) entered by a company in any of the registers maintained by it pursuant to section 170, or
- (b) be received by the Registrar.

(2) No liabilities are affected by anything done in pursuance of subsection (3), (4) or (5); and the company concerned is not affected with notice of any trust by reason of anything so done.

(3) A personal representative of the estate of a deceased individual who was registered in a register of a company as a shareholder or debenture holder may become registered as the holder of that share or debenture as personal representative of that estate.

(4) A personal representative of the estate of a deceased individual who was beneficially entitled to a share or debenture of the company that is registered in a register of the company may, with the consent of the company and of the registered shareholder or debenture holder, become the registered shareholder or debenture holder as the personal representative of the estate.

(5) When a personal representative of an estate of a deceased individual is registered pursuant to subsection (3) or (4) as a holder of a share or debenture of a company, the personal representative is, in respect of that share or debenture, subject to the same liabilities, and no more, that he would be subject to had the share or debenture remained registered in the name of the deceased individual.

Accounts, Minutes and other Records

172. (1) In addition to the records described in section 170, a company shall prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the directors and any committees of the directors. Other records.

(2) The records required under subsection (1) shall be kept at the registered office of the company or at some other place in Barbados designated by the directors; and those records must at all reasonable times be available for inspection by the directors.

(3) When any accounting records of a company are kept at a place outside Barbados, accounting records that are adequate to enable the directors to ascertain the financial position of the company with reasonable accuracy on a quarterly basis must be kept by the company at the registered office of the company or at some other place in Barbados designated by the directors.

(4) For the purposes of paragraph (b) of subsection (1) of section 170 and of this section, when a former-Act company is continued under this Act, "records" includes similar registers and other records required by law to be maintained by the company before it was continued under this Act.

*Form of Records*Records
form.**173.** All records required by this Act to be prepared and maintained

(a) may be in a bound or loose-leaf form or in a photographic film form, or

(b) may be entered or recorded

(i) by any system of mechanical or electronic data processing, or

(ii) by any other information storage device

that is capable of reproducing any required information in intelligible written form within a reasonable time.

*Care of Records*Duty of care
for records.**174.** A company and its agents shall take reasonable precautions

(a) to prevent loss or destruction of,

(b) to prevent falsification of entries in, and

(c) to facilitate detection and correction of inaccuracies in,

the records required by this Act to be prepared and maintained in respect of the company.

*Access to Records*Access to
records.**175.** (1) The directors and shareholders of a company, and their agents and legal representatives, may, during the usual business hours of the company, examine the records of the company referred to in section 170 and may take extracts therefrom free of charge.

(2) A shareholder of a company is, upon request and without charge, entitled to one copy of the articles and by-laws of the company and any unanimous shareholder agreement, and to one copy of any amendments to any of those documents.

(3) The creditors of a company and their agents and legal representatives may, during the usual business hours of the company, and upon payment of a reasonable fee, examine the records referred to in paragraphs (a) and (c) of subsection (1) of section 170, and subsections (2), (3) and (4) of that section, other than any unanimous shareholder agreement or an amendment to any unanimous shareholder agreement, and make copies of those records or take extracts therefrom.

(4) Any person may, during the usual business hours of the company and upon payment of a reasonable fee, examine the records of the company referred to in paragraph (c) of subsection (1) of section 170, and in subsections (2), (3) and (4) of that section, and make copies of those records or take extracts therefrom.

Shareholders' Lists

176. (1) Upon payment of a reasonable fee and sending to a public company or its transfer agent the affidavit referred to in subsection (4), any person may upon application require the company or its transfer agent to furnish him, within 15 days from the receipt of the affidavit, a list of shareholders of the company, in this section referred to as the "basic list", made up to a date not more than 30 days before the date of receipt of the affidavit, which must set out

Basic
list of
share-
holders.

- (a) the names of the shareholders of the company,
- (b) the number of shares held by each shareholder, and
- (c) the address of each shareholder as shown on the records of the company.

(2) When a person requiring a basic list from a public company states in the affidavit referred to in subsection (4) that he requires supplemental lists from the company, he may, upon payment of a reasonable fee, require the company or its transfer agent to furnish him with supplemental list of the shareholders, which must set out any changes from the basic list

- (a) in the names or addresses of the shareholders, and

(b) in the number of shares held by each shareholder,
for each business day following the date to which the basic list is made up.

(3) When a supplemental list has been required from a public company under subsection (2) by any person, the company, or its transfer agent, must furnish that person with a supplemental list

(a) on the date the basic list is furnished, if the information relates to changes that took place before that date, and

(b) on the business day following the day to which the supplemental list relates if the information relates to changes that take place on or after the date the basic list is furnished.

(4) The affidavit required under subsection (1) must state

(a) the name and address of the applicant;

(b) the name and address for service of the body corporate, if the applicant is a body corporate; and

(c) that the basic list and any supplemental list obtained pursuant to subsection (2) will not be used except as permitted under section 178.

(5) If the applicant is a body corporate, the affidavit must be made by a director or officer of the body corporate.

Options
list.

177. A person requiring under section 176 that a company supply a basic list or a supplemental list may also require the company to include in any such list the name and address of any known holder of an option or right to acquire shares of the company.

Restricted
use of lists.

178. A list of shareholders obtained under section 176 from a company shall not be used by any person except in connection with

(a) an effort to influence the voting of shareholders of the company;

(b) an offer to acquire shares in the company; or

(c) any other matter relating to the affairs of the company.

DIVISION I

TRANSFER OF SHARES AND DEBENTURES

179. (1) The shares or debentures of a company may be transferred by a written instrument of transfer signed by the transferor and naming the transferee. Transferring of shares.

(2) Where an instrument of transfer is prescribed in the by-laws of a company, that instrument must be used to transfer the shares or debentures of the company.

(3) Subject to subsection (2) and to any enactment, no particular form of words is necessary to transfer shares or debentures, if words are used that show with reasonable certainty that the person signing the transfer intends to vest the title to the shares or debentures in the transferee.

(4) Subject to subsection (5) and to any enactment, the beneficial ownership of the shares or debentures of a company passes to a transferee

- (a) on the delivery to him of the instrument of transfer signed by the transferor and of the transferor's share certificate or debenture, as the case may be, or
- (b) on the delivery to him of an instrument of transfer signed by the transferor that has been certified by or on behalf of the company, or by or on behalf of a stock or securities exchange in Barbados.

(4A) From 27th August, 2001 and notwithstanding subsection (4), where the transfer is of shares, the instrument of transfer must be presented to the Registrar within 30 days of its execution for the assessment and payment of 2001-30.

- (a) property transfer tax that may be payable under the *Property Transfer Tax Act*; or Cap. 84A.
- (b) stamp duty that is payable under the *Stamp Duty Act*, Cap. 91.

and until the instrument of transfer is so presented, the beneficial ownership of the shares does not pass to the transferee.

2001-30. (4B) The court may, on the application of the company, the transferor, the transferee or any interested party, order that the time for presentation under subsection (4A) be extended or that the omission be rectified.

2001-30. (4C) Where the court makes an order granting an extension of time or rectifying the omission under subsection (4B), on the presentation of the transfer in respect of that order to the Registrar, there shall be paid to the Registrar the penalty specified as payable under section 8(3) of the *Property Transfer Tax Act* in addition to any property transfer tax that may be due and payable on the transfer.

(5) If the transferor concerned is not registered with the company in respect of the shares, or, as the case may be, the debentures, subsection (4) has effect as if references to the transfer signed by the transferor included a reference to transfers signed by the person so registered and all holders of the shares or debentures intermediate between the person so registered and the transferor.

(6) Notwithstanding subsection (4) or (5), a company, and, in the case of debentures, the trustee of the covering trust deed, is not bound or entitled to treat the transferee of shares or debentures as the owner of them until the transfer to him has been registered or until the court orders the registration of the transfer to him; and until the transfer is presented to the company for registration, the company is not to be treated as having notice of the transferee's interest thereunder or of the fact that the transfer has been made.

(7) This section applies notwithstanding anything contained in the articles or by-laws of a company, and notwithstanding anything contained in any trust deed or debentures or any contract or instrument.

Restrictions
on
transfers.

180. (1) No restriction or condition in a trust deed covering a debenture of a company, or in the debenture, limits the right of any person to transfer the debenture held by him.

(2) A transfer of the shares or debentures of a shareholder or debenture holder of a company made by

- (a) his personal representative,
- (b) a trustee in bankruptcy,
- (c) a receiver appointed by or for the benefit of debenture holders,
- (d) a receiver or other person appointed by the court to administer the estate of a person of unsound mind,
- (e) the guardian of a minor, or
- (f) a person appointed by the court to execute the transfer,

is, although the person executing the transfer is not himself registered with the company as the holder of the shares or debentures, as the case may be, as valid as if he had been so registered at the time of the execution of the instrument of transfer.

(3) This section applies in respect of a company notwithstanding anything contained in the articles or by-laws of the company, and notwithstanding anything contained in any trust deed or debentures, or any contract or instrument relating to the shares or debentures of the company.

181. (1) A company must issue a certification of the transfer of a share or debenture on the presentation to the company of a transfer that is signed by the holder of the share or debenture and accompanied by delivery to the company of the share or debenture. Duty to issue.

(2) A certification consists of a statement signed on behalf of the company and written or endorsed on the transfer to the effect that the share certificate or debenture, as the case may be, has been delivered to, or lodged with, the company.

(3) The certification by a company of any transfer of a share or debenture of the company is a representation by the company to any person acting on faith of the certification that there have been produced to the company such documents as on the face of them show a *prima facie* title to share or debenture in the transferor named in the transfer; but is not a representation that the transferor has any title to the share or debenture.

(4) Where any person acts on the faith of a false certification by a company made fraudulently or negligently, the company is liable to compensate him for any loss he incurs in consequence of his so acting.

(5) A company that has issued a certification of a transfer of a share or debenture of the company is liable to compensate any person for loss that he incurs in consequence of the company subsequently releasing, otherwise than on surrender of the certification of the transfer of the share or debenture, possession of the share certificate or debenture in respect of which the certification was issued.

(6) For the purposes of this section

(a) the certification of a transfer is deemed to be made by a company if

(i) the person issuing the certification is a person authorised to issue certifications of transfers on the company's behalf, and

(ii) the certification is signed by a person authorised to issue certifications of transfers on the company's behalf, or by any other officer or employee, either of the company or of a body corporate so authorised; and

(b) a certification is deemed to be signed by a person if it purports to be authenticated by his signature or initials, whether handwritten or not, unless the signature or initials were placed on the certification neither by that person nor any person authorised to use the signature or initials for the purpose of issuing certifications of transfers on the company's behalf.

Transfer
certificate.

182. (1) A company must, within 5 weeks after the allotment of any of its shares or debentures, and within 2 months after the date on which a transfer of its shares or debentures is presented to the company for registration, complete and have ready for delivery to the allottee or transferee a proper certificate or debenture for any share or debenture allotted or transferred to him.

(2) When a company on which a notice is served requiring the company to make good any default in complying with subsection (1) fails to make good the default within 7 days after the service of the notice, the court may, on the application of the person entitled to have a certificate or debenture delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order; and the order may provide that all costs incidental to the application be borne by the company and any officer of the company responsible for the default.

1987-9.

(3) For the purpose of this section "transfer" means a transfer in proper form duly signed by the transferor and otherwise valid, and does not include a transfer that the company is for any reason entitled to refuse to register and does not register.

Registra-
tion.

1987-9.

183. (1) Notwithstanding anything in the articles or by-laws of a company or in any debenture, trust deed or other contract or instrument, the company shall not register a transfer of any share or debenture of the company unless a transfer in proper form and duly signed by the transferor has been delivered to the company; but nothing in this section affects any duty of the company to register as a shareholder or debenture holder of the company any person to whom the ownership of any share or debenture of the company has been transmitted by operation of law.

(2) On the application of the transferor of any share or debenture of a company, the company must enter in its register of shareholders or debenture holders, as the case requires, the name of the transferee in the same manner and subject to the same conditions as if the application for the entry had been made by the transferee.

(3) Notwithstanding anything in the articles or by-laws of a company or in any debenture, trust deed or other contract or instrument, a company must register the trustee in bankruptcy or the personal representative of a shareholder or debenture holder as a shareholder in respect of shares, or as holder of the debentures, of the bankrupt, or, as the case may be, the deceased person, in its register of shareholders or debenture holders, as the case may be, within 7 days after he produces to the company satisfactory evidence of his title and requests it to register him as a shareholder or debenture holder.

184. (1) A certificate issued by a company and signed on its behalf stating that any shares or debentures of the company are held by any person is *prima facie* proof of the title of that person to the shares or debentures. Effect of certificate.

(2) The registration of a person as a shareholder or debenture holder of a company, or the issue of a share certificate or debenture, constitutes a representation by the company that the person so registered, or the person named in the share certificate or debenture as entitled to the shares or debentures mentioned therein, is entitled to the shares or debentures mentioned in the register or in the share certificate or debenture; and the company may not deny the truth of that representation as against a person who believes it to be true and contracts to acquire the shares or debentures or any interest therein in good faith and for money or money's worth.

(3) It is no defence for a company to show for the purposes of subsection (2) that a registration or the issue of a share certificate or other document was procured by fraud or by the presentation to it of a forged document.

(4) Subsections (2) and (3) do not apply in respect of certificates issued by a former-Act company before 1st January, 1985.

DIVISION J

TAKE-OVER BIDS

Definitions. **185.** In this Division

(a) "dissenting offeree", if a take-over bid is made for all the shares of a class of shares,

(i) means a shareholder of that class of share who does not accept the take-over bid; and

(ii) includes a subsequent holder of that share who acquires it from the person mentioned in sub-paragraph (i);

1997-14.
Cap. 318A. (a1) "Exchange" means the Securities Exchange of Barbados established by the *Securities Exchange Act*;

(b) "offer" includes an invitation to make an offer;

(c) "offeree" means a person to whom a take-over bid is made;

(d) "offeree company" means a company whose shares are the object of a take-over bid;

(e) "offeror" means a person who makes a take-over bid otherwise than as an agent, and includes 2 or more persons who directly or indirectly

(i) make take-over bids jointly or in concert; or

(ii) intend to exercise, jointly or in concert, voting rights attached to shares for which a take-over bid is made;

(f) "share" means a share with or without voting rights, and includes

(i) a debenture currently convertible into such a share,

(ii) currently exercisable options and rights to acquire a share or such a convertible debenture;

- (g) "take-over bid" means an offer made by 2001-30.
- (i) an offeror to shareholders of an offeree company to acquire more than 25 per cent of any class of issued shares of the offeree company;
 - (ii) an issuer to repurchase more than 10 per cent of its own shares of any class; or
 - (iii) an offeror to acquire shares of an offeree company which, when combined with shares of the said offeree company already beneficially owned or controlled directly or indirectly by the offeror, or an affiliate or associate of the offeror, would exceed 25 per cent of any class of issued shares of the offeree company.

186. If, within 120 days after the date of a regularly made take-over bid which is for all the shares of an offeree company, the bid is accepted by the holders of not less than 90 per cent of the shares of any class of shares to which the take-over bid relates, other than shares held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror may, upon complying with this Division, acquire the shares held by the dissenting offerees. Offeror rights.
1997-14.

187. An offeror may acquire shares held by a dissenting offeree by sending, by registered post, within 60 days after the date of termination of the take-over bid, and in any event within 180 days after the date of the take-over bid, an offeror's notice to each dissenting offeree and to the Registrar stating Notice to dissenting share-holders.

- (a) that offerees who are holding 90 per cent or more of the shares to which the bid relates accepted the take-over bid; 1986-4.
- (b) that the offeror is bound to take up and pay for or has taken up and paid for the shares of the offerees who accepted the take-over bid;
- (c) that a dissenting offeree is required to elect
 - (i) to transfer his shares to the offeror on the terms on which the offeror acquired the shares of the offerees who accepted the take-over bid, or

- (ii) to demand payment of the fair value of his shares in accordance with sections 193 to 196 by notifying the offeror within 20 days after the dissenting offeree receives the offeror's notice;
- (d) that a dissenting offeree who does not notify the offeror in accordance with sub-paragraph (ii) of paragraph (c) is presumed to have elected to transfer his shares to the offeror on the same terms as the offeror acquired the shares from the offerees who accepted the take-over bid; and
- (e) that a dissenting offeree must send those shares of his to which the take-over bid relates to the offeree company within 20 days after he receives the offeror's notice.

Adverse claims.

188. Concurrently with sending the offeror's notice under section 187, the offeror must send to the offeree company a notice of adverse claim with respect to each share held by a dissenting offeree.

Delivery of certificates.

189. A dissenting offeree to whom an offeror's notice is sent under section 187 must, within 20 days after he receives that notice, send the share certificates of his for the class of shares to which the take-over bid relates to the offeree company.

Payment for shares.

190. Within 20 days after the offeror sends an offeror's notice under section 187, the offeror must pay or transfer to the offeree company the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected, under sub-paragraph (i) of paragraph (c) of section 187, to accept the take-over bid.

Money in trust.

191. The offeree company holds in trust for the dissenting shareholders the money or other consideration it receives under section 190; and the offeree company must deposit the money in a separate account in a bank and must place the other consideration in the custody of a bank.

192. Within 30 days after the offeror sends an offeror's notice under section 187, the offeree company must

Duty of
offeree-
company.

- (a) issue the offeror a share certificate in respect of the shares that were held by dissenting offerees;
- (b) give to each dissenting offeree who
 - (i) under sub-paragraph (i) of paragraph (c) of section 187 elects to accept the take-over bid, and
 - (ii) sends his share certificates as required under section 189, the money or other consideration to which he is entitled, disregarding fractional shares, which may be paid for in money; and

- (c) send to each dissenting shareholder who has not sent his share certificates as required under section 189 a notice stating that
- (i) his shares have been cancelled;
 - (ii) the offeree company or some designated person holds in trust for him the money or other consideration to which he is entitled as payment for or in exchange for his shares; and
 - (iii) the offeree company will, subject to sections 193 to 195, send that money or other consideration to him forthwith after receiving his shares.

193. (1) If a dissenting offeree has, under subparagraph (ii) of paragraph (c) of section 187, elected to demand payment of the fair value of his shares, the offeror may, within 20 days after it has paid the money or transferred the other consideration under section 190, apply to the court to fix the fair value of the shares of that dissenting offeree. Application to court.

(2) If an offeror fails to apply to the court under subsection (1), a dissenting offeree may, within a further period of 20 days, apply to the court to fix the fair value of the shares of the dissenting shareholder.

(3) If no application is made to the court under subsection (2) within the time provided therefor in that subsection, a dissenting offeree thereby elects to transfer his shares to the offeror on the same terms as the offeror acquired the shares from the offerees who accepted the take-over bid.

194. Upon an application under section 193

Joined parties.

- (a) all dissenting offerees referred to in subparagraph (ii) of paragraph (c) of section 187 whose shares have not been acquired by the offeror are to be joined as parties and are bound by the decision of the court; and
- (b) the offeror must notify each affected dissenting offeree of the date, place and consequences of the application and of the offeree's right to appear and be heard in person or by attorney-at-law.

Powers and order of court.

195. (1) Upon an application to the court under section 193, the court may determine whether any other person is a dissenting offeree who should be joined as a party; and the court must then fix a fair value for the shares of all dissenting offerees.

(2) The court may appoint one or more appraisers to assist the court to fix a fair value for the shares of a dissenting offeree.

(3) The final order of the court must be made in favour of each dissenting offeree against the offeror and be for the amount of the offeree's shares as fixed by the court.

Effect of non-compliance. 1997-14.

195A. Where in connection with a take-over bid a person does not comply with this Division, or the regulations made under this Division, the General Manager of the Exchange or any interested person may apply to the court, and upon such application the court may make any order it thinks fit.

Take-over bid regulations. 1997-14.

195B. (1) The Minister may, after consultation with the Exchange, make regulations respecting the procedure for take-over bids.

(2) Regulations made under subsection (1) shall be subject to negative resolution.

Exemption orders. 1997-14.

195C. Where on the application of an interested person the court is satisfied that the person is disadvantaged by the requirements of any regulations made under this Division with respect to a take-over bid, the court may make an order, on such terms as it thinks fit, exempting the person from the requirements of the regulations.

Additional orders.

196. In connection with proceedings under this Division, the court may make any order it thinks fit and, in particular, it may

- (a) fix the amount of money or other consideration that is required to be held in trust under section 191;
- (b) order that the money or other consideration be held in trust by a person other than the offeree company;

- (c) allow to each dissenting offeree, from the date he sends or delivers his share certificates under section 189 until the date of payment, a reasonable rate of interest on the amount payable to him; or
- (d) order that any money payable to a shareholder who cannot be found be paid into the Consolidated Fund and subsection (3) of section 385 applies in respect of that payment.

DIVISION K**FUNDAMENTAL COMPANY CHANGES***Altering Articles*

197. (1) Subject to sections 202 and 203, the articles of a company may, by special resolution, be amended

Funda-
mental
amendment
to articles.

- (a) to change its name;

-
- (b) to add, change or remove any restriction upon the business that the company can carry on;
 - (c) to change any maximum number of shares that the company is authorised to issue;
 - (d) to create new classes of shares;
 - (e) to change the designation of all or any of its shares, or add, ^{2001-30.} change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued;
 - (f) to change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series, or into the same or a different number of shares of other classes or series;
 - (g) to divide a class of shares, whether issued or unissued, into a series of shares and fix the number of shares in each series, and the rights, privileges, restrictions and conditions attached thereto;
 - (h) to authorise the directors to divide any class of unissued shares into series of shares and fix the number of shares in each series, and the rights, privileges, restrictions and conditions attached thereto;
 - (i) to authorise the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series;
 - (j) to revoke, diminish or enlarge any authority conferred under paragraphs (h) to (i);
 - (k) to increase or decrease the number of directors or the minimum or maximum number of directors, subject to sections 67 and 73;
 - (l) to add, change or remove restrictions on the transfer of shares;
or
 - (m) to add, change or remove any other provision that is permitted by this Act to be set out in the articles.

(2) The directors of a company may, if authorised by the shareholders in the special resolution effecting an amendment under this section, revoke the resolution before it is acted upon, without further approval of the shareholders.

(3) A provision in the articles of a company that restricts in whole or in part the powers of the directors to manage the business and affairs of the company may not be amended except with the consent of all the shareholders.

Constraints
on transfers.

198. (1) Subject to sections 202 and 203, a public company may by special resolution amend its articles in accordance with the regulations to constrain the issue or transfer of its shares

- (a) to persons who are not resident Barbadians; or
- (b) to enable the company or any of its affiliates to qualify under the law of Barbados
 - (i) to obtain a licence to carry on any business, or
 - (ii) to acquire shares of a financial intermediary as defined in the regulations.

(2) A company referred to in subsection (1) may by special resolution amend its articles to remove any constraint on the issue or transfer of its shares.

(3) The directors of a company may, if authorised by the shareholders in the special resolution effecting an amendment under subsection (1), revoke the resolution before it is acted upon, without further approval of the shareholders.

Constrained-
shared
company
regulations.

199. The Minister may, with respect to a company that constrains the issue or transfer of its shares, make regulations prescribing

- (a) the disclosures required to be made of the constraints in documents issued or published by the company;
- (b) the duties and powers of the directors to refuse to issue or register transfers of shares in accordance with the articles of the company;

- (c) the limitations on voting rights of any shares held contrary to the articles of the company;
- (d) the powers of the directors to require disclosure of beneficial ownership of shares of the company and the right of the company, its directors, officers, employees and agents to rely on that disclosure and the effects of relying thereon; and
- (e) the rights of any person owning shares of the company at the time of an amendment to its articles constraining share issues or transfers.

200. An issue or a transfer of a share or act of a company is valid notwithstanding any failure to comply with section 198 or the regulations under section 199. Validity of transfer, etc.

201. (1) Subject to subsection (2), a director or a shareholder of a company who is entitled to vote at an annual meeting of shareholders may, in accordance with section 112, make a proposal to amend the articles of the company. Proposal to amend articles.

(2) Notice of a meeting of shareholders at which a proposal to amend the articles is to be considered must set out the proposed amendment, and, where applicable, must state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 213; but failure to make that statement does not invalidate an amendment.

202. (1) The holders of shares of a class, or, subject to subsection (2), of a series, are, unless the articles otherwise provide in the case of an amendment described in paragraph (a) or (b), entitled to vote separately, as a class or series, upon a proposal to amend the articles Class vote on proposal.

- (a) to increase or decrease any maximum number of authorised shares of that class, or increase any maximum number of authorised shares of a class having rights or privileges equal or superior to the shares of that class;
- (b) to effect an exchange, reclassification or cancellation of all or part of the shares of that class;

- (c) to add, change or remove the rights, privileges, restrictions or conditions attached to the shares of that class and, in particular
 - (i) to remove or change prejudicially rights to accrued dividends or to cumulative dividends,
 - (ii) to add, remove or change redemption rights prejudicially,
 - (iii) to reduce or remove a dividend preference or a liquidation preference, or
 - (iv) to add, remove or change prejudicially conversion privileges, options, voting transfer or pre-emptive rights, or rights to acquire shares or debentures of a company, or sinking fund provisions;
- (d) to increase the rights or privileges of any class of shares having rights or privileges equal or superior to the shares of that class;
- (e) to create a new class of shares equal or superior to the shares of that class;
- (f) to make any class of shares having rights or privileges inferior to the shares of that class equal or superior to the shares of that class;
- (g) to effect an exchange or to create a right of exchange of all or part of the shares of another class into the shares of that class; or
- (h) to constrain the issue or transfer of the shares of that class, or extend or remove the constraint.

(2) The holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) only if the series is affected by an amendment in a manner different from other shares of the same class.

(3) Subsection (1) applies whether or not shares of a class or series otherwise carry the right to vote.

(4) A proposed amendment to the articles referred to in subsection (1) is adopted when the holders of the shares of each class or series entitled to vote separately thereon as a class or series have approved the amendment by a special resolution.

203. (1) Subject to any revocation under subsection (2) of section 197 or subsection (3) of section 198, after an amendment has been adopted under section 197, 198, or 202, articles of amendment in the prescribed form must be sent to the Registrar. Delivery of articles.

(2) If an amendment effects or requires a reduction of stated capital, subsections (3) and (4) of section 44 apply.

204. (1) Upon receipt of articles of amendment from a company, the Registrar must issue to the company a certificate of amendment in accordance with section 404. Certificate of amendment.

(2) An amendment to the articles of a company becomes effective on the date shown in the certificate issued by the Registrar in respect of that company; and the articles of the company are amended accordingly.

(3) No amendment to the articles affects

(a) an existing cause of action or claim or liability to prosecution in favour of or against the company or its directors or officers, or

(b) any civil, criminal or administrative action or proceeding to which a company or any of its directors or officers is a party.

205. (1) The directors of a company may at any time, and must, when reasonably so directed by the Registrar, restate the articles of incorporation of the company as amended. Re-stated articles.

(2) Re-stated articles of incorporation in the prescribed form must be sent to the Registrar.

(3) Upon receipt of re-stated articles of incorporation, the Registrar must issue a re-stated certificate of incorporation in accordance with section 404.

(4) Re-stated articles of incorporation are effective on the date shown in the restated certificate of incorporation, and supersede the original articles of incorporation and all amendments thereto.

Amalgamations

Amalga-
mation.

206. Two or more companies, including holding and subsidiary companies, may amalgamate and continue as one company.

Agreement
for amalga-
mation.

207. (1) Each company proposing to amalgamate must enter into an agreement setting out the terms and means of effecting the amalgamation, and, in particular, setting out

- (a) the provisions that are required to be included in articles of incorporation under section 5;
- (b) the name and address of each proposed director of the amalgamated company;
- (c) the manner in which the shares of each amalgamating company are to be converted into shares or debentures of the amalgamated company;
- (d) if any shares of an amalgamating company are not to be converted into shares or debentures of the amalgamated company, the amount of money or shares or debentures of any body corporate that the holders of those shares are to receive instead of shares or debentures of the amalgamated company;
- (e) the manner of payment of money instead of the issue of fractional shares of the amalgamated company or of any other body corporate the shares or debentures of which are to be received in the amalgamation;
- (f) whether the by-laws of the amalgamated company are to be those of one of the amalgamating companies, and, if not, a copy of the proposed by-laws; and
- (g) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated company.

(2) If shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation agreement must provide for the cancellation of those shares when the amalgamation becomes effective, without any repayment of capital in respect thereof; and no provision may be made in the agreement for the conversion of those shares into shares of the amalgamated company.

208. (1) The directors of each amalgamating company must submit the amalgamation agreement for approval to a meeting of the shareholders of the amalgamating company of which they are directors, and, subject to subsection (4), to the holders of each class or series of shares of that amalgamating company. Approval by shareholders.

(2) A notice of a meeting of shareholders complying with section 109 must be sent in accordance with that section to each shareholder of each amalgamating company; and the notice

- (a) must include or be accompanied with a copy or summary of the amalgamation agreement; and
- (b) must state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 213,

but failure to make the statement referred to in paragraph (b) does not invalidate an amalgamation.

(3) Each share of an amalgamating company carries the right to vote in respect of an amalgamation, whether or not the share otherwise carries the right to vote.

(4) The holders of shares of a class or series of shares of an amalgamating company are entitled to vote separately as a class or series in respect of an amalgamation when the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles, would entitle those holders to vote as a class or series under section 202.

(5) An amalgamation agreement is adopted when the shareholders of each amalgamating company have approved of the amalgamation by special resolutions of each class or series of the shareholders entitled to vote on the amalgamation.

(6) An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation the agreement can be terminated by the directors of an amalgamating company, notwithstanding approval of the agreement by the shareholders of all or any of the amalgamating companies.

Vertical
short-form
amalgama-
tion.

209. A holding company and one or more of its wholly-owned subsidiary companies may amalgamate and continue as one company without complying with sections 207 and 208, if

- (a) the amalgamation is approved by a resolution of the directors of each amalgamating company; and
- (b) the resolutions provide that
 - (i) the shares of each amalgamating subsidiary company will be cancelled without any repayment of capital in respect of the cancellation;
 - (ii) the articles of amalgamation will be the same as the articles of incorporation of the amalgamating holding company; and
 - (iii) no shares or debentures will be issued by the amalgamated company in connection with the amalgamation.

Horizontal
short-form
amalgama-
tion.

210. Two or more wholly-owned subsidiary companies of the same holding body corporate may amalgamate and continue as one company without complying with sections 207 and 208, if

- (a) the amalgamation is approved by a resolution of the directors of each amalgamating company; and
- (b) the resolutions provide that
 - (i) the shares of all but one of the amalgamating subsidiary companies will be cancelled without any repayment of capital in respect of the cancellation;
 - (ii) the articles of amalgamation will be the same as the articles of incorporation of the amalgamating subsidiary company whose shares are not cancelled; and

- (iii) the stated capital of the amalgamating subsidiary companies whose shares are cancelled will be added to the stated capital of the amalgamating subsidiary company whose shares are not cancelled.

211. (1) Subject to subsection (6) of section 208, after an amalgamation has been adopted under section 208 or approved under section 209 or 210, articles of amalgamation in the prescribed form must be sent to the Registrar together with the documents required by sections 66 and 169. Articles of amalgamation.

(2) There must be attached to the articles of amalgamation a statutory declaration of a director or an officer of each amalgamating company that establishes to the satisfaction of the Registrar

- (a) that there are reasonable grounds for believing that
 - (i) each amalgamating company is and the amalgamated company will be able to pay its liabilities as they become due; and
 - (ii) the realisable value of the amalgamated company's assets will not be less than the aggregate of its liabilities and stated capital of all classes; and
- (b) that there are reasonable grounds for believing that
 - (i) no creditor will be prejudiced by the amalgamation, or
 - (ii) adequate notice has been given to all known creditors of the amalgamating companies, and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

(3) For the purposes of subsection (2), adequate notice is given to creditors by a company, if

- (a) a notice in writing is sent to each known creditor having a claim against the company that exceeds \$1 000;
- (b) a notice is published once in a newspaper published or distributed in Barbados; and

- (c) each notice states that the company intends to amalgamate with one or more specified companies in accordance with this Act, and that a creditor of the company can object to the amalgamation within 30 days from the date of the notice.

Certificate
of
amalgam-
ation.

212. (1) Upon receipt of articles of amalgamation, the Registrar must issue a certificate of amalgamation in accordance with section 404.

(2) On the date shown in a certificate of amalgamation, in respect of an amalgamated company

- (a) the amalgamation of the amalgamating companies and their continuance as one company becomes effective;
- (b) the property of each amalgamating company becomes the property of the amalgamated company;
- (c) the amalgamated company becomes liable for the obligations of each amalgamating company;
- (d) any existing cause of action, claim or liability to prosecution is unaffected;
- (e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating company may be continued by or against the amalgamated company;
- (f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating company may be enforced by or against the amalgamated company; and
- (g) the articles of amalgamation are the articles of incorporation of the amalgamated company, and, except for the purposes of subsection (1) of section 62, the certificate of amalgamation is the certificate of incorporation of the amalgamated company.

Dissenters' Rights and Obligations

213. (1) Subject to sections 223 and 228, a shareholder of any class of shares of a company may dissent if the company resolves

Dissent by shareholder. 1984-7.

- (a) to amend its articles under section 197 or 198 to add, change or remove any provisions restricting or constraining the issue or transfer of shares of that class;
- (b) to amend its articles under section 197 to add, change or remove any restriction upon the businesses that the company can carry on;
- (c) to amalgamate with another company, otherwise than under section 209 or 210; or
- (d) to sell, lease or exchange all or substantially all its property under section 134.

(2) Subject to sections 223 and 228, a shareholder of any class of shares of a company may dissent if the company is subject to an order of the court under section 224 permitting the shareholders to dissent.

(3) The articles of a company that is not a public company may provide that a shareholder of any class or series of shares who is entitled to vote under section 202 may dissent if the company resolves to amend its articles in a manner described in that section.

(4) In addition to any other right he has, but subject to section 222, a shareholder who complies with this section is entitled, when the action approved by the resolution from which he dissents or an order made under section 224 becomes effective, to be paid by the company the fair value of the shares held by him in respect of which he dissents; and the fair value is to be determined as of the close of business on the day before the resolution was adopted or the order made.

(5) A dissenting shareholder may not claim under this section except only with respect to all the shares of a class or series

- (a) held by him on behalf of any one beneficial owner, and
- (b) registered in the name of the dissenting shareholder.

(6) A dissenting shareholder must send to the company, at or before any meeting of shareholders of the company at which a resolution referred to in subsection (1) or (3) is to be voted on, a written dissent from the resolution, unless the company did not give notice to the shareholder of the purpose of the meeting and of his right to dissent.

(7) When a shareholder of a company has dissented pursuant to subsection (6) to a resolution referred to in subsection (1) or (3), the company must, within 10 days after the shareholders of the company adopt the resolution, send to the shareholder notice that the resolution has been adopted; but the notice need not be sent to the shareholder if he has voted for the resolution or has withdrawn his dissent.

Demand for
payment.

214. (1) A dissenting shareholder must, within 20 days after he receives a notice under subsection (7) of section 213, or, if he does not receive that notice, within 20 days after he learns that a resolution under that subsection has been adopted, send to the company a written notice containing

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

(2) A dissenting shareholder must, within 30 days after sending a notice under subsection (1), send the certificates representing the shares in respect of which he dissents to the company or its transfer agent.

(3) A dissenting shareholder who fails to comply with subsection (2) has no right to make a claim under this section.

(4) A company or its transfer agent must endorse on any share certificate received by it under subsection (2) a notice that the holder of the share is a dissenting shareholder under this section, and forthwith return the share certificate to the dissenting shareholder.

Suspension
of rights.

215. After sending a notice under section 214, a dissenting shareholder ceases to have any rights as a shareholder, other than the right to

be paid the fair value of his shares as determined under this section, unless

- (a) the dissenting shareholder withdraws his notice before the company makes an offer under section 216;
- (b) the company fails to make an offer in accordance with section 216 and the dissenting shareholder withdraws his notice; or
- (c) the directors
 - (i) under subsection (2) of section 197 or subsection (3) of section 207, revoke a resolution to amend the articles of the company;
 - (ii) under subsection (6) of section 208, terminate an amalgamation agreement; or
 - (iii) under subsection (7) of section 134, abandon a sale, lease or exchange of property,

in which case his rights as a shareholder are re-instated as of the date the notice mentioned in section 214 was sent.

216. (1) A company must, not later than 7 days after the day on which the action approved by the resolution is effective, or the day the company received the notice referred to in section 214, whichever is the later date, send to each dissenting shareholder who has sent such a notice Offer to pay for share.

- (a) a written offer to pay for his shares in an amount considered by the directors of the company to be the fair value of those shares, which must be accompanied with a statement showing how the fair value was determined; or
 - (b) if section 222 applies, a notification that it is unable lawfully to pay dissenting shareholders for their shares.
- (2) Every offer made under subsection (1) for shares of the same class or series must be on the same terms.
- (3) Subject to section 222, a company must pay for the shares of a dissenting shareholder within 10 days after an offer made under

subsection (1) has been accepted; but the offer lapses if the company does not receive an acceptance of the offer within 30 days after it has been made.

Application
to court.

217. (1) If a company fails to make an offer under subsection (1) of section 216, or if a dissenting shareholder fails to accept the offer made by the company, the company may, within 50 days after the action approved by the resolution is effective, apply to the court to fix a fair value for the shares of any dissenting shareholders.

(2) If a company fails to apply to the court in the circumstances described in subsection (1), a dissenting shareholder may, within a further period of 20 days, apply to the court to fix a fair value for the shares of any dissenting shareholders.

Joined
parties.

218. Upon an application to the court under section 217

(a) all dissenting shareholders whose shares have not been purchased by the company are to be joined as parties and are bound by the decision of the court; and

(b) the company must notify each affected dissenting shareholder of the date, place and consequences of the application and of his right to appear and be heard in person or by an attorney-at-law.

Court
powers.

219. (1) Upon an application to the court under section 217, the court may determine whether any other person is a dissenting shareholder who should be joined as a party; and the court must then fix a fair value for the shares of all dissenting shareholders.

(2) The court may appoint one or more appraisers to assist the court to fix a fair value for the shares of the dissenting shareholders.

(3) The final order of the court must be made against the company in favour of each dissenting shareholder of the company and for the amount of the shares of the dissenting shareholder as fixed by the court.

Interest.

220. The court may allow a reasonable rate of interest on the amount payable to each dissenting shareholder, from the date the action approved by the resolution is effective until the date of payment by the company.

221. (1) If section 222 applies, the company must, within 10 days after the making of an order under subsection 3 of section 219, notify each dissenting shareholder that it is unable lawfully to pay dissenting shareholders for their shares. Recourse of dissenting shareholder.

(2) If section 222 applies, a dissenting shareholder, by written notice delivered to the company within 30 days after receiving a notice under subsection (1)

- (a) may withdraw his notice of dissent, in which case the company consents to the withdrawal and the shareholder is re-instated to his full rights as a shareholder; or
- (b) may retain a status as a claimant against the company entitled to be paid as soon as the company is lawfully able to do so, or, in a liquidation, to be ranked subordinate to the rights of creditors of the company, but in priority to the company's shareholders.

222. A company shall not make a payment to a dissenting shareholder under section 216 if there are reasonable grounds for believing Prohibition of payment.

- (a) the company is or would, after the payment, be unable to pay its liabilities as they become due; or
- (b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.

Re-organisation

223. (1) In this section, "re-organisation" means Re-organisation.

- (a) a court order made under section 228;
- (b) a court order approving a proposal under the *Bankruptcy Act*; or Cap. 303.
- (c) a court order that is made under any other enactment and that affects the rights among the company, its shareholders and creditors.

(2) If a company is subject to an order referred to in subsection (1), its articles may be amended by the order to effect any change that might lawfully be made by an amendment under section 197.

(3) If the court makes an order referred to in subsection (1), the court may also

- (a) authorise the issue of debentures of the company, whether or not convertible into shares of any class or series, or having attached any rights or options to acquire shares of any class or series, and fix the terms thereof; and
- (b) appoint directors in place of, or in addition to, all or any of the directors then in office.

(4) After an order referred to in subsection (1) has been made, articles of re-organisation in the prescribed form must be sent by the company to the Registrar, together with the documents required by sections 66 and 169, if applicable.

(5) Upon receipt of articles of re-organisation for a company, the Registrar must issue a certificate of amendment in accordance with section 404.

(6) A re-organisation of a company becomes effective on the date shown in the certificate of amendment, and its articles of incorporation are amended accordingly.

(7) A shareholder of a company is not entitled to dissent under section 213 if an amendment to the articles of incorporation of the company is effected under this section.

Arrangements

Arrange-
ments.

224. (1) In this section, "arrangements" includes

- (a) an amendment of the articles of a company;
- (b) an amalgamation of 2 or more companies;
- (c) a division of the businesses carried on by a company;
- (d) a transfer of all or substantially all the property of a company to another body corporate in exchange for property, money or shares or debentures of the body corporate;

- (e) an exchange of shares or debentures held by shareholders or debenture holders of a company for property, money or other shares or debentures of the company, or property, money or shares or debentures of another body corporate, if it is not a take-over bid within the meaning of Division J;
 - (f) a liquidation and dissolution of a company; and
 - (g) any combination of the activities described in paragraphs (a) to (f).
- (2) For the purposes of this section, a company is insolvent when
- (a) it is unable to pay its liabilities as they become due, or
 - (b) the realisable value of the assets of the company are less than the aggregate of its liabilities and stated capital of all classes.
- (3) Where it is not practicable for a company that is solvent to effect a fundamental change in the nature of an arrangement under any other provision of this Act, the company may apply to the court for an approval of an arrangement proposed by the company.
- (4) In connection with an application under this section, the court may make any interim or final order it thinks fit
- (a) an order determining the notice to be given to any interested person or dispensing with notice to any person other than the Registrar;
 - (b) an order requiring a company, in such manner as the court directs, to call, hold and conduct a meeting of shareholders or debenture holders, or holders of options or rights to acquire shares in the company;
 - (c) an order permitting a shareholder to dissent under section 213; or
 - (d) an order approving an arrangement as proposed by the company or as amended in such manner as the court may direct.

(5) An applicant under this section must give the Registrar notice of the application; and the Registrar may appear and be heard in person or by an attorney-at-law.

(6) After an order referred to in paragraph (d) of subsection (4) has been made, articles of arrangement in the prescribed form must be sent to the Registrar together with the documents required by sections 74 and 169, if applicable.

1984-7. (7) Upon receipt of articles of arrangement, the Registrar must issue a certificate of amendment in accordance with section 404.

1984-7. (8) An arrangement becomes effective on the date shown in the certificate of amendment.

DIVISION L

CIVIL REMEDIES

Definitions. **225.** In this Part

(a) "action" means an action under this Act;

(b) "complainant" means

(i) a shareholder or debenture holder, or a former holder of a share or debenture of a company or any of its affiliates;

(ii) a director or an officer or former director or officer of a company or any of its affiliates;

(iii) the Registrar; or

(iv) any other person who, in the discretion of the court, is a proper person to make an application under this Part.

Derivative Actions

Derivative actions. **226.** (1) Subject to subsection (2), a complainant may, for the purpose of prosecuting, defending or discontinuing an action on behalf of a company, apply to the court for leave to bring an action in the name

and on behalf of the company or any of its subsidiaries, or intervene in an action to which any such company or any of its subsidiaries is a party.

(2) No action may be brought, and no intervention in an action may be made, under subsection (1) unless the court is satisfied

- (a) that the complainant has given reasonable notice to the directors of the company or its subsidiary of his intention to apply to the court under subsection (1) if the directors of the company or its subsidiary do not bring, diligently prosecute or defend, or discontinue, the action;
- (b) that the complainant is acting in good faith; and
- (c) that it appears to be in the interests of the company or its subsidiary that the action be brought, prosecuted, defended or discontinued.

227. In connection with an action brought or intervened in under section 226, the court may at any time make any order it thinks fit, including Court powers.

- (a) an order authorising the complainant, the Registrar or any other person to control the conduct of the action;
- (b) an order giving directions for the conduct of the action;
- (c) an order directing that any amount adjudged payable by a defendant in the action be paid, in whole or in part, directly to former and present shareholders or debenture holders of the company or its subsidiary, instead of to the company or its subsidiary; or
- (d) an order requiring the company or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

Restraining Oppression

228. (1) A complainant may apply to the court for an order under this section. Oppression restrained.

(2) If, upon an application under subsection (1), the court is satisfied that in respect of a company or any of its affiliates

- (a) any act or omission of the company or any of its affiliates effects a result,
- (b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner, or
- (c) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, any shareholder or debenture holder, creditor, director or officer of the company, the court may make an order to rectify the matters complained of.

(3) In connection with an application under this section, the court may make any interim or final order it thinks fit, including

- (a) an order restraining the conduct complained of;
- (b) an order appointing a receiver or receiver-manager;
- (c) an order to regulate a company's affairs by amending its articles or by-laws, or creating or amending a unanimous shareholder agreement;
- (d) an order directing an issue or exchange of shares or debentures;
- (e) an order appointing directors in place of, or in addition to, all or any of the directors then in office;
- (f) an order directing a company, subject to subsection (6), or any other person, to purchase shares or debentures of a holder thereof;
- (g) an order directing a company, subject to subsection (6), or any other person, to pay to a shareholder or debenture holder any part of the moneys paid by him for his shares or debentures;
- (h) an order varying or setting aside a transaction or contract to which a company is a party, and compensating the company or any other party to the transaction or contract;
- (i) an order requiring a company, within a time specified by the court, to produce to the court or an interested person financial

statements in the form required by section 147 or an accounting in such other form as the court may determine;

- (j) an order compensating an aggrieved person;
- (k) an order directing rectification of the registers or other records of a company under section 231;
- (l) an order liquidating and dissolving the company;
- (m) an order directing an investigation under Division B of Part V to be made; or
- (n) an order requiring the trial of any issue.

(4) If an order made under this section directs the amendment of the articles or by-laws of a company

- (a) the directors must forthwith comply with subsection (4) of section 223; and
- (b) no other amendment to the articles or by-laws may be made without the consent of the court, until the court otherwise orders.

(5) A shareholder is not entitled under section 213 to dissent if an amendment to the articles is effected under this section.

(6) A company shall not make a payment to a shareholder under paragraph (f) or (g) of subsection (3) if there are reasonable grounds for believing that

- (a) the company is unable or would, after that payment, be unable to pay its liabilities as they become due, or
- (b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.

(7) An applicant under this section may apply in the alternative for an order under section 373.

229. (1) An application made or an action brought or intervened in under this Part may not be stayed or dismissed by reason only that

Staying
action.

it is shown that an alleged breach of a right or duty owed to the company or its subsidiary has been or might be approved by the shareholders of the company or its subsidiary; but evidence of approval by the shareholders may be taken into account by the court in making an order under section 227, 228, or 373.

(2) An application made or an action brought or intervened in under this Part may not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit; and if the court determines that the interests of any complainant could be substantially affected by the stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the complainant.

Interim costs.

230. In an application made or an action brought or intervened in under this Part, the court may at any time order the company or its subsidiary to pay to the complainant interim cost, including legal fees and disbursements; but the complainant may be held accountable for those interim costs upon the final disposition of the application or action.

Rectification of records.

231. (1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a company, the company, a shareholder or debenture holder of the company, or any aggrieved person, may apply to the court for an order that the registers or records of the company be rectified.

(2) An applicant under this section must give the Registrar notice of the application; and the Registrar is entitled to appear and be heard in person or by an attorney-at-law.

(3) In connection with an application under this section, the court may make any order it thinks fit including

- (a) an order requiring the registers or other records of the company to be rectified;
- (b) an order restraining the company from calling or holding a meeting of shareholders, or paying a dividend before that rectification;

- (c) an order determining the right of a party to the proceedings to have his name entered or retained in, or deleted or omitted from, the registers or records of the company, whether the issue arises between 2 or more shareholders or debenture holders or alleged shareholders or alleged debenture holders, or between the company and any shareholders or debenture holders, or alleged shareholders or alleged debenture holders; and
- (d) an order compensating a party who has incurred a loss.

Other Remedial Actions

232. The Registrar may apply to the court for directions in respect of any matter concerning his duties under this Act; and on the application the court may give such directions and make such further order as it thinks fit. Directions
for Registrar.

233. (1) When the Registrar refuses to file any articles or other document required by this Act to be filed by him before the articles or other document become effective, the Registrar must Refusal by
Registrar.

- (a) within 60 days after the receipt thereof by him, or 60 days after he receives any approval required under any other Act, whichever is the later date, and,
- (b) after giving the person who sent the articles or document an opportunity to be heard,

give written notice of the refusal to that person, together with the reasons for the refusal.

(2) If the Registrar does not file or give written notice of his refusal to file any articles or document within the time limited therefor in subsection (1), then, for the purposes of section 234, the Registrar has refused to file the articles or document.

Appeal from
Registrar.

- 234.** A person who feels aggrieved by a decision of the Registrar
- (a) to refuse to file in the form submitted to him any articles or other document required by this Act to be filed by him;
 - (b) to give a name, to change or revoke a name, or to refuse to reserve, accept, change or revoke a name under sections 11 to 14;
 - (c) to refuse to grant an exemption under subsection (2) of section 10, section 142, section 148 or subsection (3) of section 152 and any regulations thereunder;
 - (d) to refuse under subsection (2) of section 353 to permit a continued reference to shares having a nominal or par value; or
 - (e) to dissolve a company under section 371,

may apply to the court for an order requiring the Registrar to change his decision; and upon the application the court may so order, and make any further order it thinks fit.

Restraining
order, etc.

235. If a company or any director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a company does not comply with this Act, the regulations, articles, by-laws, or any unanimous shareholder agreement of the company, a complainant or creditor of the company may, in addition to any other right he has, apply to the court for an order directing any such person to comply with, or restraining any such person from acting in breach of, any provisions of this Act, the regulations, articles, by-laws or unanimous shareholder agreement, as the case may be.

Summary
application.

236. Where this Act states that a person may apply to the court, the application may be made in a summary manner by summons, originating notice of motion, or otherwise as the rules of the court provide, but subject to any order respecting notice to interested parties or costs, or any other order the court thinks fit.

PART II

PROTECTION OF CREDITORS AND INVESTORS

DIVISION A

REGISTRATION OF CHARGES

Charges

237. (1) Subject to this Division, where a charge to which this section applies is created by a company, the company must, within 28 days after the creation of the charge, lodge with the Registrar a statement of the charge and

Registration
with
Registrar.

- (a) any instrument by which the charge is created or evidenced; or
- (b) a copy of the instrument together with a statutory declaration verifying the execution of the charge and also verifying the copy as being a true copy of the instrument,

and if this provision is not complied with in relation to the charge, the charge is void so far as any security interest it thereby purported to create.

(1A) Where on or after 19th July, 1990¹, a charge created by a company affects land owned by that company, the company must within 28 days after the creation of the charge lodge with the Registrar of Titles a copy of the instrument creating or evidencing the charge together with a statutory declaration verifying the execution of the charge and also verifying the copy as being a true copy of the instrument; and if this provision is not complied with in relation to the charge, the charge is void as far as any security interest it thereby purported to create.

1990-20.
1990-28.

¹ The insertion of the date 19th July, 1990 by Act 1990-28 does not affect any charge created between the 13th November, 1989 and the 18th July, 1990 to which Act 1990-20 had applied.

(2) Nothing in subsection (1) affects any contract or obligation for repayment of the money secured by a charge that is void under that subsection; and the money received under the charge becomes immediately payable.

(3) This section applies to all charges created by a company except

(a) any pledge of, or possessory lien on, goods, and

(b) any charge by way of pledge, deposit or trust receipt, or bills of lading, dock warrants or other documents of title to goods, or of bills of exchange, promissory notes, or other negotiable securities for money.

Changes created between 13th November, 1989 and the 18th July, 1990 not affected. 1990-28.

237.1 Section 237(1A) in force before the 3rd September, 1990, shall be deemed not to have affected any charge created between the 13th November, 1989 and the 18th July, 1990 by a company respecting land owned by that company, where the provisions of the section have not been complied with relation to that charge.

Contents of charge statements.

238. (1) Subject to subsections (2) and (3), the statement referred to in section 237 must contain the following particulars

(a) the date of the creation of the charge;

(b) the nature of the charge;

(c) the amount secured by the charge, or the maximum sum deemed to be secured by the charge in accordance with section 242;

(d) short particulars of the property charged;

(e) the persons entitled to the charge; and

(f) in the case of a floating charge, the nature of any restriction on the power of the company to grant further charges ranking in priority to, or equally with, the charge thereby created.

(2) Where a company creates a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture holders of that series are entitled equally, it is sufficient if there is lodged with the Registrar for registration, within 28 days after the execution of the instrument containing the charges, or, if there is no such instrument, after the execution of the first debenture of the series, a statement containing the following

- (a) the total amount secured by the whole series;
- (b) the dates of the resolutions authorising the issue of the series and the date of any covering instrument by which the security interest is created or defined;
- (c) the name of any trustee for the debenture holders; and
- (d) the particulars specified in paragraphs (b), (d) and (f) of subsection (1).

(3) The statement referred to in subsection (2) must be accompanied by the instrument containing the charge or a copy of that instrument and a statutory declaration verifying the execution of the instrument and verifying the copy to be a true copy; but, if there is no such instrument, the statement must be accompanied by a copy of one of the debentures of the series and a statutory declaration verifying the copy to be a true copy.

239. For the purposes of subsection (1) of section 237 and subsection (3) of section 238, a certified copy of an instrument or debenture is a copy of the instrument or debenture that has endorsed on it a certificate

Certified
copy of
instrument.

- (a) that states that the instrument or debenture is a true and complete copy of the original, and
- (b) that is under the seal of the company or under the hand of some person interested in the instrument or debenture otherwise than on behalf of the company.

Later charges.

- 240.** When a charge requiring registration under sections 237 to 239
- (a) is created before the lapse of 30 days after the creation of a prior unregistered charge that comprises all or any part of the property comprised in the prior charge, and
 - (b) is given as security for the same debt that is secured by the prior charge or any part of that debt,

then, to the extent to which the subsequent charge is a security for the same debt or part thereof and so far as respects the property comprised in the prior charge, the subsequent charge does not operate nor is it valid unless it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purpose of avoiding or evading the provisions of this Division.

Effect on enactments.

- 241.** Sections 237 to 240 do not affect any other enactment relating to the registration of charges.

Fluctuating charges.

242. (1) When a charge the particulars of which require registration under section 237 is expressed to secure all sums due or to become due or some other fluctuating amount, the particulars required under paragraph (c) of subsection (1) of section 238 must state the maximum sum that is deemed to be secured by the charge, which must be the maximum covered by the stamp duty paid thereon; and the charge is, subject to subsection (2), void, so far as any security interest is created by the charge, as respects any excess over the stated maximum.

(2) Where, in respect of a charge on the property of a company of a kind referred to in subsection (1)

- (a) any additional stamp duty is later paid on the charge, and
- (b) at any time after that, but before the commencement of the liquidation of the company, amended particulars of the charge stating the increased maximum sum deemed to be secured by the charge, together with the original instrument by which the charge was created or evidenced, are lodged with the Registrar for registration,

then, as from the date on which it is lodged, the charge, if otherwise valid, is effective to the extent of the increased maximum sum, except as regards any person who, before the date on which the charge was so lodged, had acquired any proprietary rights in, or a fixed or floating charge on, the property that is subject to the charge.

243. (1) Where a company acquires any property that is subject to a charge of any kind that would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Division, the company must, within 28 days after the date on which the acquisition is completed, lodge with the Registrar for registration

Charge on acquisition of property.

- (a) a statement of the particulars required by section 238 and of the date of the acquisition of the property, and
- (b) the instrument by which the charge was created or is evidenced or a copy thereof,

accompanied by a statutory declaration as required by section 237 and certified as provided in section 239.

(2) Failure to comply with subsection (1) does not affect the validity of the charge concerned.

Registration of Charges

244. (1) Documents and particulars required to be lodged for registration may

Duty to register.

- (a) in the case of a requirement under section 237, be lodged by the company concerned or by any person interested in the documents, and
- (b) in the case of a requirement under section 243, be lodged by the company concerned.

(2) A person not being the company concerned who lodges documents or particulars for registration pursuant to paragraph (a) of subsection (1) may recover from the company concerned the amount of

any fees properly payable on the registration if he meets the requirements of sections 237 to 240.

Register of charges.

245. (1) The Registrar must keep a register of all the charges lodged for registration under this Division and enter in the register with respect of those charges the following particulars

- (a) in any case to which subsection (2) of section 238 applies, such particulars as are required to be contained in a statement lodged under that subsection;
- (b) in any case to which section 243 applies, such particulars as are required to be contained in a statement lodged under paragraph (a) of subsection (1) of that subsection; and
- (c) in any other case, such particulars as are required by section 238 to be contained in a statement lodged under that section.

(2) The Registrar must issue a certificate of every registration, stating, if applicable, the amount secured by the charge, or, in a case referred to in section 242, the maximum amount secured by the charge; and the certificate is conclusive proof that the requirements as to registration have been complied with.

Charges to be entered on the Land Register. 1990-20.

245.1 Where a copy of a charge is lodged with the Registrar of Titles, he must enter the particulars in the appropriate section of the folio of the Land Register pertaining to the parcel of land that is affected by the charge.

Endorsement on debenture.

246. (1) A company shall endorse on every debenture issued by it

- (a) a copy of the certificate of registration of any charge related to the debenture; or
- (b) a statement that the registration of a charge related to the debenture has been effected and the date of the registration.

(2) Subsection (1) does not apply to a debenture issued by a company before the charge was created in relation to the debenture.

- 247.** (1) Where, with respect to any registered charge
- (a) the debt for which the charge was given has been paid or satisfied in whole or in part, or
- (b) the property or undertaking charged, or any part thereof, has been released from the charge, or has ceased to form part of the company's property or undertaking,

Satisfaction
and
payment.

the company may lodge with the Registrar in the prescribed form a memorandum of satisfaction, in whole or in part, or a memorandum of the fact that the property or undertaking, or any part thereof, has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and the Registrar must enter particulars of that memorandum in the register.

(2) The memorandum must be supported by evidence sufficient to satisfy the Registrar of the payment, satisfaction, release or cessation referred to in subsection (1).

248. On being satisfied that the omission to register a charge within the time required, or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum

Rectification
of error.

- (a) was accidental or due to inadvertence or to some other sufficient cause,
- (b) is not of a nature to affect adversely the position of creditors or shareholders, or
- (c) that, on other grounds, it is just and equitable to grant relief,

the court may, on the application of the company or any person interested, and on such terms and conditions as seem to the court to be just and expedient, order that the time for registration be extended or that the omission or mis-statement be rectified.

249. (1) A company must retain, at the registered office of the company, a copy of every instrument creating any charge that requires registration under this Division; but, in the case of a series of

Retention of
copy.

debentures, the retention of a copy of one debenture of the series is sufficient for the purposes of this subsection.

(2) A company must record all charges specifically affecting property of the company, and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge and the names of the persons entitled thereto.

Inspection
of copies.

250. The copies of instruments retained by the company pursuant to section 249 must be kept open for the inspection of creditors and shareholders of the company, free of charge.

Registration
of receiver.

251. (1) Where any person

- (a) obtains an order for the appointment of a receiver of any of the property of a company, or
- (b) appoints a receiver of any of the property of a company or enters into possession of any property of a company under any powers contained in any charge,

he must give, within 10 days from the date of the order, appointment or entry into possession, notice thereof to the Registrar, who must enter the fact in the register of the particulars of charges relating to the company.

(2) When

- (a) a person who has been appointed a receiver of the property of a company ceases to act as receiver, or
- (b) a person who had entered into possession of any property of a company goes out of possession of that property,

he must, within 10 days of his having done so, give notice of his so doing in the prescribed form to the Registrar, who must enter the notice in the register of the particulars of charges relating to that company.

Application of Division

252. (1) This Division applies to charges created or acquired, External company. after the commencement of this Division, by an external company, on property in Barbados, in like manner and with like consequences as if the external company were a company as defined in section 2, whether or not the external company is registered under this Act pursuant to Division B of Part III.

(2) An external company is a firm or other body of persons, whether incorporated or unincorporated, that is formed under the laws of a country other than Barbados.

DIVISION B

TRUST DEEDS & DEBENTURES

253. In this Division Definitions.

- (a) "event of default" means an event specified in a trust deed on the occurrence of which
- (i) a security interest constituted by the trust deed becomes enforceable, or
 - (ii) the principal, interest and other moneys payable thereunder become, or can be declared to be, payable before maturity; but the event is not an event of default until all 1984-7. conditions prescribed in the trust deed in connection with that event for the giving of notice or the lapse of time or otherwise have been satisfied;
- (b) "trustee" means any person appointed as trustee under the terms of a trust deed to which a company is a party, and includes any successor trustee;
- (c) "trust deed" means any deed, indenture or other instrument, including any supplement or amendment thereto, made by a company after its incorporation or continuance under this Act, under which the company issues debentures and in which a person is appointed as trustee for the holders of the debentures issued thereunder.

Application of Division. **254.** This Division applies to a trust deed if the debentures issued or to be issued under the trust deed are part of a distribution to the public.

Trustees

Conflict of interest. **255.** (1) No person may be appointed as trustee if there is a material conflict of interest between his role as trustee and his role in any other capacity.

(2) There is a material conflict of interest for the purpose of subsection (1) where a person is an officer or employee, or a shareholder of the company issuing the debentures.

(3) Within 90 days after a trustee becomes aware that a material conflict of interest exists in his case, the trustee must

(a) eliminate the conflict of interest, or

(b) resign from office.

(4) A trust deed, any debentures issued thereunder and a security interest effected thereby are valid notwithstanding a material conflict of interest of the trustee.

(5) If a trustee is appointed contrary to subsection (1), or continues as a trustee contrary to subsection (3), any interested person may apply to the court for an order that the trustee be replaced; and the court may make an order on such terms as it thinks fit.

List of debenture holders. **256.** (1) A holder of debentures issued under a trust deed may, upon payment to the trustee of a reasonable fee, require the trustee to furnish, within 15 days after delivering to the trustee the statutory declaration referred to in subsection (4), a list setting out

(a) the names and addresses of the registered holders of the outstanding debentures of the issuer;

(b) the principal amount of outstanding debentures owned by each such holder; and

(c) the aggregate principal amount of debentures outstanding, as shown on the records maintained by the trustee on the day that the statutory declaration is delivered to him.

(2) Upon the demand of a trustee, the issuer of debentures must furnish the trustee with the information required to enable the trustee to comply with subsection (1).

(3) If the person requiring the trustee to furnish a list under subsection (1) is a body corporate, the statutory declaration required under that subsection must be made by a director or officer of the body corporate.

(4) The statutory declaration required under subsection (1) must state

(a) the name and address of the persons requiring the trustee to furnish the list, and, if the person is a body corporate, its address for service; and

(b) that the list will not be used except as permitted under subsection (5).

(5) A list obtained under this section shall not be used by any person except in connection with

(a) an effort to influence the voting of the debenture holders;

(b) an offer to acquire debentures; or

(c) any other matter relating to the debentures or the affairs of the issuer or guarantor thereof.

257. (1) An issuer or a guarantor of debentures issued or to be issued under a trust deed must, before doing any act that is described in paragraph (a), (b) or (c) of this subsection, furnish the trustee with evidence of compliance with the conditions in the trust deed relating to

(a) the issue, certification and delivery of debentures under the trust deed;

(b) the release, or release and substitution, of property that is subject to a security interest constituted by the trust deed; or

(c) the satisfaction and discharge of the trust deed.

(2) Upon the demand of a trustee, the issuer or guarantor of debentures issued or to be issued under a trust deed must furnish the trustee with evidence of compliance with the trust deed by the issuer or guarantor in respect of any act to be done by the trustee at the request of the issuer or guarantor.

Contents of
evidence.

258. Evidence of compliance as required by section 257 must consist of

(a) a statutory declaration or certificate made by a director or an officer of the issuer or guarantor stating that the conditions referred to in that section have been complied with;

(b) if the trust deed requires compliance with conditions that are subject to review by an attorney-at-law, his opinion that those conditions have been complied with; and

(c) if the trust deed requires compliance with conditions that are subject to review by an auditor or accountant, an opinion or report of the auditor of the issuer or guarantor, or such other accountant as the trustee may select, that those conditions have been complied with.

Further
evidence.

259. The evidence of compliance referred to in section 258 must include a statement by the person giving the evidence

(a) declaring that he has read and understands the conditions of the trust deed described in section 257;

(b) describing the nature and scope of the examination or investigation upon which he based the certificate, statement or opinion; and

(c) declaring that he has made such examination or investigation as he believes necessary to enable him to make the statements or give the opinion contained or expressed therein.

260. Upon the demand of a trustee, the issuer or guarantor of debentures issued under a trust deed must furnish the trustee with evidence in such form as the trustee may require as to compliance with any condition of the trust deed relating to any action required or permitted to be taken by the issuer or guarantor under the trust deed.

Evidence relating to conditions.

261. At least once in each 12 month period beginning on the date of the trust deed and at any other time upon the demand of a trustee, the issuer or guarantor of debentures issued under the trust deed must furnish the trustee with a certificate that the issuer or guarantor has complied with all requirements contained in the trust deed that, if not complied with, would, with the giving of notice, lapse of time or otherwise, constitute an event of default, or, if there has been failure to so comply, giving particulars of that failure.

Certificate of compliance.

262. Within 30 days after a trustee under a trust deed becomes aware of an event of default thereunder, the trustee must give to the holder of any debentures issued under the trust deed notice of the event of default arising under the trust deed and continuing at the time the notice is given, unless the trustee reasonably believes that it is in the best interests of the debenture holders to withhold that notice and in writing so informs the issuer and guarantor.

Notice of default.

263. (1) Debentures issued, pledged or deposited by a company are not redeemed by reason only that the amount in respect of which the debentures are issued, pledged or deposited is repaid.

Redemption of debenture.

(2) Debentures issued by a company and purchased, redeemed or otherwise acquired by it may be cancelled, or, subject to any applicable trust deed or other agreement, may be re-issued, pledged or deposited to secure any obligation of the company then existing or thereafter incurred; and any such acquisition and re-issue, pledge or deposit is not a cancellation of the debenture.

264. A trustee under a trust deed in exercising his powers and discharging his duties must

Duty of care.

- (a) act honestly and in good faith with a view to the best interests of the holders of the debentures issued under the trust deed, and

(b) exercise the care, diligence and skill of a reasonably prudent trustee.

Reliance on statements.

265. Notwithstanding section 264, a trustee is not liable if he relies in good faith upon statements contained in a statutory declaration, certificate, opinion or report that complies with this Act or the trust deed.

No exculpation.

266. No term of a trust deed or of any agreement between a trustee and the holders of debentures issued thereunder, or between the trustee and the issuer or guarantor, operates to relieve a trustee from the duties imposed upon him by section 264.

Rights of trustees.

267. (1) The trustee under a trust deed holds all contracts, stipulations and undertakings given to him and all mortgages, charges and securities vested in him, in connection with the debentures covered by the trust deed, or some of those debentures, exclusively for the benefit of the debenture holders concerned, except in so far as the trust deed otherwise provides.

(2) A debenture holder may

(a) sue the company that issued the debentures he holds for payment of any amount payable to him in respect of the debentures, or

(b) sue the trustee of the trust deed covering the debentures he holds for compensation for any breach of the duties that the trustee owes him,

and in any such action it is not necessary for any other debenture holders of the same class, or, if the action is brought against the company, the trustee under the covering trust deed, to be joined as a party.

(3) This section applies notwithstanding anything contained in a debenture trust deed or other instrument; but a provision in a debenture or trust deed is valid and binding on all the debenture holders of the class concerned to the extent that, by a resolution supported by the votes of the holders of at least three-quarters in value of the debentures of that

class in respect of which votes are cast on the resolution, the provision enables a meeting of the debenture holders

- (a) to release any trustee from liability for any breach of his duties to the debenture holders that he has already committed, or generally from liability for all such breaches, without necessarily specifying them, upon his ceasing to be a trustee;
- (b) to consent to the alteration or abrogation of any of the rights, powers or remedies of the debenture holders and the trustee under the trust deed covering their debentures, except the powers and remedies under section 274; or
- (c) to consent to the substitution of debentures of a different class issued by the company or any other company or body corporate for the debentures of the debenture holders, or to consent to the cancellation of the debentures in consideration of the issue to the debenture holders of shares credited as fully paid in the company or any other body corporate.

Trust Deeds

268. (1) A public company must, before issuing any of its debentures, execute a trust deed in respect of the debentures and procure the execution thereof by a trustee. Need for trust deed.

(2) No trust deed may cover more than one class of debentures, whether or not the trust deed is required by this section to be executed.

(3) Where a trust deed is required by this section to be executed in respect of any debentures issued by a public company but a trust deed has not been executed, the court may, on the application of a holder of any debenture issued by the company

- (a) order the company to execute a trust deed in respect of those debentures,
- (b) direct that a person nominated by the court be appointed a trustee of the trust deed, and
- (c) give such consequential directions as the court thinks fit regarding the contents of the trust deed and its execution by the trustee.

- Kinds of debentures. **269.** (1) Debentures belong to different classes if different rights attach to them in respect of
- (a) the rate of interest or the dates for payment of interest;
 - (b) the dates when, or the instalments by which, the principal of the debentures will be repaid, unless the difference is solely that the class of debentures will be repaid during a stated period of time and particular debentures will be repaid at different dates during that period according to selections made by the company or by drawings, ballot or otherwise;
 - (c) any right to subscribe for, or convert the debentures into other shares or other debentures of the company or any other body corporate; or
 - (d) the powers of the debenture holders to realise any security interest.
- (2) Debentures belong to different classes if they do not rank equally for payment when
- (a) any security interest is realised, or
 - (b) the company is liquidated,
- that is to say, if, in those circumstances, the security interest or the proceeds thereof, or any assets available to satisfy the debentures, is or are not to be applied in satisfying the debentures strictly in proportion to the amount of principal, premiums and arrears of interest to which the holders of them are respectively entitled.
- Cover of trust deed. **270.** A debenture is covered by a trust deed if the debenture holder is entitled to participate in any money payable by the company under the trust deed, or is entitled by the trust deed to the benefit of any security interest, whether alone or together with other persons.
- Exception. **271.** Sections 268 to 270 do not apply to debentures issued before 1st January, 1985, or to debentures forming part of a class of debentures some of which were issued before that date.

272. (1) Every trust deed, whether required by section 268 or not, Contents of trust deed. must state

- (a) the maximum sum that the company can raise by issuing debentures of the same class;
- (b) the maximum discount that can be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures can be made redeemable;
- (c) the nature of any assets over which a security interest is created by the trust deed in favour of the trustee for the benefit of the debenture holders equally, and, except where such an interest is a floating charge or a general floating charge, the identity of the assets subject to it;
- (d) the nature of any assets over which a security interest has been, or will be, created in favour of any person other than the trustee for the benefit of the debenture holders equally, and, except where such an interest is a floating charge or a general floating charge, the identity of the assets subject to it;
- (e) whether the company has created or will have to create any security interest for the benefit of some, but not all, of the holders of debentures issued under the trust deed;
- (f) any prohibition or restriction on the power of the company to issue debentures or to create any security interest on any of its assets ranking in priority to, or equally with, the debentures issued under the trust deed;
- (g) whether the company will have power to acquire debentures issued under the trust deed before the date for their redemption and to re-issue the debentures;
- (h) the dates on which interest on the debentures issued under the trust deed will be paid, and the manner in which payment will be made;
- (i) the dates on which the principal of the debentures issued under the trust deed will be repaid, and, unless the whole principal is to be repaid to all the debenture holders at the same time, the

maner in which redemption will be effected, whether by the payment of equal instalments of principal in respect of each debenture or by the selection of debentures for redemption by the company, or by drawing, ballot or otherwise;

- (j) in the case of convertible debentures, the dates and terms on which the debentures can be converted into shares and the amounts that will be credited as paid upon those shares, and the dates and terms on which the debenture holders can exercise any right to subscribe for shares in right of the debentures held by them;
- (k) the circumstances in which the debenture holders will be entitled to realise any security interest vested in the trustee or any other person for their benefit, other than the circumstances in which they are entitled to do so by this Act;
- (l) the power of the company and the trustee to call meetings of the debenture holders, and the rights of debenture holders to require the company or the trustee to call meetings of the debenture holders;
- (m) whether the rights of debenture holders can be altered or abrogated, and, if so, the conditions that are to be fulfilled, and the procedures that are to be followed, to effect an alteration or an abrogation; and
- (n) the amount or rate of remuneration to be paid to the trustee and the period for which it will be paid, and whether it will be paid in priority to the principal, interest and costs in respect of debentures issued under the trust deed.

(2) If the debentures are issued without a covering trust deed being executed, the statements required by subsection (1) must be included in each debenture or in a note forming part of the same document, or endorsed thereon; and in applying that subsection, references therein to the trust deed are to be construed as references to all or any of the debentures of the same class.

(3) Subsection (2) does not apply if

- (a) the debenture is the only debenture of the class to which it belongs that has been or that can be issued, and
- (b) the rights of the debenture holder cannot be altered or abrogated without his consent.

(4) This section does not apply to a trust deed executed or to debentures issued before 1st January, 1985.

273. (1) Every debenture that is covered by a trust deed must state either in the body of the debenture or in a note forming part of the same document or endorsed thereon Contents of debentures.

- (a) the matters required to be stated in a trust deed by paragraphs (a), (b), (f), (h), (i), (j), (l) and (m) of subsection (1) of section 272;
- (b) whether the trustee of the covering trust deed holds the security interest vested in him by the trust deed in trust for the debenture holders equally, or in trust for some only of the debenture holders, and, if so, which debenture holders; and
- (c) whether the debenture is secured by a general floating charge vested in the trustee of the covering trust deed or in the debenture holders.

(2) A debenture issued by a company must state on its face in clearly legible print that it is unsecured if no security interest is vested in the holder of the debenture or in any other person for his benefit as security for payment of principal and interest.

(3) This section does not apply to debentures issued before 1st January, 1985.

Realisation of Security

274. (1) Debenture holders are entitled to realise any security interest vested in them or in any other person for their benefit, if Equity realisation.

- (a) the company fails, within one month after it becomes due, to pay
 - (i) any instalment of interest,

- (ii) the whole or part of the principal, or
 - (iii) any premium,owing under the debentures or the trust deed covering the debentures;
 - (b) the company fails to fulfil any of the obligations imposed on it by the debentures or the trust deed;
 - (c) any circumstances occur that by the terms of the debentures or trust deed entitle the holders of the debentures to realise their security interest; or
 - (d) the company is liquidated.
- (2) Debenture holders whose debentures are secured by a general floating charge vested in themselves or the trustee of the covering trust deed or any other person are additionally entitled to realise their security interest, if
- (a) any creditor of the company issues a process of execution against any of its assets or commences proceedings for liquidation of the company by order of any court of competent jurisdiction;
 - (b) the company ceases to pay its debts as they fall due;
 - (c) the company ceases to carry on business;
 - (d) the company incurs, after the issue of debentures of the class concerned, losses or diminution in the value of its assets that in the aggregate amount to more than one-half of the total amount owing in respect of
 - (i) debentures of the class held by the debenture holders who seek to enforce their security interest, and
 - (ii) debentures whose holders rank before them for payment of principal or interest; or
 - (e) any circumstances occur that entitle debenture holders who rank for payment of principal or interest in priority to the debentures secured by the general floating charge to realise their security interest.

(3) At any time after a class of debenture holders become entitled to realise their security interest, a receiver of any assets subject to such security interest or in favour of the class of debenture holders or the trustee of the covering trust deed or any other person may be appointed

- (a) by the trustee;
- (b) by the holders of debentures in respect of which there is owing more than half of the total amount owing in respect of all the debentures of the same class; or
- (c) by the court on the application of any trustee or debenture holder of the class concerned.

(4) A receiver appointed pursuant to subsection (3), has, subject to any order made by the court, power

- (a) to take possession of the assets that are subject to the security interest and to sell those assets, and
- (b) if the security interest extends to that property
 - (i) to collect debts owed to the company,
 - (ii) to enforce claims vested in the company,
 - (iii) to compromise, settle and enter into arrangements in respect of claims by or against the company,
 - (iv) to carry on the company's business with a view to selling it on the most favourable terms,
 - (v) to grant or accept leases of land and licences in respect of patents, designs, copyright, or trade, service or collective marks, and
 - (vi) to recover capital unpaid on the company's issued shares.

(5) The remedies given by this section are in addition to, and not in substitution for, any other powers and remedies conferred on the trustee under the trust deed or on the debenture holders by the debentures or the trust deed; and any power or remedy that is expressed in any instrument to be exercisable if the debenture holders

become entitled to realise their security interest is exercisable on the occurrence of any of the events specified in subsection (1), or, in the case of a general floating charge, in subsections (1) and (2); but a manager of the business or of any of the assets of a company may not be appointed for the benefit of debenture holders unless a receiver has also been appointed and has not ceased to act.

(6) This section applies to debentures issued before, as well as after 1st January, 1985.

(7) No provision in any instrument is valid that purports to exclude or restrict the remedies given by this section.

DIVISION C

RECEIVERS AND RECEIVER-MANAGERS

Disqualified
receivers.

275. (1) A person may not be appointed a receiver or receiver-manager of any assets of a company, and may not act as such a receiver or receiver-manager, if the person

- (a) is a body corporate,
- (b) is an undischarged bankrupt; or
- (c) is disqualified from being a trustee under a trust deed executed by the company, or would be so disqualified if a trust deed had been executed by the company.

(2) If a person who was appointed to be a receiver or receiver-manager becomes disqualified under subsection (1) or under any provision contained in a debenture or trust deed, another person may be appointed in his place by the persons who are entitled to make the appointment, or by the court; but a receivership is not terminated or interrupted by the occurrence of the disqualification.

(3) This section applies to a person appointed to be a receiver or receiver-manager whether so appointed before or after 1st January, 1985.

Functions of
receivers.

276. A receiver of any property of a company may, subject to the rights of secured creditors, receive the income from the property, pay

the liability connected with the property, and realise the security interest of those on behalf of whom he is appointed; but, except to the extent permitted by the court, he may not carry on the business of the company.

277. A receiver of a company may, if he is also appointed manager of the company, carry on any business of the company to protect the security interest of those on behalf of whom he is appointed.

Functions of receiver-manager.

278. When a receiver-manager of a company is appointed by the court or under an instrument, the powers of the directors of the company that the receiver-manager is authorised to exercise may not be exercised by the directors until the receiver-manager is discharged.

Directors' powers stopped.

279. A receiver or receiver-manager of a company appointed by the court must act in accordance with the directions of the court.

Duty under court direction.

280. A receiver or receiver-manager of a company appointed under an instrument must act in accordance with that instrument and any directions of the court made under section 282.

Duty under instrument.

281. A receiver or receiver-manager of a company appointed under an instrument must

Duty of care.

- (a) act honestly and in good faith; and
- (b) deal with any property of the company in his possession or control in a commercially reasonable manner.

282. Upon an application by a receiver or receiver-manager of a company, whether appointed by the court or under an instrument, or upon an application by any interested person, the court may make any order it thinks fit, including

Directions by court.

- (a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;
- (b) an order determining the notice to be given to any person, or dispensing with notice to any person;
- (c) an order declaring the rights of persons before the court or otherwise, or directing any person to do, or abstain from doing, anything;

- (d) an order fixing the remuneration of the receiver or receiver-manager;
- (e) an order requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed,
 - (i) to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the company,
 - (ii) to relieve any such person from any default on such terms as the court thinks fit, and
 - (iii) to confirm any act of the receiver or receiver-manager; and
- (f) an order giving direction on any matter relating to the duties of the receiver or receiver-manager.

Duties of
receivers,
etc.

283. A receiver or receiver-manager of a company must

- (a) immediately give notice of his appointment to the Registrar, and of his discharge;
- (b) take into his custody and control the property of the company in accordance with the court order or instrument under which he is appointed;
- (c) open and maintain a bank account in his name as receiver or receiver-manager of the company for the moneys of the company coming under his control;
- (d) keep detailed accounts of all transactions carried out by him as receiver or receiver-manager;
- (e) keep accounts of his administration, which must be available during usual business hours for inspection by the directors of the company;
- (f) prepare financial statements of his administration at such intervals and in such form as are prescribed;
- (g) upon completion of his duties, render a final account of his administration, in the form adopted for interim accounts under paragraph (f); and

- (h) file with the Registrar a copy of any financial statement mentioned in paragraph (f) and any final account mentioned in paragraph (g) within 15 days of the preparation of the financial statement or rendering of the final account, as the circumstances require.

284. (1) A receiver of assets of a company appointed under subsection (3) of section 274 or under the powers contained in any instrument

Liability of receivers, etc.

- (a) is personally liable on any contract entered into by him in the performance of his functions, except to the extent that the contract otherwise provides, and
- (b) is entitled in respect of that liability to an indemnity out of the assets of which he was appointed to be receiver,

but nothing in this subsection limits any right to an indemnity that he would have, apart from this subsection, or limits his liability on contracts entered into without authority, or confers any right to indemnity in respect of that liability.

(2) When the purported appointment of a receiver out of court is invalid because the charge under which the appointment purported to be made is invalid, or because, in the circumstances of the case, the power of appointment under the charge was not exercisable or not wholly exercisable, the court may, on application being made to it

- (a) wholly or to such extent as it thinks fit, exempt the receiver from personal liability in respect of anything done or omitted to be done by him that, if the appointment had been valid, would have been properly done or omitted to be done; and
- (b) order that the person by whom the purported appointment was made, be personally liable to the extent to which that relief has been granted.

(3) Subsection (1) applies to a receiver appointed before or after 1st January, 1985, but does not apply to contracts entered into before that date.

Notice of
receivership.

285. Where a receiver or a receiver-manager of any assets of a company has been appointed for benefit of debenture holders, every invoice, order of goods or business letter issued by or on behalf of the company or the receiver, being a document on or in which the name of the company appears, must contain a notice that a receiver or a receiver-manager has been appointed.

Floating
charges
priorities.
1984-7.

285.1. (1) Where a receiver is appointed on behalf of the holders of any debentures of a company that are secured by a floating charge or where possession is taken, by or on behalf of any debenture holders of a company, of any property of the company that is subject to a floating charge, then, if the company is not at the time in course of being liquidated, the debts that in every liquidation are under Part IV and the regulations relating to preferential payments to be paid in order of priority to all other debts must be paid in order of priority forthwith out of any assets coming into the hands of the receiver or person taking possession of that property, as the circumstances require, in priority to any claim for principal or interest in respect of the debentures of the company secured by the floating charge.

(2) Any period of time mentioned in the provisions referred to in subsection (1) is to be reckoned, as the circumstances require, from the date of the appointment of the receiver in respect of the debenture holders secured by the floating charge or from the date possession is taken of any property that is subject to the floating charge.

(3) Payments made pursuant to this section may be recouped as far as can be out of the assets of the company that are available for the payment of general creditors.

Statement
of affairs.

286. (1) Where a receiver of the whole, or substantially the whole, of the assets of a company, in this section and section 287 referred to as the "receiver", is appointed under subsection (3) of section 274, or under the powers contained in any trust deed, for the benefit of the holders of any debentures of the company secured by a general floating charge, then, subject to this section and section 287

(a) the receiver shall forthwith send notice to the company of his appointment;

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- (b) within 14 days after receipt of the notice by the company, or such longer period as may be allowed by the receiver, there shall be made out by the company and submitted to the receiver a statement in accordance with section 287 as to the affairs of the company;
- (c) the receiver shall, within 2 months after receipt of the statement, send
- (i) to the Registrar, and, if the receiver was appointed by the court, to the court, a copy of the statement and of any comments he sees fit to make thereon, and, in the case of the Registrar, also a summary of the statement and of his comments, if any, thereon;
 - (ii) to the company, a copy of those comments, or, if the receiver does not see fit to make any comments, a notice to that effect;
 - (iii) to the trustee of the trust deed, a copy of the statement and those comments, if any; and
 - (iv) to the holders of all debentures belonging to the same class as the debentures in respect of which he was appointed, a copy of that summary.
- (2) The receiver shall
- (a) within 2 months or such longer period as the court may allow, after the expiration of the period of 12 months from the date of his appointment, and after every subsequent period of 12 months, and
 - (b) within 2 months or such longer period as the court may allow after he ceases to act as receiver of the assets of the company,

send to the Registrar, to the trustee of the trust deed, and to the holders of all debentures belonging to the same class as the debentures in respect of which the receiver was appointed, an abstract in a form approved by the Registrar.

(3) The abstract must show

(a) the receiver's receipts and payments during the period of 12 months, or, if the receiver ceases so to act, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing to act, and

(b) the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(4) Subsection (1) does not apply in relation to the appointment of a receiver to act with an existing receiver, or in place of a receiver who dies or ceases to act, except that, where that subsection applies to a receiver who dies or ceases to act before the subsection has been fully complied with, the references in paragraphs (b) and (c) of that subsection to the receiver include, subject to subsection (5), references to his successor and to any continuing receiver.

(5) If the company is being liquidated, this section and section 287 apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(6) Nothing in subsection (2) affects the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times that, he is required to do so apart from that subsection.

Contents of
statement.

287. (1) The statement as to the affairs of a company required by section 286 to be submitted to the receiver or his successor must show, as at the date of the receiver's appointment

(a) the particulars of the company's assets, debts and liabilities,

(b) the names, addresses and occupations of the company's creditors,

(c) the security interests held by the company's creditors respectively,

(d) the dates when the security interests were respectively created, and

(e) such further or other information as is prescribed.

(2) The state of affairs of the company must be submitted by, and be verified by, the signed declaration of at least one person who is, at the date of the receiver's appointment, a director, and by the secretary

of the company at that date, or by such of the persons, hereafter in this subsection mentioned, as the receiver or his successor, subject to the direction of the Registrar, may require to submit and verify the statement, namely: persons who

- (a) are or have been officers of the company;
- (b) have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;
- (c) are in the employment of the company, or have been in the employment of the company within that year, and, in the opinion of the receiver, are capable of giving the information required; or
- (d) are, or have been within that year officers of, or in the employment of, an affiliated company.

(3) Any person making or verifying the statement of affairs of a company, or any part of it, must be allowed and paid by the receiver or his successor out of the receiver's receipts, such costs and expenses incurred in and about the making or verifying of the statement as the receiver or his successor considers reasonable, subject to an appeal to the court.

DIVISION D PROSPECTUSES

Interpretation

288. In this Division

Definitions.

- (a) "issue" includes circulate or distribute;
- (b) "notice" includes circular or advertisement;
- (c) "prospectus" includes, in relation to any company, any notice, prospectus, or other document that
 - (i) invites applications from the public, or invites offers from the public, to subscribe for or purchase, or
 - (ii) offers to the public for subscription or purchase, directly or through other persons,

any shares or debentures of the company or any units of any such shares or debentures of the company.

Application
of Division.

289. This Division applies whether any shares or debentures of a company are offered to the public on, or with reference to, the promotion of a company, or at any time after the company has come into existence.

Prospectus Requirements

Prohibition
re public
issue.

290. (1) Subject to subsection (2), no person shall issue any form of application for shares or debentures unless

- (a) a prospectus, as required by this Division, has been registered with the Registrar, and
- (b) a copy of the prospectus is issued with the form of application or the form specifies a place in Barbados where a copy of the prospectus can be obtained.

(2) Subsection (1) does not apply if the form of application referred to is issued in connection with shares or debentures that are not offered to the public or intended for the public.

Contents of
prospectus.

291. The following requirements apply to a prospectus

- (a) the prospectus must be dated; and that date, unless there is proof to the contrary, is to be taken as the date of issue of the prospectus;
- (b) one copy of the prospectus must be lodged with the Registrar, and the prospectus must set out that a copy of the prospectus has been so lodged, and immediately state thereafter that the Registrar takes no responsibility as to the validity or veracity of its contents;
- (c) the prospectus must contain a statement that no shares and debentures, or either, are to be allotted on the basis of the prospectus later than 3 months after the date of issue of the prospectus;
- (d) the prospectus must, if it contains any statement by an expert made or contained in what purports to be a copy of or extract from a report, memorandum or valuation, of an expert, state the date on which the statement, report, memorandum or valuation was made, and whether or not it was prepared by the expert for incorporation in the prospectus;

- (e) the prospectus must disclose any commission payable by virtue of section 50; and
- (f) the prospectus must contain such other matters as are prescribed.

292. A prospectus must contain the name of any person as a trustee for holders of debentures or as an auditor, a banker, an attorney-at-law, a stockbroker or sharebroker, of the company or proposed company, or for or in relation to the issue or proposed issue of shares or debentures, unless that person has consented in writing, before the issue of the prospectus, to act in that capacity in relation to the prospectus and a copy of the consent, verified as prescribed in subsection (2) of section 407, has been lodged with the Registrar.

Professional names.

293. A condition is void that

No waivers.

- (a) purports to require or bind an applicant for shares or debentures of a company to waive compliance with any requirement of this Division; or
- (b) purports to affect the applicant with notice of any contract, document or matter not specifically referred to in the prospectus.

294. (1) Subject to this section, no person

Certain notice required.

- (a) shall issue any notice that offers, for subscription or purchase, shares or debentures of a company, or invites subscription for, or purchase of, any such shares or debentures;
- (b) shall issue any notice that calls attention to
 - (i) an offer, or intended offer, for subscription or purchase, of shares or debentures of a company;
 - (ii) an invitation, or intended invitation, to subscribe for, or purchase, any such shares or debentures; or
 - (iii) a prospectus.

- (2) This section does not apply to
- (a) a notice that relates to an offer or invitation not made or issued to the public, directly or indirectly;
 - (b) a registered prospectus within the meaning of this Division;
 - (c) a notice
 - (i) that calls attention to a registered prospectus,
 - (ii) that states that allotments of, or contracts with respect to, the shares or debentures will be made only on the basis of one of the forms of applications referred to in, and attached to, a copy of the prospectus; and
 - (iii) that contains no other information except that permitted pursuant to subsection (3); or
 - (d) a notice
 - (i) that accompanies a notice referred to in paragraph (c) or would, but for the inclusion therein of a statement referred to in subparagraph (iii) or (iv) of this paragraph, be a notice so referred to,
 - (ii) that is issued by a person whose ordinary business is or includes advising clients in connection with their investments and is issued only to clients so advised in the course of that business,
 - (iii) that contains a statement that the investment to which it or the accompanying document relates is recommended by that person, and
 - (iv) that, if the person is an underwriter or sub-underwriter of an issue of shares or debentures to which the notice or accompanying document relates, contains a statement that the person making the recommendation is interested in the success of the issue as an underwriter or sub-underwriter, as the case may be.
- (3) All or any of the following information is permitted for the purposes of subparagraph (iii) of paragraph (c) of subsection (2)
- (a) the number and description of the shares or debentures of the company to which the prospectus relates;

- (b) the name of the company, the date of its incorporation and the number of the company's issued shares and the amount paid on its issued shares;
- (c) the general nature of the company's main business, or its proposed main business;
- (d) the names, addresses and occupations of the directors of the company;
- (e) the names and addresses of the brokers or underwriters, if any, to the issue of shares or debentures, or both, and, if the prospectus relates to debentures, the name and address of the trustee for the debenture holders;
- (f) the name of any stock or securities exchange of which the brokers or underwriters to the issue are members;
- (g) the particulars of the period during which the offer is effective;
- (h) the particulars of the time and place at which copies of the registered prospectus and form of application for the shares or debentures to which it relates can be obtained.

(4) This section applies to any notice issued in Barbados by newspapers, or by radio or television broadcasting, or by cinematograph or any other means.

295. (1) Where a person issues a notice in contravention of section 294 and before doing so obtains a certificate that

Responsibility re certificate.

- (a) is signed by 2 directors of the company or 2 directors of the proposed company to which, or to the shares or debentures of which, the notice relates,
- (b) specifies the names of those directors and of that company or of those proposed directors of that proposed company, and
- (c) is to the effect that, by the operation of subsection (2) of section 294, this section does not apply to the notice,

each person who signed the certificate is deemed to have issued the notice, and the person who obtained the certificate is deemed not to have done so.

(2) A person who has obtained a certificate referred to in subsection (1) shall deliver the certificate to the Registrar on being required to do so by the Registrar.

Evidence. **296.** In proceedings for a contravention of section 294 or 295, a certificate that purports to be a certificate under section 295 is *prima facie* proof

- (a) that, at the time the certificate was given, the persons named as such in the certificate were directors of the company so named, or proposed directors of the proposed company so named, as the case may be;
- (b) that the signatures in the certificate purporting to be the signatures of those persons are their signatures; and
- (c) that publication of the notice to which the certificate relates was authorised by those persons.

Registration of Prospectus

Registration of prospectus. **297.** (1) No person shall issue a prospectus unless a copy thereof has first been registered by the Registrar and the prospectus states on its face the fact of the registration and the date on which it was effected.

- (2) The Registrar may not register a copy of a prospectus unless
 - (a) a copy of the prospectus is lodged with the Registrar on or before the date of its issue, and it is signed by every director and by every person who is named in the prospectus as a proposed director of the company, or by his agent authorised in writing;
 - (b) the prospectus appears to comply with the requirements of this Act;
 - (c) there are also lodged with the Registrar copies of any consents required by section 299 to the issue of the prospectus and of all material contracts referred to in the prospectus, or, in the case of any such contracts that is not reduced to writing, a memorandum giving full particulars of the contract; and

(d) the Registrar is of the opinion that the prospectus does not contain any statement or matter that is misleading in the form or context in which it is included.

(3) If the Registrar refuses to register a prospectus, he must give notice of that fact to the person who lodged the prospectus, and give in the notice the reasons for his refusal; and if the Registrar registers a prospectus he must give notice of that fact to the person who lodged the prospectus, and give in the notice the date on which the registration was effected.

(4) A person who lodged a prospectus with the Registrar may, within 30 days after he is notified of a refusal to register pursuant to subsection (3), require in writing that the Registrar refer the matter to the court; and the Registrar must then refer the matter to the court for its determination.

(5) Where a refusal to register is referred to the court under subsection (4), the court, after hearing the person who lodged the prospectus, and, if the court so wishes, the Registrar, may order the Registrar to register the prospectus, or it may uphold his decision to refuse registration.

(6) On a hearing under subsection (5), a party may be heard in person or by an attorney-at-law.

Other Requirements

298. (1) When a company allots or agrees to allot to any person shares or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, the document by which the offer for sale to the public is made is for all purposes deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectuses or otherwise relating to prospectuses, apply and have effect accordingly as if the shares or debentures had been offered to the public, and as if the persons accepting the offer in respect of the shares or debentures were subscribers for them, but without affecting the liability, if any, of the person by whom the offer is made, in respect of statements or non-disclosures in the document or otherwise.

Prospectus
presumed.

(2) For the purposes of this Act, and unless the contrary is shown, it is proof that an allotment of, or an agreement to allot, shares or debentures of a company was made with a view to the shares or debentures being offered for sale to the public, if

- (a) the offer for sale of the shares or debentures, or of any of them, to the public was made within 6 months after the allotment or agreement to allot; or
- (b) at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) The requirements of this Division as to the prospectuses are to have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a company.

(4) In addition to complying with the other requirements of this Division, the document making the offer must set out

- (a) the net amount of the consideration received, or to be received, by the company in respect of the shares or debentures to which the offer relates; and
- (b) the place and time at which the contract under which the shares or debentures have been, or are to be, allotted can be inspected.

(5) Where an offer to which this section relates is made by a company or firm, it is sufficient if the document making the offer is signed on behalf of the company or firm by 2 directors of the company, or not less than half the members of the firm, as the case may be; and a director or member may sign by his agent authorised in writing to do so.

Expert's
consent.

299. (1) A prospectus that invites subscription for, or the purchase of shares or debentures of a company, and that includes a statement purporting to be made by an expert shall not be issued unless

- (a) that expert has given, and has not before delivery of a copy of the prospectus for registration withdrawn, his written consent to the inclusion of the statement in the form and context in which it is included in the prospectus; and

(b) there appears in the prospectus a statement that the expert has given and has not withdrawn his consent.

(2) A person is not to be deemed to have authorised or caused the issue of a prospectus by reason only of his having given the consent required by this Division to the inclusion in the prospectus of a statement purporting to be made by him as an expert.

Liability for Prospectus Claims

300. (1) Subject to this section, each of the following designated persons is, for any loss or damage sustained by other persons who, on the faith of a prospectus, subscribe for, or purchase, any shares or debentures, liable for any loss or damage sustained by those other persons by reason of any untrue statement in the prospectus, or by reason of the wilful non-disclosure in the prospectus of any matter of which the designated person had knowledge and that he knew to be material, namely

Liability on prospectus.

- (a) a person who is a director of the company at the time of the issue of the prospectus;
- (b) a person who authorised or caused himself to be named, and is named, in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;
- (c) an incorporator of the company; or
- (d) a person who authorised or caused the issue of the prospectus.

(2) Notwithstanding subsection (1), where the consent of an expert is required to the issue of a prospectus and he has given that consent, he is not, by reason only of the consent, liable as a person who has authorised or caused the issue of the prospectus, except in respect of an untrue statement purporting to be made by him as an expert; and the inclusion in the prospectus of a name of a person as a trustee for debenture holders, auditor, banker, attorney-at-law, transfer agent or stockbroker or sharebroker may not, for that reason alone, be taken as an authorisation by him of the issue of the prospectus.

- (3) No person is liable under subsection (1)
- (a) who, having consented to become a director of the company, withdrew his consent before the issue of the prospectus and the prospectus was issued without his authority or consent;
 - (b) who, when the prospectus was issued without his knowledge or consent, gave reasonable public notice of that fact forthwith after he became aware of its issue;
 - (c) who, after the issue of the prospectus and before allotment or sale under it, became aware of an untrue statement in it and withdrew his consent, and gave reasonable public notice of the withdrawal of his consent and the reasons for it; or
 - (d) who, as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, had reasonable ground to believe and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true.
- (4) No person is liable under subsection (1)
- (a) if, as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert, it fairly represented the statement, or was a correct and fair copy of, or extract from, the report or valuation and that person had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the expert making the statement was competent to make it, and had given his consent as required under section 299 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, nor had the expert, to that person's knowledge, withdrawn that consent before allotment or sale under the prospectus; or

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

(5) Subsections (3) and (4) do not apply in the case of a person liable, by reason of his having given a consent required of him by section 299, as a person who has authorised or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(6) A person who, apart from this subsection, would be liable under subsection (1), by reason of his having given a consent required of him by section 299 as a person who has authorised or caused the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert is not liable

- (a) if, having given his consent under that section to the issue of the prospectus, he withdrew his consent in writing before a copy of the prospectus was lodged with the Registrar;
- (b) if, after a copy of the prospectus was lodged with the Registrar and before allotment or sale under the prospectus, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reasons for withdrawal; or
- (c) if he was competent to make the statement and had reasonable ground to believe, and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true.

(7) When

- (a) a prospectus contains the name of a person as a director of the company, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus and has not authorised or consented to its issue, or

- (b) the consent of a person is required under section 299 to the issue of a prospectus and he either has not given the consent or has withdrawn it before the issue of the prospectus,

any person who authorised or caused the issue of the prospectus and the directors of the company, other than those directors without whose knowledge or consent the prospectus was issued, are liable to indemnify the person so named, or whose consent was so required, against all damages, costs and expenses to which he might be liable by reason of his name having been inserted in the prospectus, or of the inclusion therein of a statement purporting to be made by him as an expert, or in defending himself against any action or legal proceedings brought against him in respect thereof.

Subscription List and Minimum Subscription

Subscription lists.

301. (1) No allotment may be made of any shares or debentures of a company in pursuance of a prospectus, and no proceedings may be taken on applications made in pursuance of a prospectus, until the beginning of the fifth day after that on which the prospectus is first issued, or any such later time as is specified in the prospectus; and the beginning of that fifth day or specified later time is referred to in this section as the "time of the opening of the subscription lists".

(2) An application for shares or debentures of a company made in pursuance of a prospectus is not revocable until after the expiration of the fifth day from the time of the opening of the subscription lists, or the giving before the expiration of that fifth day, by some person responsible under this Act for the prospectus, of a public notice having the effect of excluding or limiting the responsibility of the person giving it.

(3) Although an allotment made in contravention of this section is void, it does not affect any allotment of the same shares or debentures later made to the same applicant.

(4) In reckoning for the purposes of this section the fifth day from another day, any intervening day that is a public holiday must be disregarded; and if the fifth day as so reckoned falls on a Saturday, Sunday, or public holiday, the first day thereafter that is not a Saturday, Sunday or public holiday is deemed to be the fifth day for those purposes.

302. (1) Unless all the shares or debentures offered for subscription by a prospectus issued to the public are underwritten, the prospectus must state the minimum amount of money required to be raised by the company by issuing the shares or debentures, in this Division, referred to as the "minimum subscription".

Minimum
subscription.

(2) No allotment may be made of any shares or debentures of a company that are offered to the public unless

- (a) the minimum subscription has been subscribed, and
- (b) the sum payable on application for the shares or debentures has been received by the company;

and, if a cheque for the sum payable has been received by the company, the sum is deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

(3) If the conditions referred to in subsection (2) have not been complied with on the expiration of 40 days after the first issue of the prospectus, all moneys received from the applicants for any shares or debentures must be forthwith repaid to them without interest, and, if any such moneys are not so repaid within 48 days after the issue of the prospectus, the directors of the company are, subject to subsection (4), jointly and severally liable to repay that money with interest at the rate of 6 percent per annum from the expiration of the forty-eighth day.

(4) A director is not liable to repay moneys under subsection (3) if the default in any repayment of moneys was not due to any default or negligence on his part.

(5) A condition is void that purports to require or bind any applicant for shares or debentures to waive compliance with a requirement of this section.

(6) This section does not apply to an allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

303. All application money and other moneys paid prior to an allotment by an applicant on account of shares or debentures offered to the public must, until the allotment of the shares or debentures, be held by the company, or, in the case of an intended company, by the persons

Escrow of
subscription
money.

named in the prospectus as proposed directors and by the incorporators, upon trust for the applicant; but there is no obligation or duty on any bank or third person with whom any such moneys have been deposited to inquire into, or see to the proper application of those moneys so long as the bank or person acts in good faith.

Remedial Actions

Rescission
of contract.

304. (1) A shareholder or a debenture holder may bring, against a company that has allotted shares or debentures under a prospectus, an action for the rescission of all allotments and the repayment to the shareholders or debenture holders of the whole or part of the issue price that has been paid in respect of the shares or debentures, if

- (a) the prospectus contained a material statement, promise or forecast that was false, deceptive or misleading; or
- (b) the prospectus did not contain a statement, report or account required under this Act to be contained in it.

(2) In this section

- (a) "debenture holder" means a holder of any of the debentures allotted under the prospectus, whether the original allottee or a person deriving title under him;
- (b) "shareholder" means a holder of any of the shares allotted under the prospectus, whether the original allottee or a person deriving title under him.

(3) For the purposes of this section, a prospectus contains a material statement, promise or forecast if the statement, promise or forecast was made in such a manner or context, or in such circumstances, as to be likely to influence a reasonable man in deciding whether to invest in the shares or debentures offered for subscription; and a statement, report or account is omitted from a prospectus if it is omitted entirely, or if it does not contain all the information required by this Act to be given in the statement, report or account.

(4) In an action brought under this section, the plaintiff need not prove that he, or the person to whom the shares or debentures he holds were allotted, was in fact influenced by the statement, promise or forecast that he alleges to be false, deceptive or misleading, or by the omission of any report, statement, or account required to be contained in the prospectus.

(5) No action may be brought under this section more than 2 years after the first issue of the prospectus under which shares or debentures were allotted to the plaintiff or the person under whom the plaintiff derives title.

(6) If judgment is given in favour of a plaintiff under this section, the allotment of all shares or debentures under the same prospectus, whether allotted to the plaintiff, or the person under whom he derives title, or to other persons, is void; and judgment must be entered in favour of all such persons for the payment by the company to them severally of the amount paid in respect of the shares or debentures that they respectively hold; but if any shareholder or debenture holder at the date judgment is so entered signifies to the company in writing, whether before or after the entry of judgment, that he waives his right to rescind the allotment of shares or debentures that he holds, he is deemed not to be included among the persons in whose favour judgment is entered.

(7) The operation of this section is not affected by the company's being liquidated or ceasing to pay its debts as they fall due; and in the liquidation of the company a repayment due under subsection (6) must be treated as a debt of the company payable immediately before the repayment of the shares or debentures of the class in question, that is to say

- (a) in the case of a repayment in respect of shares, before repayment of the capital paid up on shares of the same class, and before any accumulated or unpaid dividends, or any premiums in respect of those shares, but after the payment of all debts of the company and the satisfaction of all claims in respect of prior ranking classes of shares; and

- (b) in the case of a repayment in respect of debentures, before the repayment of the principal of the debentures of the same class, and before any unpaid interest or any premiums in respect of those debentures, but after the payment of all debts or liabilities of the company that this Act requires to be paid before those debentures, and after the satisfaction of all rights in respect of prior ranking classes of debentures.
- (8) Subject to subsection (9), it is a defence to an action under this section for the company to prove that
- (a) the plaintiff was the allottee of the shares or debentures in right of which the action was brought and that at the time they were allotted to him he knew that the statement, promise or forecast of which he complains was false, deceptive or misleading, or that he knew of the omission from the prospectus of the matter of which he complains; or
- (b) the plaintiff has received a dividend or payment of interest, or has voted at a meeting of shareholders or debenture holders since he discovered that the statement, promise or forecast of which he complains was false, deceptive or misleading, or since he discovered the omission from the prospectus of the matter of which he complains.
- (9) An action may not be dismissed if there are several plaintiffs, when the company proves that it has a defence under subsection (8) against each of them; and in any case in which the company proves that it has a defence against the plaintiff or all the plaintiffs, the court may, instead of dismissing the action, substitute some other shareholder or debenture holder of the same class as plaintiff.
- (10) If a company would have a defence under subsection (8) but for the fact that the allottee of the shares or debentures in right of which the action is brought has transferred or renounced them, the company may bring an action against the allottee for an indemnity against any sum that the court orders it to pay to the plaintiff in the action.

(11) Subsections (8) and (10) apply also in the case of shares and debentures of the same class as those in right of which a plaintiff obtains and enters judgment against the company under subsection (6)

- (a) with the substitution in subsection (8) of references to the shareholder or debenture holder for references to the plaintiff, and
- (b) with the substitution in subsections (8) and (10) of references to a right for the company to have the judgment set aside in respect of the shares or debentures for references to a defence to the action.

(12) This section applies to shares and debentures allotted pursuant to an underwriting contract as if they had been allotted under the prospectus.

(13) This section applies to shares or debentures issued under a prospectus that offers them for subscription in consideration of the transfer or surrender of other shares or debentures, whether with or without the payment of cash by or to the company, as though the issue price of the shares or debentures offered for subscription were the fair value, as ascertained by the court, of the shares or debentures to be transferred or surrendered, plus the amount of cash, if any, to be paid by the company.

(14) The rights conferred on shareholders and debenture holders by this section are in substitution for all rights to rescission and restitution in equity and all rights to sue the company at common law for deceit or for false statements made negligently; and those common law and equitable rights are hereby abolished in connection with prospectuses, but without prejudice to claims for damages or compensation against persons other than the company.

305. No allotment may be made, on the basis of a prospectus, of any shares or debentures of a company that are offered to the public later than three months after the issue of the prospectus.

Time limit
on allot-
ment.

Statements in Lieu of Prospectus

Restriction
on
allotment.

306. A public company that does not issue a prospectus on, or with reference to, its formation may not allot any of its shares or debentures unless at least 3 days before the first allotment of either shares or debentures there has been lodged with the Registrar for registration a statement in lieu of prospectus that complies with the requirements of this Division.

Statements
in lieu of
prospectus.

307. (1) To comply with the requirements of this Division, a statement in lieu of prospectus lodged by or on behalf of a company

(a) must be signed by every person who is named therein as a director or a proposed director of the company, or by his agent authorised in writing,

(b) must disclose any commission payable by virtue of section 50, and

(c) must contain such matters as are prescribed.

(2) The Registrar may not accept for registration any statement in lieu of prospectus unless it appears to the Registrar to comply with the requirements of this Act.

(3) Subsections (3) to (6) of section 297 apply in relation to the registration of, or refusal to register, a statement in lieu of prospectus as they apply in relation to the registration of or refusal to register a prospectus.

DIVISION E

INSIDER TRADING

"Insider"
defined.

308. In this Division, "insider" means, in respect of a company

(a) a director or officer of the company;

(b) a company that purchases or otherwise acquires shares issued by it or any of its affiliates;

- (c) a person who beneficially owns more than 10 percent of the shares of the company, or who exercises control or direction over more than 10 percent of the votes attached to shares of the company;
- (d) an associate or affiliate of a person mentioned in paragraphs (a) to (c); and
- (e) a person, whether or not he is employed by the company, who
 - (i) receives specific confidential information from a person described in this section, including a person described in this paragraph, and
 - (ii) has knowledge that the person giving the information is a person described in this section, including a person described in this paragraph.

309. (1) For the purpose of this Division

Presumed
insider.

- (a) a director or officer of a body corporate that is an insider of a company is an insider of the company;
 - (b) a director or officer of a body corporate that is a subsidiary is an insider of its holding company.
- (2) For the purposes of this Division
- (a) if a body corporate becomes an insider of a company, or enters into a business combination with a company, a director or officer of the body corporate is presumed to have been an insider of the company for the previous 6 months or for shorter period as he was a director or an officer of the body corporate; and
 - (b) if a company becomes an insider of a body corporate, or enters into a business combination with a body corporate, a director or officer of the body corporate is presumed to have been an insider of the company for the previous 6 months, or for such shorter period as he was a director or officer of the body corporate.

(3) In subsection (2), "business combination" means an acquisition of all or substantially all the property of one body corporate by another, or an amalgamation of 2 or more bodies corporate.

Liability
of insider.

310. An insider who, in connection with a transaction in a share of the company or any of its affiliates, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the share

- (a) is liable to compensate any person for any direct loss incurred by that person as a result of the transaction, unless the information was known or in the exercise of reasonable diligence should have been known, to that person at the time of the transaction, and
- (b) is accountable to the company for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

Time limit
on action.

311. An action to enforce a right created by section 310 may not be commenced except within 2 years after the discovery of the facts that gave rise to the cause of action.

PART III

OTHER REGISTERED COMPANIES

DIVISION A

COMPANIES WITHOUT SHARE CAPITAL

Application
of Division.

312. (1) This Division applies to every company without share capital, in this Division called a "non-profit company".

(2) When a provision of this Division is inconsistent with, or repugnant to, any other provision of this Act, the provision of this Division in so far as it affects a non-profit company to which this Division applies, supersedes and prevails over the other provisions of this Act.

(3) For the avoidance of uncertainty, but subject to subsection (2), the following provisions of this Act apply, with such modifications as the circumstances of a non-profit company require, to such a company, namely:

- (a) the provisions of Divisions A, B, D, E, F, G, H, I, K and L of Part I, and sections 31, 44, 45, 46 and 56 in that Part;
- (b) the provisions of Divisions A, B and C of Part II;
- (c) the provisions of Divisions B and C of this Part; and
- (d) the provisions of Part IV and Part V.

1986-4.

(4) The provisions of Part V of the *Charities Act* apply with such modifications as the circumstances require to a non-profit company.

2002-6.

Cap. 243.

313. When used in relation to a non-profit company, "member" refers to a member of the non-profit company in accordance with the provisions of this Act and the articles and by-laws of the company.

"Member" defined.

314. (1) Without the prior approval of the Minister, no articles may be accepted for filing in respect of any non-profit company.

Incorporation.

(2) In order to qualify for approval, a non-profit company must restrict its undertaking to one that is of a patriotic, religious, philanthropic, charitable, educational, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature, or the like, or to the promotion of some other useful object.

(3) Notwithstanding subsection (1), the approval of the Minister is not required for the continuation under this Division of a former-Act company that was registered by licence of the Minister pursuant to section 21 of the former Act.

315. The articles of a non-profit company must be in the prescribed form and, in addition, must state

Form of articles.

- (a) the restrictions on the undertaking that the company is to carry on;
- (b) that the company has no authorised share capital and is to be carried on without pecuniary gain to its members, and that any profits or other accretions to the company are to be used in furthering its undertaking;

- (c) if the undertaking of the company is of a social nature, the address in full of the clubhouse or similar building that the company is maintaining; and
- (d) that each first director becomes a member of the company upon its incorporation.

Directors
ex officio.

316. (1) A non-profit company may have no fewer than 3 directors.

(2) The articles or by-laws of a non-profit company may provide for individuals becoming directors by virtue of holding some office outside the company.

"Incorporated" or "inc" etc.

317. (1) Notwithstanding section 10, the word "incorporated" or "corporation" or the abbreviation "inc" or "corp" must be the last word of the name of each non-profit company; but a non-profit company may use and be legally designated by either the full or the abbreviated form.

(2) This section does not apply to a former-Act company without share capital that is continued under this Act; but this section applies to any such company that changes its name by amended articles.

Members
unlimited.

318. (1) Unless the articles or by-laws of a non-profit company otherwise provide, there is no limit on the number of members of the company.

(2) The articles or by-laws of a non-profit company may provide for more than one class of membership; but, if they do so, they must set forth the designation of, and the terms and conditions attached to, each class of members.

Admission
to membership.

319. Subject to the articles or by-laws of a non-profit company, persons may be admitted to membership in the company by resolution of the directors; but the articles or by-laws may provide

- (a) that the resolution is not effective until confirmed by the members in a general meeting; and
- (b) that members can be admitted by virtue of holding some office outside the company.

320. (1) Subject to subsection (2), each member of each class of members of a non-profit company has one vote. Voting by members.

(2) The articles of a non-profit company may provide that each member of a specified class has more than one vote, or has no vote.

321. (1) Unless the articles of the company otherwise provide, the interest of a member in a non-profit company is not transferable, and lapses and ceases to exist upon his death or when he ceases to be a member by resignation, or otherwise in accordance with the by-laws of the company. Transfer of members.

(2) Where the articles of a non-profit company provide that the interest of a member in the company is transferable, the by-law may not restrict the transfer of that interest.

322. (1) The directors of a non-profit company may make by-laws, not being contrary to this Act or to the articles of the company, respecting By-laws.

- (a) the admission of persons and unincorporated associations as members and as *ex officio* members, and the qualifications of, and the conditions of membership;
- (b) the fees and dues of members;
- (c) the issue of membership cards and certificates;
- (d) the suspension and termination of membership by the company and by a member;
- (e) where the articles provide that the interest of a member is transferable, the method of transferring membership;
- (f) the qualifications of, and the remuneration of, the directors and the *ex officio* directors, if any;
- (g) the time for, and manner of, election of directors;
- (h) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the company, and the security, if any, to be given by them to the company;

- (i) the time and place, and the notice to be given, for the holding of meetings of the members and of the board of directors, the quorum at meetings of members, the requirement as to proxies, and the procedure in all things at meetings of the members and at meetings of the board of directors; and
 - (j) the conduct in all other particulars of the affairs of the company.
- (2) The directors of a non-profit company may make by-laws respecting
- (a) the division of its members into groups, either territorially or on the basis of common interest;
 - (b) the election of some or all of the directors
 - (i) by the groups on the basis of the number of members in each group,
 - (ii) for the groups in a defined geographical area, by the delegates of the groups meeting together, or
 - (iii) by the groups on the basis of common interest;
 - (c) the election of delegates and alternate delegates to represent each group on the basis of the number of members in each group;
 - (d) the number and qualifications of delegates and the method of their election;
 - (e) the holding of meetings of members or delegates;
 - (f) the powers and authority of delegates at meetings; and
 - (g) the holding of meetings of members or delegates territorially or on the basis of common interest.
- (3) A by-law passed under paragraph (f) of subsection (2) may provide that a meeting of delegates for all purposes is a meeting of the members with all the powers of such a meeting.

(4) A by-law under subsection (2) is not effective until it is confirmed by at least two-thirds of the votes cast at a general meeting of the members duly called for that purpose.

(5) A delegate has only one vote and may not vote by proxy.

(6) A by-law passed under subsection (2) may not prohibit members from attending meetings of delegates and participating in the discussions at the meetings.

323. (1) The articles of incorporation of a non-profit company may provide that, upon dissolution, the remaining property of the company is to be distributed among the members, or among the members of a class or classes of members, or to one designated organisation or more, or to any combination thereof. Dissolution and distribution.

(2) Where the articles of incorporation of a non-profit company do not provide for a distribution of its remaining property in accordance with subsection (1), the company must, by special resolution, after payment of all debts and liabilities distribute or dispose of the remaining property to any organisation in Barbados the undertaking of which is charitable or beneficial to the community.

(3) A distribution or disposition of property in accordance with subsections (1) and (2) is sufficient compliance with paragraph (d) of subsection (4) of section 367 and paragraph (i) of section 379.

(4) Where the articles of incorporation do not contain a provision for the distribution of remaining property to the members, the articles may not be amended so to provide.

DIVISION B

EXTERNAL COMPANIES

324. (1) In this Division

Interpretation.

- (a) "external company" means any incorporated or unincorporated body formed under the laws of a country other than Barbados;
- (b) "undertaking" means, in relation to an external company, any business or undertaking carried on by the external company.

(2) An external company is carrying on an undertaking in Barbados if

- (a) it holds title to any land in Barbados or has an interest in any such land;
- (b) it maintains an office, warehouse or place of business in Barbados;
- (c) it is licensed or registered or required to be licensed or registered under any law of Barbados that entitles it to do business or to sell shares or debentures of its own issue;
- (d) it is the holder of a certificate of registration issued under the *Road Traffic Act* respecting a public service vehicle; or
- (e) in any other manner it carries on any undertaking in Barbados.

Cap. 295.

1984-7.

(2) For the purposes of subsection (2), where an external company is listed with a telephone number in Barbados under the name of the external company in a telephone directory published for use in Barbados, the external company is presumed, in the absence of evidence to the contrary, to be carrying on an undertaking in Barbados.

Exceptions.

Cap. 378A.

325. This Division does not apply to an external company that carries on its undertaking on a co-operative basis within the meaning of the *Co-operative Societies Act* or that is exempted from this Division by an order published in the *Gazette*, which may be made by the Minister.

Prohibition.

326. (1) No external company shall begin or carry on any undertaking in Barbados until it is registered under this Act.

1984-7.
1990-1.

(2) Every external company that was carrying on an undertaking in Barbados immediately before 1st January, 1985 must, within 6 years after that date apply to the Registrar for registration under this Act.

(3) An external company whose name appears on the register maintained by the Registrar pursuant to section 395 is presumed to be registered under this Act; and an external company whose name does not appear on that register is presumed not to be registered under this Act.

(4) Until the expiration of 6 years from 1st January, 1985, subsection (1) does not apply to an external company that was carrying on an undertaking in Barbados on that date. 1986-4.
1990-1.

326.1.¹ (1) An external company registered on or after the 1st January, 1985 shall be deemed to have been validly and lawfully registered under the principal Act. Validation.
1990-1.

327. (1) Subject to subsection (2) and to sections 416 and 417, an external company, upon payment of the prescribed fee, is entitled to be registered under this Act for any lawful undertaking. Registration
required.

(2) An application for registration under this Act by an external company may be referred by the Registrar to the Minister, who may order the Registrar to refuse registration.

328. (1) In the prescribed circumstances, the Registrar may restrict the powers or activities that an external company can exercise or carry on in Barbados. Restrictions
on activities.

(2) When any powers or activities of an external company are restricted under subsection (1), the company shall not exercise those powers or carry on those activities in Barbados.

(3) Where any powers or activities of an external company are to be restricted pursuant to subsection (1)

(a) the Registrar must notify the company of what he intends to do;

¹ This section was enacted as section 4(1) of Act 1990-1.

- (b) the company may appeal to the Minister within 30 days from the date on which the notification from the Registrar was received by the company; and
- (c) the Minister may confirm, vary or overrule the decision of the Registrar.

External
amalgam-
ated
company.

329. An external company that has been continued from the amalgamation of 2 or more external companies must comply with section 332 as though it were a new registration of an external company, irrespective of the fact that one or more of the external companies that were continued by the amalgamated company had been registered under this Act at the date of the amalgamation or thereafter.

Registering
external
companies.

330. (1) In order to register under this Act, an external company must file with the Registrar a statement in the prescribed form setting out

- (a) the name of the company;
- (b) the jurisdiction within which the company was incorporated;
- (c) the date of its incorporation;
- (d) the manner in which it was incorporated;
- (e) the particulars of its corporate instruments;
- (f) the period, if any, fixed by its corporate instruments for the duration of the company;
- (g) the extent, if any, to which the liability of the shareholders or members of the company is limited;
- (h) the undertaking that the company will carry on in Barbados;
- (i) the date on which the company intends to commence any of its undertakings in Barbados;
- (j) the authorised, subscribed and paid-up or stated capital of the company, and the shares that the company is authorised to issue and their nominal or par value, if any;

- (k) the full address of the registered or head office of the company outside Barbados;
 - (l) the full address of the principal office of the company in Barbados; and
 - (m) the full names, addresses and occupations of the directors of the company.
- (2) The statement under subsection (1) must be accompanied with
- (a) a statutory declaration by 2 directors of the company that verifies on behalf of the company the particulars set out in the statement;
 - (b) a copy of the corporate instruments of the company;
 - (c) a statutory declaration by an attorney-at-law that this section has been complied with;
 - (d) the prescribed fees; and
 - (e) a power of attorney in accordance with section 332.

(3) The Registrar may accept the declaration referred to in paragraph (c) of subsection (2) as sufficient evidence of compliance with the requirements of this section.

331. When a document that is required to be filed under section 330 is not in the English language, a notarily certified translation of that document must be provided unless the Registrar otherwise directs. Language.

332. (1) An external company must file with the Registrar a fully executed power of attorney in the prescribed form that will empower some person named in the power and resident in Barbados to act as the attorney of the company for the purpose of receiving service of process in all suits and proceedings by or against the company in Barbados, and of receiving all lawful notices. Attorney of company.

(2) A power of attorney under subsection (1) must declare that service of process in respect of suits and proceedings by or against the

company and of lawful notices on the attorney will be binding on the company for all purposes.

(3) An external company may, by another power of attorney executed and deposited in accordance with this section

(a) appoint another attorney in Barbados for the purposes set forth in the power, and

(b) replace the attorney previously appointed pursuant to this section.

Failure of
power.

333. If an attorney named in a power of attorney executed by an external company under section 332 ceases to reside in Barbados, or if the power of attorney becomes invalid or ineffectual for any other reason, the company must file another power of attorney pursuant to section 332.

Capacity of
attorney.

334. (1) Service of process and notices on an attorney for an external company appointed under a power of attorney registered under section 332 is legal and binding service on the company.

(2) When an attorney for an external company appointed under a power registered under section 332 signs a deed on behalf of the company, the deed is binding on the company in Barbados if the company has empowered the attorney to execute deeds and he executes it with the attorney's own seal.

(3) A deed that is binding under subsection (2) on an external company has the same effect as if it were under the seal of the external company.

Certificate
of
registration.

335. (1) When the Registrar has, in respect of an external company, received the statements and other documents required, under this Act together with the prescribed fees, the Registrar must

- (a) issue a certificate showing that the company has been registered as an external company under this Act; and
- (b) publish in the *Gazette* a notice of the registration of the company as an external company,

but subject to his discretionary powers under this Division.

(2) A certificate of registration issued under this section to an external company is conclusive proof of the registration of the company on the date shown in the certificate and of any other facts that the certificate purports to certify.

336. Subject to this Division and any other laws of Barbados, an external company that is registered under this Act may carry on its undertaking in Barbados in accordance with its certificate of registration and may exercise its corporate powers within Barbados. Effect of registration.

337. (1) Subject to such regulations as the Minister may make in that behalf, the Minister may suspend or revoke the registration of any external company for failing to comply with any requirements of this Division, or for any other prescribed cause; and the Minister may, subject to those regulations, remove a suspension or cancel a revocation. Suspension of registration.

(2) The rights of the creditors of an external company are not affected by the suspension or revocation of its registration under this Act.

(3) The Registrar must publish forthwith in the *Gazette* a notice of any suspension or revocation of the registration of an external company under this Act.

338. (1) When an external company ceases to carry on its undertaking in Barbados, the company shall file a notice to that effect with the Registrar, who must thereupon cancel the registration of the company under this Act. Cancelling registration.

(2) If an external company ceases to exist and the Registrar is made aware of that circumstance by evidence satisfactory to him, the Registrar may cancel the registration of the company under this Act.

(3) If the Minister is of the opinion that the public convenience will be served thereby, the Minister may, by publishing in the *Gazette* a notice to that effect, cancel the registration of an external company under this Act.

Revival of
registration.
2001-30.

339. (1) Subject to subsection (4), where the registration of an external company has been cancelled under section 338 or has ceased to be valid by virtue of section 342(3), the Registrar may revive the registration of the external company under this Act if the company files with him such documents as he may require and pays the prescribed fee.

(2) A registration of an external company is revived when the Registrar issues a new certificate of registration to the company.

(3) The Registrar may require the external company to whom he has issued a new certificate under this section to publish in the *Gazette* at its own expense a notice of the revival of its registration.

(4) The Registrar may not revive the registration of a company the registration of which was cancelled by the Minister pursuant to subsection (3) of section 338.

Previous
activities.

340. Registration or revival of registration under this Act of an external company retroactively authorises all previous acts of the company as though the company had been registered at the time of those acts, except for the purposes of a prosecution for any offence under this Division.

Name
display.

341. (1) An external company carrying on any undertaking in Barbados shall paint or affix its name and place of business in a conspicuous place in easily legible letters, and keep that information so painted and affixed, on the outside of its head office in Barbados and every other office or place in Barbados in which it carries on its undertaking in Barbados.

(2) An external company carrying on any undertaking in Barbados shall, in the transaction of its undertaking within Barbados, have its name mentioned in legible characters in

- (a) all notices, advertisements and other official publications of the company;
- (b) all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company; and
- (c) all bills of parcels, invoices, receipts and letters of credit of the company.

342. (1) Where, in the case of an external company registered under this Act

Funda-
mental
changes.

- (a) the name of the company has been changed;
- (b) the corporate instruments of the company have been altered to reflect a fundamental change within the meaning of Division K of Part I;
- (c) the objects of the company have been altered or its business has been restricted; or
- (d) any change is made among its directors,

the company shall, within 30 days after the change has been made, file with the Registrar duly certified copies of the instruments by which the change has been made or ordered to be made.

(2) Upon receipt of the duly certified copies referred to in subsection (1) and the prescribed fee, the Registrar must enter the change of name in the register, and, with the approval of the Minister, enter a record of such other changes in the register as he considers to be in the public interest.

(3) The registration of an external company under this Act ceases to be valid 60 days after a change described in subsection (1) is made or ordered unless within that period the change is filed with the Registrar pursuant to subsection (1).

(4) Upon the registration under this section of a change in respect of an external company, the Registrar must

(a) issue to the company a certificate of the change under his hand in a form adapted to the circumstances; and

(b) if the change involves a change of name, publish notice of the change in the *Gazette*.

(5) A certificate issued under subsection (4) and a notice published in the *Gazette* under that subsection are admissible in evidence as conclusive proof of the change therein set out.

Returns. **343.** (1) An external company shall, not later than the first day of April in each year after the date of its registration, send to the Registrar an annual return in the prescribed form containing the prescribed information made up to the preceding thirty-first day of December and accompanied with the prescribed fees.

(2) A director or officer of the external company must certify the contents of any return made under this section.

2001-30. (2A) From 27th August, 2001 an external company that is in default in complying with subsection (1) is liable to a penalty of \$10 payable to the Registrar for every day during which the default continues and every director and officer who knowingly and wilfully authorises or permits the default is also liable to that penalty.

(3) The Registrar may strike off the register an external company that neglects or refuses to file a return required under this section.

Incapacity of company. **344.** (1) An external company that is not registered under this Act may not maintain any action, suit or other proceeding in any court in Barbados in respect of any contract made in whole or in part within Barbados in the course of, or in connection with, the carrying on of any undertaking by the company in Barbados.

(2) Notwithstanding subsection (1), when an external company described in that subsection becomes registered under this Act or has its registration restored, as the case may be, the company may then maintain an action, suit or other proceeding in respect of the contract described in subsection (1) as though the company had never been disabled under that subsection, whether or not the contract was made or proceeding instituted by the company before the date the company was registered or had its registration restored.

(3) In the case of an external company whose registration has been restored, subsection (2) is subject to the terms of any conditions imposed upon the company, or to the terms of any order of the court in respect of the restoration of the company's registration.

(4) Where an assignment of a debt or any chose in action is made by an external company described in subsection (1) to an individual or to a body corporate having the capacity to maintain any action, suit or other proceeding in a court in Barbados

(a) that individual or body corporate, or

(b) any person claiming under the individual or body corporate, may not maintain, in any court in Barbados, any action, suit or other proceeding that is based on the subject of the assignment unless the external company is registered under this Act during the time the action, suit or other proceeding is being proceeded with.

(5) Subsection (4) does not apply in respect of an external company that is a judgment creditor applying to have a judgment registered in the Supreme Court under the *Foreign and Commonwealth Judgments (Reciprocal Enforcement) Act*. Cap. 201.

345. Where an action, suit or proceeding has been dismissed or otherwise decided against an external company on the ground that an act or transaction of the company was invalid or prohibited by reason of the company's not being registered under this Act, the company may, when it becomes registered under this Act, and upon such terms as to costs as the court may order, maintain a new action, suit or other proceeding as if no judgment had been given or entered therein. Resumption
of action.

Other provisions.

346. The provisions of sections 18 to 23, 416 and 417 and the provisions of Divisions B to E of Part II and Division B of Part V apply *mutatis mutandis* to external companies.

DIVISION C

FORMER-ACT COMPANIES

Former-Act company.

347. (1) Upon 1st January, 1985

- (a) all corporate instruments of a former-Act company, and
- (b) all cancellations, suspensions, proceedings, acts, registrations and things,

lawfully done under any provision of the former Act are presumed to have been lawfully done under this Act, and continue in effect under this Act as though they had been lawfully done under this Act.

(2) For the purposes of this section, "lawfully done" means to have been lawfully granted, issued, imposed, taken, done, commenced, filed, or passed, as the circumstances require.

Effect of corporate instrument.

348. (1) Notwithstanding any other provision of this Act, but subject to subsection (3), if any provision of a corporate instrument of a former-Act company lawfully in force immediately before 1st January, 1985 is inconsistent with, repugnant to, or not in compliance with, this Act, that provision is not illegal or invalid only by reason of that inconsistency, repugnancy or non-compliance.

(2) Any act, matter or proceeding or thing done or taken by the former-Act company or any director, shareholder, member or officer of the company under a provision mentioned in subsection (1) is not illegal or invalid by reason only of the inconsistency, repugnancy or non-compliance mentioned in that subsection, or by reason of being prohibited, or not authorised by the law as it is after 1st January, 1985.

(3) Section 95 applies to a former-Act company immediately upon 1st January, 1985.

349. (1) Every former-Act company must, within 6 years after 1st January, 1985, apply to the Registrar for a certificate of continuance under this Act. Continuation as company. 1990-1.

(2) Subject to subsection (5), a former-Act company which did not within the period specified in subsection (1) apply to the Registrar for a certificate of continuance under this Act, may apply to the Registrar in accordance with subsection (3) for leave to file articles of continuance within such further period as the Registrar with the approval of the Minister allows. 2001-30.

(3) An application under subsection (2) must be in writing and shall be accompanied by a statutory declaration by a director, officer or other duly authorised agent of the former-Act company giving full particulars to the satisfaction of the Registrar of 2001-30.

- (a) the reason why the former-Act company failed to apply for continuance under this Act within the period specified in subsection (1);
- (b) the obligations of the former-Act company;
- (c) the hardship, if any, experienced by the former-Act company by reason of its non-continuance under this Act;
- (d) the property owned by the former-Act company; and
- (e) the reasons why, having regard to section 353 of the Act, the former-Act company should be continued as a company under this Act.

(4) After considering an application under subsection (2) the Registrar may grant leave in writing to the former-Act company to file articles of continuance in accordance with section 351 within such period as the Registrar with the approval of the Minister allows. 2001-30.

(5) No former-Act company shall be continued under this Act after 31st December, 2003. 2001-30.

Amending
instrument.

350. Within the period referred to in section 349, any amendments to, or replacement of, the corporate instruments of a former-Act company must be made as nearly as possible in accordance with this Act.

Articles of
continuance.

351. (1) Articles of continuance may, without so stating in the articles, effect any amendments to the corporate instruments of a former-Act company if the amendment is an amendment that a company incorporated under this Act can make in its articles.

(2) Articles of continuance in the prescribed form must be sent to the Registrar together with the documents required by sections 66 and 169.

(3) A shareholder or member may not dissent under section 213 in respect of an amendment made under subsection (1).

Certificate
of continu-
ance.

352. (1) Upon receipt of an application under this Part, the Registrar may, and, if the applicant complies with all reasonable requirements of the Registrar to have the continued company accord with the requirements of this Act, the Registrar must, issue a certificate of continuance to the former-Act company, in accordance with section 404.

(2) On the date shown in the certificate of continuance

(a) the former-Act company becomes a company to which this Act applies as if it had been incorporated under this Act;

(b) the articles of continuance are the articles of incorporation of the continued company; and

(c) except for the purposes of subsection (1) of section 62, the certificate of continuance is the certificate of incorporation of the continued company.

1990-1.

(3)¹ A certificate of continuance issued to a former-Act company on or after 1st January, 1987 and before 5th February, 1990 shall be deemed to have been validly and lawfully issued under this Act.

¹This subsection was enacted as section 4(2) of Act 1990-1.

353. (1) When a former-Act company is continued as a company under this Act Preservation of company.

- (a) the property of the former-Act company continues to be the property of the company;
- (b) the company continues to be liable for the obligations of the former-Act company;
- (c) an existing cause of action, claim or liability to prosecute is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the former-Act company may be continued by or against the company; and
- (e) a conviction against, or ruling order or judgment in favour of or against, the former-Act company may be enforced by or against the company.

(2) When the Registrar determines, on the application of a former-Act company, that it is not practicable to change a reference to the nominal or par value of shares of a class or series that the former-Act company was authorised to issue before it was continued as a company under this Act, the Registrar may, notwithstanding section 28, permit the company to continue to refer in its articles to those shares, whether issued or non-issued as shares having a nominal or par value. 1986-4.

(3) A company must set out in its articles the maximum number of shares of a class or series referred to in subsection (2); and it may not amend its articles to increase that maximum number of shares or to change the nominal or par value of the shares.

354. (1) A share of a former-Act company issued before the company was continued under this Act is presumed to have been issued in compliance with this Act and with the provisions of the articles of continuance, irrespective of whether the share is fully paid, and irrespective of any designation, rights, privileges, restrictions or conditions attached to the share, or set out on, or referred to in, the certificate representing the share; and continuance under this Act does not deprive a shareholder of any right or privilege that he claims under an issued share of the company, nor does it relieve him of any liability in respect of an issued share of the company.

Various shares.

(2) For the purposes of this section, "share" includes an instrument issued pursuant to subsection (1) of section 35.

354A. When a former-Act company fails to apply to the Registrar for a certificate of continuance within the time limited therefor under section 349, then, after the expiration of that period

Non-continuance disability. 1984-7.

- (a) the former-Act company may not, without leave, sue in any court, but may be made a defendant to a suit;
- (b) no dividend shall be paid to any shareholder of the former-Act company; and
- (c) every director or manager of the former-Act company is liable to a penalty of \$100 a day for each day during which the former-Act company carries on its undertaking thereafter.

1984-7.

355. (1) A reference in any corporate instrument of any body corporate to the former Act or any procedure under the former Act is, in relation to any former-Act company continued under this Act, to be construed as a reference to the provisions of this Act or procedure thereunder that is the equivalent provision or procedure under this Act.

Effect of earlier references.

Cap. 1. (2) Without affecting the operation of the *Interpretation Act*, when there is no equivalent provision in this Act to the provision or procedure in or under the former Act referred to in the corporate instrument of a body corporate, the provision or proceeding of the former Act is to be applied, and stands unrepealed to the extent necessary to give effect to that reference in the corporate instrument.

1995-9.

DIVISION C.1

STATUTORY COMPANIES

Interpreta-
tion.**355.1.** In this Act

"incorporating Act"

(a) means an Act, other than this Act, under which a company is incorporated; but

(b) does not include

Cap. 1.

(i) an Act under which a statutory board, within the meaning of section 43 of the *Interpretation Act*, is incorporated, or

Cap. 318B.

(ii) the *Societies With Restricted Liability Act*;

"statutory company"

(a) means a body corporate incorporated under an enactment other than this Act; but

(b) does not include

Cap. 1.

(i) a statutory board within the meaning of section 43 of the *Interpretation Act*, or

Cap. 318B.

(ii) a body organised under the *Societies With Restricted Liability Act*.

Rein-
corporation.

355.2. (1) A statutory company that wishes to reincorporate under this Act may apply to the Registrar for a certificate of reincorporation under this Act.

(2) No fee in excess of \$500 to defray administration costs may be prescribed in respect of an application and certificate of reincorporation under this Division.

355.3. (1) Where a statutory company applies for reincorporation pursuant to section 355.2 Statutory company.

- (a) all corporate instruments of the statutory company; and
- (b) all cancellations, suspensions, proceedings, acts, registrations and things,

lawfully done under or pursuant to any provision of the incorporating Act are presumed to have been lawfully done under this Act, and continue in effect under this Act as though they had been lawfully done under this Act.

(2) For the purposes of this section, "lawfully done" means to have been lawfully granted, issued, imposed, taken, done, commenced, filed, or passed, as the circumstances require.

355.4. (1) Notwithstanding any other provision of this Act, but subject to subsection (3), if any provision of a corporate instrument of a statutory company lawfully in force immediately before its reincorporation under this Division is inconsistent with, repugnant to, or not in compliance with, this Act, that provision is not illegal or invalid only by reason of the inconsistency, repugnancy or non-compliance. Effect of corporate instrument.

(2) Any act, matter or proceeding or thing done or taken by the statutory company or any director, shareholder, member or officer of the company under a provision mentioned in subsection (1) is not illegal or invalid by reason only of the inconsistency, repugnancy or non-compliance mentioned in that subsection, or by reason of being prohibited, or not authorised by the law as it applies to the company after reincorporation under this Act.

(3) Section 95 applies to a statutory company immediately upon its reincorporation under this Act.

355.5. (1) Articles of reincorporation may, without so stating in the articles, effect any amendments to the corporate instruments of a statutory company if the amendment is an amendment that a company incorporated under this Act can make in its articles. Articles of re-incorporation.

(2) Articles of reincorporation in the prescribed form must be sent to the Registrar together with the documents required by sections 66 and 169.

(3) A shareholder or member may not dissent under section 213 in respect of an amendment made under subsection (1).

355.6. (1) Upon receipt of an application under this Part, the Registrar may, and, if the applicant complies with all reasonable requirements of the Registrar to have the company accord with the requirements of this Act, the Registrar must, issue a certificate of reincorporation to the statutory company, in accordance with section 404. Certificate of re-incorporation.

- (2) On the date shown in the certificate of reincorporation
 - (a) the statutory company becomes a company to which this Act applies as if it had been incorporated under this Act;
 - (b) the articles of reincorporation are the articles of incorporation of the statutory company; and
 - (c) except for the purposes of subsection (1) of section 62, the certificate of reincorporation is the certificate of incorporation of the statutory company.

Preservation
of company.

355.7. (1) When a statutory company is reincorporated as a company under this Act

- (a) the property of the statutory company continues to be the property of the company;
- (b) the company continues to be liable for the obligations of the statutory company;
- (c) an existing cause of action, claim or liability to prosecute is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the statutory company may be continued by or against the company; and
- (e) a conviction against, or ruling order or judgment in favour of or against, the statutory company may be enforced by or against the company.

(2) When the Registrar determines, on the application of a statutory company, that it is not practicable to change a reference to the nominal or par value of shares of a class or series that the statutory company was authorised to issue before it was reincorporated as a company under this Act, the Registrar may, notwithstanding section 28, permit the company to continue to refer in its articles to those shares, whether issued or non-issued as shares having a nominal or par value.

(3) A company must set out in its articles the maximum number of shares of a class or series referred to in subsection (2); and it may not

amend its articles to increase that maximum number of shares or to change the nominal or par value of the shares.

355.8. (1) A share of a statutory company issued before the company was reincorporated under this Act is presumed to have been issued in compliance with this Act and with the provisions of the articles of reincorporation, irrespective of whether the share is fully paid, and irrespective of any designation, rights, privileges, restrictions or conditions attached to the share, or set out on, or referred to in, the certificate representing the share; and reincorporation under this Act does not deprive a shareholder of any right or privilege that he claims under an issued share of the company, nor does it relieve him of any liability in respect of an issued share of the company.

Various shares.

(2) For the purposes of this section, "share" includes an instrument issued pursuant to subsection (1) of section 35.

355.9. (1) A reference in any corporate instrument of any body corporate to the incorporating Act or any procedure under the incorporating Act is, in relation to any statutory company reincorporated under this Act, to be construed as a reference to the provisions of this Act or procedure thereunder that is the equivalent provision or procedure under this Act.

Effect of earlier references.

(2) Without affecting the operation of the *Interpretation Act*, when there is no equivalent provision in this Act to the provision of procedure in or under the incorporating Act referred to in the corporate instrument of a body corporate, the provision or proceeding of the incorporating Act is to be applied, and stands unrepealed to the extent necessary to give effect to that reference in the corporate instrument.

Cap. 1.

355.10. Without affecting section 355.9, where a statutory company is reincorporated under this Act the enactment under which the statutory company was incorporated is repealed.

Effect of reincorporation.

DIVISION D

CORPORATE MOBILITY

Corporations moving to Barbados. 1984-7.

356.1. (1) A body corporate that is then incorporated in a jurisdiction other than Barbados may, if so authorised under the laws of that other jurisdiction, apply to the Registrar for a certificate of continuance under this Act.

(2) An application under subsection (1) must be made by articles of continuance in the prescribed form.

(3) Articles of continuance may, without so stating in the articles, effect any amendment to the corporate instruments of the body corporate that applies for continuance under this section, if the amendment

- (a) is authorised in accordance with the law applicable to the body corporate before continuance under this Act; and
- (b) is an amendment that a company incorporated under this Act is entitled to make to its articles.

Certificate of continuance.

356.2. (1) Upon receipt of articles of continuance, the Registrar may issue a certificate of continuance in accordance with section 404.

(2) On the date shown in the certificate of continuance

- (a) the body corporate becomes a company to which this Act applies as if the company had been incorporated under this Act;
- (b) the articles of continuance become the articles of incorporation of the continued company; and
- (c) except for the purpose of section 62, the certificate of continuance is the certificate of incorporation of the continued company.

Application of sections 353 and 354.

356.3. When a body corporate is continued as a company under this Act, sections 353 and 354 apply, with such modifications as the circumstances require, to the continued company as if it had been a former-Act company continued under this Act.

356.4. (1) Subject to section 356.5, a company may

Corporation
leaving
Barbados.

- (a) if it is authorised by its shareholders in accordance with this section; and
- (b) if it is established to the satisfaction of the Registrar that its proposed continuance in another jurisdiction will not adversely affect its creditors or shareholders,

apply to the appropriate official or public body of the other jurisdiction and request that the company be continued as a corporation in the other jurisdiction as if it had been incorporated under the laws of that other jurisdiction.

(2) A notice of a meeting of shareholders complying with section 109 must be sent in accordance with that section to each shareholder and must state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with sections 213 to 222; but a failure to make that statement does not invalidate a continuance effected in another jurisdiction pursuant to an application made otherwise in accordance with this section.

(3) Each share of a company carries the right to vote in respect of a continuance in another jurisdiction whether or not it otherwise carries a right to vote.

(4) An application for continuance in another jurisdiction becomes authorised when the shareholders voting thereon have approved the continuance by special resolution.

(5) The directors of a company may, if authorised by the shareholders at the time of approving an application under this section for continuance of the company in another jurisdiction, abandon the application without further approval of the shareholders.

356.5. A company may not apply for continuance in another jurisdiction, nor may it be continued under the laws of another jurisdiction, as a body corporate incorporated in that other jurisdiction pursuant to section 356.4 unless the laws of that other jurisdiction provide in effect that

Conditions
precedent.

- (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 is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the company can be continued to be prosecuted by or against the body corporate; and
- (e) a conviction against or ruling order or judgment in favour of or against, the company can be enforced by or against the body corporate.

Discontinu-
ance and
effect.
1986-4.

356.6. (1) Upon receipt of notice satisfactory to him that a company that has made an application under section 356.4 has been continued as a corporation under the laws of another jurisdiction, the Registrar must file the notice and issue a certificate of discontinuance in accordance with section 404.

(2) After a certificate of discontinuance is issued under subsection (1) in respect of a company that is continued as a corporation under the laws of another jurisdiction, the corporation thereupon becomes an external company for all the purposes of this Act.

(3) The notice described in subsection (1) is, for the purposes of section 404, articles that conform to law.

DIVISION E

MUTUAL INSURANCE COMPANIES

Application
of Division.

356.7. (1) This Division applies to every company incorporated under this Act for the purpose of undertaking contracts of insurance upon the mutual plan, that is to say, a plan whereby the company is directly or indirectly owned by its members and provides insurance or reinsurance directly or indirectly for the benefit of such members in this Division called a "mutual company."

(2) When a provision of this Division is inconsistent with or repugnant to any other provision of this Act, the provision of this Division in so far as it affects a mutual company, prevails over the other provision of this Act.

(3) For the avoidance of uncertainty but subject to subsection (2), the following provisions of this Act with such modifications as the circumstances require, apply to a mutual company namely

- (a) the provisions of Divisions A, B, D, E, F, G, H, I, K, and L of Part I, and sections 31, 44, 45, 46 and 56 of that Part;
- (b) the provisions of Divisions A, B, C, and D of Part II;
- (c) the provisions of Divisions B and D of this Part; and
- (d) the provisions of Parts IV and V.

356.8. When used in relation to a mutual company

Definitions.

- (a) "member" means a person who, in accordance with this Act and the articles and by-laws of the mutual company, has voting rights in the company through his interest under a contract of insurance or reinsurance issued or reinsured by the company, and
- (b) "premium" means the payment to be made for insurance and re-insurance and includes, for insurance and re-insurance issued or effected to or for or on behalf of a member, dues, assessments, retrospective premium adjustments, obligations to contribute to a reserve fund or calls and other consideration.

356.9. Where it is proposed to engage in exempt insurance business under the *Exempt Insurance Act*, and subject to section 5 of that Act, 2 or more persons who

Incorporation of mutual company. Cap. 308A.

- (a) have an insurable interest in property of a kind to be insured by the proposed mutual company, or
- (b) have a common and lawful interest in protecting each other from a loss attendant upon a reasonable business risk,

may incorporate a mutual company without share capital by signing and sending to the Registrar articles of incorporation.

Articles of
incorpora-
tion.

356.10. (1) The articles of incorporation shall set out how the company's reserve fund is to be established and maintained and describe the first risk for which insurance is to be effected by the company.

(2) Section 4(2) applies in respect of an incorporation under this section.

Cap. 308A.

(3) The articles of incorporation of a mutual company must state that the business of the company is restricted to insurance business within the meaning of the *Exempt Insurance Act*.

(4) The name of a mutual company must include the word "Mutual" and the word "Insurance" or "Assurance" or "Re-insurance".

Member and
his liability.

356.11. No member is liable in respect of any loss or claim or demand against the company beyond the amount paid upon his premium or any undischarged portion of his premium.

Withdrawal
from
mutual.

356.12. Any member of a mutual company may, with the consent of the directors, withdraw from the company upon such terms as the by-laws may prescribe.

Voting.

356.13. (1) Unless otherwise provided in the articles or by-laws, each member of a mutual company is entitled at all meetings of the company to a number of votes in proportion to the amount of his premium with the company, as follows

(a) an amount under \$500 000, one vote,

(b) any amount from \$500 000, to \$10 000 000 2 votes, and

(c) each extra \$10 000 000 over \$10 000 000 one vote.

(2) Where the insured under a mutual plan is a board of trustees or a body corporate, it may by resolution appoint in writing any person to vote on its behalf.

Stated
capital.
Cap. 308A.

356.14. The contributed reserve fund of a mutual company constitutes its stated capital, which subject to section 17 of the *Exempt Insurance Act*, shall be held in such assets and in such amount, not being less than \$250 000 as the Supervisor of Insurance may from time to time prescribe.

DIVISION F

COMPANIES WITH A SEPARATE
ACCOUNT STRUCTURE

356.15. This Division applies to a company whose articles permit the establishment of one or more separate accounts in respect of a contract liability of the company in respect of insurance. Application. 2001-30.

356.16. In this Division Interpretation. 2001-30.

(a) "assets of a separate account" include

- (i) the specific assets owned by a company allocated to and credited to the separate account, and
- (ii) all income, interest, gains, expenses and losses incurred or earned, in respect of the company's dealing with the assets that are allocated to the separate account in accordance with the terms of the contract that relate to the establishment of that separate account;

(b) "separate account" means each account established pursuant to the articles of a company and evidenced in the records of the company, to which shall be allocated and credited specific assets owned by a company and, where there are sub-accounts, shall consist of each sub-account.

356.17. (1) Where the articles of a company so permit, and subject to the provisions of this Division, a company may establish and maintain one or more separate accounts in respect of any contract liability of the company, to be segregated from the general assets of the company. Authority to establish segregated accounts. 2001-30.

(2) A company referred to under subsection (1) shall in its articles, specify the designation, restrictions, conditions and rights that are attached to any separate account created under the authority of its articles, including

(a) the investment powers of the company in respect of assets held in separate account;

- (b) the allocation and apportionment of gains and losses in respect of any dealing with assets held in separate account;
- (c) the auditing of and method for settlement of accounts;
- (d) the liquidation of the separate account and any disposition of the assets allocated to the separate account;
- (e) the charging of fees, expenses and liabilities against the separate account;
- (f) the right to transfer, assign or otherwise negotiate any interest under or in respect of the separate account; and
- (g) any other relevant matter including any matter required under the contract that is related to a separate account, or that is necessary or proper to define the rights of the company or the interests of persons in that separate account.

Power to
deal with
assets in
separate
accounts.
2001-30.

356.18. (1) A company that has established a separate account in accordance with section 356.17 may invest and deal with assets of a separate account in accordance with the terms of the contract relating to that account and the articles of the company; and the investing and dealing with the assets may include the following:

- (a) investing the assets of a separate account;
- (b) notwithstanding section 53, granting advances, credit facilities, financial guarantees or any other form of financial assistance; and
- (c) pooling the assets held in any one or more separate accounts and any income or gains derived therefrom, for the purpose of investing the same or for any other lawful purpose prescribed under the articles.

(2) Unless the parties otherwise agree, a company that has established a separate account may grant advances, credit facilities, financial guarantees or any other form of financial assistance with the assets of a separate account.

356.19. (1) Notwithstanding any provision in the corporate instruments of the company, a separate account and all assets of a separate account are the property of the company; but the assets of a separate account shall be kept segregated and independent from the general assets of the company.

Rights and interests in respect of a separate account. 2001-30.

(2) The assets of a separate account of a company shall not be chargeable with any liability arising from any other business of the company.

(3) Notwithstanding any provision to the contrary under any other law, the aggregate liability of a company under any contract, agreement or other dealing in respect of the assets of a separate account shall be limited to the net value of the separate account or, where there has been a pooling of assets referred to in paragraph (c) of subsection (1), to the value of the pooled assets.

(4) The general assets of a company with a separate account or the assets of another separate account of the company shall not be chargeable with any liability arising from any business of the company which under the terms of a contract are to be charged only against the assets of a given separate account of the company.

(5) Each contract that is related to a separate account established by a company shall be deemed to have a provision incorporated in the contract stating that, unless expressly stated in the contract, no claim under the contract may be paid from the general assets of the company, or from the assets of another separate account that is not related to the contract.

(6) The rights and interests of any person in the assets of a separate account shall be determined by the contract that is related to the establishment of the separate account.

(7) Notwithstanding any law to the contrary, no other rights and interests, except as provided in subsection (6), may exist in the assets of a separate account.

(8) Notwithstanding any law to the contrary the principles of law respecting tracing shall apply to the assets of a separate account, including where the assets have been pooled.

Financial
and audit
require-
ments.
2001-30.

356.20. (1) A company that establishes a separate account shall allocate to that account all income, interest, gains, expenses and losses incurred or earned from its dealing with the assets belonging to or concerning the separate account in accordance with the terms of the contract that relate to the separate account.

(2) A company referred to in subsection (1) shall maintain separate books of record for each separate account in accordance with the standards required by this Act and the provisions of Division G of Part I of this Act shall be applicable to the separate account with such modifications as are necessary.

DIVISION G

SEGREGATED CELL COMPANIES

Application
of Division.
2001-30.

356.21. (1) This Division applies to every company incorporated or continued under this Act for the purpose of carrying on

- (a) financial services activity including insurance, banking and mutual fund activity; or
- (b) such activity of a non-financial nature as approved by the Minister,

in accordance with a plan whereby the assets and business operations are divided into cells, for the purpose of segregating and protecting the cellular assets of the company in the manner provided by this Division.

(2) When a provision of this Division is inconsistent with or repugnant to any other provisions of this Act, the provisions of this Division in so far as it affects a segregated cell company prevails over other provisions of this Act.

356.22. For the avoidance of doubt, but subject to subsection (2) of section 356.21, the following provisions of this Act, with such modifications as the circumstances require, apply to a segregated cell company:

Application of certain sections of the Act. 2001-30.

- (a) Divisions A, B, D, E, F, G, H, I, J, K and L of Part I;
- (b) Division D of Part III; and
- (c) Part V.

356.23. In this Division

Interpretation. 2001-30.

"cell" means a structure created by a segregated cell company for the purpose of segregating and protecting cellular assets in the manner provided by this Act;

"cell shares" means shares created and issued by a cell company in respect of one of its cells pursuant to the provisions of section 356.30;

"cell share capital" means the proceeds of issue of cell shares;

"cellular assets" of a cell company means the assets of the company attributable to the company's cells pursuant to section 356.28;

"cellular dividend" means a dividend payable by a cell company in respect of cell shares pursuant to the provisions of section 356.30(4);

"non-cellular assets", in relation to a cell company, means the assets of the company which are not cellular assets pursuant to section 356.28;

"segregated cell company" or "cell company" means a company incorporated, registered by way of continuation or converted as such under section 356.25;

"transaction" means any dealing of whatever nature, including the issue of any security, by which the assets or liabilities linked to a segregated account are affected, or, in the case of assets intended by the parties to be applied to a risk of any nature, any dealing which exposes such assets to liability or loss.

Segregated cell company to be a single legal person. 2001-30.

356.24. (1) For the purposes of this Division, a segregated cell company, in this Division referred to as a "cell company", shall, notwithstanding that it may create one or more cells, be a single legal person and the creation by a cell company of a cell does not create, in respect of that cell, a legal person separate from the company.

Formation of a cell company. 2001-30.

356.25. For the purposes of conducting business activity

- (a) a company may incorporate in Barbados as a cell company in accordance with the provisions of this Division;
- (b) an existing company incorporated under this Act may be converted to a cell company in the manner prescribed; or
- (c) an external cell company may be
 - (i) registered as a cell company in Barbados, or
 - (ii) continued as a cell company in Barbados.

Name and memorandum of a protected cell company. 2001-30.

356.26. (1) Notwithstanding section 10 of this Act, the name of a segregated cell company shall include clearly the expression "Segregated Cell Company" or the abbreviation "SCC" after its name.

(2) Each cell of a cell company shall have its own distinct designation or denomination which shall be clearly set out in the agreement governing the subscription for cell shares.

(3) A company incorporated under the laws of a jurisdiction other than Barbados and continued as a cell company incorporated under this Act may use the name designated in the Articles of continuation with the addition of either the suffix "Segregated Cell Company" or the abbreviation "SCC".

Creation of one or more cells. 2001-30.

356.27. A cell company may create one or more cells for the purpose of segregating and protecting cellular assets in the manner provided by this Division.

Cellular and non-cellular assets. 2001-30.

356.28. (1) The assets of a cell company may comprise cellular assets or a combination of both cellular and non-cellular assets.

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- (2) The directors of a cell company 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.
- (3) The directors of a cell company may cause or permit
- (a) cellular assets and non-cellular assets to be held
 - (i) by or through a trustee or other custodian, or
 - (ii) by a company the shares and capital interests of which may be cellular assets or non-cellular assets, or a combination of both;
 - (b) cellular assets or non-cellular assets, or a combination of both, to be collectively managed by an investment manager, provided that the assets in question remain separately identifiable.
- (4) The assets attributable to a cell of a cell company shall comprise
- (a) assets represented by the stated capital and reserves attributable to the cell; and
 - (b) all other assets attributable to or held within the cell.
- (5) For the purposes of subsection (4), "reserves" includes retained earnings, capital reserves, revaluation surpluses and contributed surpluses.

356.29. A cell company shall

Records.
2001-30.

- (a) maintain records in accordance with this Act for the preparation of financial statements, and the records shall clearly show the share capital, proceeds of securities, reserves, assets, liabilities, income and expenses, dividends and distributions that are linked in such a cell;

- (b) maintain a record of each transaction linked to a cell account maintained by the company; and
- (c) maintain a general account which records in accordance with this Act all the assets and liabilities of the company which are linked to a cell account.

Cellshares
and cell
share
capital.
2001-30.

356.30. (1) A cell company may, in respect of any of its cells, create and issue cell shares; and the cell share capital shall be part of the cellular assets attributable to the cell in respect of which the cell shares were issued.

(2) The proceeds of the issue of shares other than cell shares created and issued by a cell company shall form part of the company's non-cellular assets.

(3) Subject to section 51, a cell company may pay a cellular dividend in respect of cell shares.

(4) Cellular dividends may be paid in respect of cell shares by reference only to the cellular assets and liabilities attributable to the cell in respect of which the cell shares were issued.

(5) In determining the cellular dividend payment, no account needs to be taken of

- (a) the profits and losses, or the assets and liabilities, attributable to any other cell of the company; or
- (b) non-cellular profits and losses, or assets and liabilities.

Reduction of
cellshare
capital.
2001-30.

356.31. (1) Subject to subsection (2), a cell company or a holder of cell shares in a cell of a cell company may by special resolution of the cell shareholders reduce the cell share capital of the company in accordance with sections 44 and 45 of this Act.

(2) Any creditor who is prejudiced by the authorised reduction of capital under subsection (1) may apply to the court for redress or for an order restraining or prohibiting the reduction of cell share capital.

(3) The court, in determining any application brought under this section, shall have regard to the provisions of this section and such other factors or circumstances as the court deems fit and appropriate.

Creditors

356.32. (1) Where a liability of a cell company to a person arises from a transaction, or is otherwise imposed, in respect of a particular cell

Liability of a segregated cell.
2001-30.

- (a) that liability of the company shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to
- (i) the cellular assets attributable to that cell which shall be primarily liable, and
 - (ii) to the extent that the cellular assets attributable to that cell may be insufficient, the company's non-cellular assets, which shall be secondarily liable; but
- (b) that liability of the company shall not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to, the cellular assets attributable to any other cell.
- (2) Where a liability of a cell company to a person
- (a) arises otherwise than from a transaction relating to a particular cell; or
- (b) is imposed otherwise than in respect of a particular cell,

that liability of the company shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the company's non-cellular assets.

Liability of
cellular
assets.
2001-30.

356.33. (1) Subject to the provisions of subsection (2), and save to the extent that the company may have agreed that a liability shall be the liability solely of the company's non-cellular assets or of the cellular assets attributed to a particular cell of the company, where any liability which is attributable to a particular cell of a cell company arises

- (a) the cellular assets attributable to that cell shall be primarily liable;
- (b) the company's non-cellular assets shall be secondarily liable, provided that the cellular assets attributable to the relevant cell have been exhausted; and
- (c) the liability shall not be a liability of any cellular assets not attributable to the relevant cell.

(2) In the case of loss or damage which is attributable to a particular cell of a cell company and which is caused by fraud, the loss or damage shall be the liability solely of the company's non-cellular assets, without affecting any liability of any person other than the company, where that fraud 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.

(3) Any liability not attributable to a particular cell of a cell company shall be the liability solely of the company's non-cellular assets.

(4) Notwithstanding the other provisions of this section

- (a) the liabilities under paragraph (a) of subsection (1) of the cellular assets attributable to a particular cell of a cell company shall abate rateably until the value of the aggregate liabilities equals the value of those assets, but the provisions of this paragraph shall be disregarded in assessing the existence and extent of any secondary liability under paragraph (b) of subsection (1);

- (b) the liabilities of the company's non-cellular assets shall abate rateably until the value of the aggregate liabilities equals the value of those assets, but the provisions of this paragraph shall 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 referred to in subsection (1).

356.34. (1) The rights of creditors of a cell company shall correspond with the liabilities provided for in section 356.32. Creditors of a protected cell company. 2001-30.

(2) No creditor shall have any rights other than the rights referred to in this section and in sections 356.33 and 356.36.

(3) There shall be implied, except in so far as the same is expressly excluded in writing, in every transaction entered into by a cell company the following terms:

- (a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wherever, 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 shall succeed by any means whatsoever or wherever 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 shall be liable to the company to pay a sum equal to the value of the benefit thereby obtained by him; and
- (c) that if any party shall succeed in 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 shall hold those assets or their proceeds on trust for the company and shall keep those assets or proceeds separate and identifiable as such trust property.

(4) All sums recovered by a cell company as a result of any such trust as is described in paragraph (c) of subsection (3) shall be credited against any concurrent liability imposed pursuant to the implied term set out in paragraph (b) of subsection (3).

(5) Any asset or sum recovered by a cell company pursuant to the implied term set out in paragraphs (b) or (c) of subsection (3) or by any other means whatsoever or wherever in the events referred to in those paragraphs shall, 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 cell company 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 shall

- (a) cause or procure its auditor to 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 paragraph (b) of subsection (6) a cell company 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.

Recourse to
cellular
assets by
creditors.
2001-30.

356.35. Subject to sections 356.33 and 356.34, cellular assets attributable to a cell of a cell company

- (a) shall only be available to the creditors of the company who are creditors in respect of that cell and who shall thereby be entitled, in conformity with the provisions of this Act, to have recourse to the cellular assets attributable to that cell; and

- (b) shall be absolutely protected from the creditors of the company who are not creditors in respect of that cell and who accordingly shall not be entitled to have recourse to the cellular assets attributable to that cell.

356.36. (1) Cellular assets attributable to a cell of a cell company may be transferred in the ordinary course of the company's business, through payments, investments or otherwise to another cell of the cell company or to a person, wherever resident or incorporated, and whether or not a cell company.

Transfer of cellular and non-cellular assets from a segregated cell company. 2001-30.

(2) A transfer, pursuant to subsection (1), of cellular assets attributable to a cell of a cell company shall not of itself entitle creditors of that company to have recourse to the assets of the person to whom the cellular assets were transferred save and except where such transfer of cellular assets was made by fraud or with intent to defraud creditors of the particular cell making the transfer of cellular assets.

(3) Non-cellular assets shall not be transferred by a cell company unless the transfer is permitted by a special resolution of the cell company.

(4) The provisions of this section shall not affect any power of a cell company lawfully to make payments or transfers from the cellular assets attributable to any cell of the company to a person entitled, in conformity with the provisions of this Act, to have recourse to those cellular assets.

356.37. (1) Liabilities of a cell company not otherwise attributable to any of its cells shall be discharged from the company's non-cellular assets.

Attribution of non-cellular assets and liabilities. 2001-30.

(2) Income, receipts and other property or rights of or acquired by a cell company not otherwise attributable to any cell shall be applied to and comprised in the company's non-cellular assets.

s.356.38.

Protection
of creditors.
2001-30.**356.38.** (1) A cell company shall

- (a) inform any person with whom it transacts that it is a cell company; and
 - (b) for the purposes of that transaction, identify or specify the cell in respect of which that person is transacting, unless that transaction is not a transaction in respect of a particular cell.
- (2) Where, in contravention of subsection (1), a cell company
- (a) fails to inform a person that he is transacting with a cell company, and that person is otherwise unaware that, and has no reasonable grounds to believe that, he is transacting with a cell company; or
 - (b) fails to identify or specify the cell in respect of which a person is transacting, and that person is otherwise unaware of, and has no reasonable basis of knowing, which cell he is transacting with,

then, in either such case

- (i) the directors shall, notwithstanding any provision to the contrary in the company's articles or in any contract with the company or otherwise, incur personal liability to that person in respect of the transaction, and
 - (ii) the directors shall have a right of indemnity against the non-cellular assets of the company, unless they were fraudulent, they knowingly authorised, acquiesced in or permitted the contravention, or acted in bad faith.
- (3) Notwithstanding sub-paragraph (i) of subsection (2) the court may relieve a director of all or part of his personal liability thereunder if he satisfies the court that the director ought fairly to be so relieved because
- (a) he was not aware of the circumstances giving rise to his liability and, in being not so aware, he was neither fraudulent, nor did he knowingly authorise, or acquiesce in nor permit the contravention, nor did he act in bad faith; or

(b) he expressly objected, and exercised such rights as he had as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability.

(4) Where, pursuant to the provisions of subsection (3), the court relieves a director of all or part of his personal liability under sub-paragraph (i) of subsection (2), the court may order that the liability in question shall instead be met from such of the cellular or non-cellular assets of the cell company as may be specified in the order.

356.39. Where the liabilities of a cell company exceed the assets of the company referred to under paragraph (b) of subsection (1) of section 356.21, the provisions of Part IV of this Act may apply.

Power of authority in respect of guarantee. 2001-30.

Administration Order

356.40. (1) An application to the court for an administration order may be made by

Application for administration order. 2001-30.

- (a) the company;
- (b) the directors of the company;
- (c) the shareholders or any class of shareholders of the company or of any cell; or
- (d) any creditor of the company or, where the order is sought in respect of a cell, any creditor of the company in respect of that cell.

(2) The court, on hearing an application

- (a) for an administration order; or
- (b) for leave, pursuant to subsection (6) of section 356.41, 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 an administration order in respect of a cell company or a cell thereof shall be served upon

- (a) the company;
- (b) the Registrar; and
- (c) such other person as the court may direct,

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

Administra-
tion order in
relation to
segregation
cell
companies
or cells.
2001-30.

356.41. (1) Subject to the other provisions of this section, where, in relation to a cell company, the court is satisfied

- (a) that the cellular assets attributed 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; or
- (b) that the company's cellular assets and non-cellular assets are or are likely to be insufficient to discharge the liabilities of the company,

and the court considers that the making of an order under this section may achieve one of the purposes set out in subsection (4), the court may make an order, hereinafter referred to as "administration order", under this section in respect of that company.

(2) An administration order may be made in respect of one or more cells.

(3) An administration order is an order directing that, during the period for which the order is in force, the business and assets of or attributable to the cell or, as the case may be, the business and assets of the company, shall be managed by a person, hereinafter referred to as an "administrator", appointed by the court for that purpose.

- (4) The purposes for which an administration order may be made are
- (a) the survival as a going concern of the cell or of the company, as the case may be;
 - (b) the more advantageous realisation of the business and assets of or attributable to the cell or, as the case may be, the business and assets of the company than would be achieved by a receivership of the cell or as the case may be by the liquidation of the company.
- (5) An administration order, whether in respect of a cell company or a cell thereof
- (a) may not be made where
 - (i) a liquidator has been appointed to act in respect of the company, or
 - (ii) the company has passed a resolution for voluntary winding up;
 - (b) shall cease to be of effect upon the appointment of a liquidator to act in respect of the company, but without prejudice to prior acts.
- (6) No resolution for the voluntary winding up of a cell company, or any cell of that company, which is subject to an administration order shall be effective without the leave of the court.

356.42. (1) The administrator of a cell of a cell company

- (a) may do all such things as may be necessary for the purposes set out in section 356.41(4) for which the administration order was made; and
- (b) shall have all the functions and powers of the directors in respect of the business and cellular assets of or attributable to the cell.

Functions of administrator and effects of administration order. 2001-30.

- (2) The administrator 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 administration order to be discharged or varied; or
 - (c) for an order as to any matter arising in the course of his administration.

(3) In exercising his functions and powers, the administrator is deemed to act as the agent of the cell company, and shall not incur personal liability except to the extent that he is fraudulent, knowingly authorises, acquiesces in, permits or acts in bad faith.

(4) Any person dealing with the administrator in good faith is not concerned to enquire whether the administrator is acting within his powers.

(5) When an application has been made for, and during the period of operation of, an administration order in respect of a cell company or a cell thereof

- (a) no proceedings may be instituted or continued by or against the company; and
- (b) no steps may be taken to enforce any security or in execution of legal process in respect of the business or assets of the company or, as the case may be, the business or assets of or attributable to the cell,

except by leave of the court, which may be conditional or unconditional.

- (6) During the period of operation of an administration order
- (a) in respect of a cell in a cell company
 - (i) the functions and powers of the directors shall cease in respect of the business and cellular assets of or attributable to the cell, and

- (ii) the administrator shall be deemed a director of the company in respect of the company's non-cellular assets, unless there are no creditors of the company in respect of that cell entitled to have recourse to the company's non-cellular assets;
- (b) in respect of a cell company, the functions and powers of the directors shall cease.

356.43. (1) The court shall not discharge an administration order unless it appears to the court that

Discharge and variation of administration order. 2001-30.

- (a) the purpose for which the order was made has been achieved or is incapable of achievement; or
 - (b) it would otherwise be desirable or expedient to discharge the order.
- (2) The court, on hearing an application for the discharge of variation of an administration order, may make an interim order or adjourn the hearing, conditionally or unconditionally.
- (3) Upon discharging an administration order, the court may direct,
- (a) where the administration order was made in respect of a cell company, that any payment made by the administrator to any creditor of the company shall be deemed full satisfaction of the liabilities of the company to that creditor and the creditor's claims against the company shall be thereby deemed extinguished;
 - (b) where the administration order was made in respect of a cell, that any payment made by the administrator 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 thereby be deemed extinguished.

(4) Nothing in subsection (3) shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the cell company.

Remuneration of administration.
2001-30.

356.44. The remuneration of an administrator, and any expenses properly incurred by him, shall be payable in priority to all other claims

- (a) in the case of the administration of a cell, from
 - (i) the cellular assets attributable to the cell, and
 - (ii) to the extent these may be insufficient, the non-cellular assets of the cell company; and
- (b) in the case of the administration of a cell company, from
 - (i) the non-cellular assets of the company, and
 - (ii) to the extent these may be insufficient, the cellular assets, in such shares or proportions as the court may direct.

Receivership Order

Application for receivership order.
2001-30.

356.45. (1) An application to the court for a receivership order in respect of a cell of a cell company 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;
 - (e) the administrator of that cell; or
 - (f) the Registrar.
- (2) The court, on hearing an application
- (a) for a receivership order; or

- (b) for leave, pursuant to section 25(5), 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 cell company shall be served upon

- (a) the company;
- (b) the administrator, if any, of the cell;
- (c) the Registrar; and
- (d) 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.

356.46. (1) Subject to the provisions of this section, if in relation to a cell company the court is satisfied that

Receivership
order in
relation to
cells.
2001-30.

- (a) 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;
- (b) the making of an administration order under section 356.39 in respect of that cell would not be appropriate; and
- (c) the making of an order under this section would achieve the purposes set out in subsection (3),

the court may make an order hereinafter referred to as "receivership order" in respect of that cell.

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

(3) 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, referred to in this Part as a "receiver", specified in the order 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.

(4) A receivership order

- (a) may not be made if
 - (i) a liquidator has been appointed to act in respect of the cell company, or
 - (ii) the cell company has passed a resolution for voluntary winding up;
- (b) may be made in respect of a cell subject to an administration order under section 356.41;
- (c) shall cease to be of effect upon the appointment of a liquidator to act in respect of the cell company, but without prejudice to prior acts.

(5) No resolution for the voluntary winding up of a cell company which, or any cell of which, is subject to a receivership order shall be effective without leave of the court.

Functions of receiver and effects of receivership order.
2001-30.

356.47. (1) The receiver of a cell

- (a) may do all such things as may be necessary for the purposes set out in subsection (3) of section 356.46; and
- (b) shall have all the functions and powers 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 his receivership.

(3) In exercising his functions and powers the receiver is deemed to act as the agent of the cell company, and shall not incur personal liability except to the extent that he 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 his 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 cell company 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 and powers 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 shall be deemed a director of the cell company 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.

Discharge
and
variation of
receivership
order.
2001-30.

356.48. (1) The court shall not discharge a receivership order unless it appears to the court that the purpose for which the order was made has been achieved or substantially achieved or 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 cell company 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) Nothing in subsection (3) shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the cell company.

(5) Subject to the provisions of

(a) this Act and of any law relating to privileges and priorities of claims; and

(b) any agreement between the cell company 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 shall, in the winding up of the business of or attributable to that cell pursuant to the provisions of this Part of this Act, be realised and applied in satisfaction of the company's liabilities attributable to that cell *pari passu*.

(6) Unless the articles of the company otherwise provide, any surplus shall thereafter be distributed

- (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,

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 cell company, direct that the cell shall be dissolved on such date as the court may specify.

(8) Immediately upon the dissolution of a cell of a cell company, the company shall not undertake business or incur liabilities in respect of that cell.

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

Remuneration of receiver. 2001-30.

- (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 non-cellular assets of the cell company.

Liquidation

356.50. (1) Notwithstanding any statutory provision to the contrary, in the liquidation of a cell company, the liquidator

Liquidation of a segregated cell company. 2001-30.

- (a) shall be bound to deal with the company's assets in accordance with the requirements of section 356.28(2);
- (b) in discharge of the claims of creditors of the cell company, shall apply the company's assets to those entitled to have recourse thereto in conformity with the provisions of this Act.

(2) The provisions of the *Companies Act* relating to the distribution of property on winding up shall apply to a cell company subject to such modifications as may be necessary to bring them in conformity with this Act.

Miscellaneous

Regulations.
2001-30.

356.51. (1) The Minister may make regulations for the purposes of this Division.

- (2) Any regulations made under subsection (1) may
 - (a) extend the provisions of this Division to activities of a non-financial nature;
 - (b) provide the procedure and conditions for an existing company to become a cell company under section 356.25;
 - (c) provide for the sound management of a cell company;
 - (d) impose such reporting obligations as the Minister may deem necessary including a report in respect of the liquidity analysis and the profit and loss statement of the cell company;
 - (e) provide for the paying of fees and levying of charges; and
 - (f) provide that any person who contravenes these regulations is guilty of an offence and is liable to a fine of \$5 000 or to imprisonment for a term of one year.

PART IV
WINDING UP
DIVISION A
INSOLVENCY AND LIQUIDATION

357. (1) A receiving order under the *Bankruptcy Act* may be made against a company. Bankruptcy Act applies.

(2) For the purposes of the *Bankruptcy Act*, "debtor" in subsection (3) of section 3 of that Act includes a company. Cap. 303.

(3) A company commits an act of bankruptcy for the purposes of the *Bankruptcy Act* in any of the cases set out in paragraphs (a), (b), (c), (e), (f), (g), (h) or (i) of subsection (1) of section 3 of that Act.

358. Where the court makes a receiving order under the *Bankruptcy Act* against a company, any provision of that Act that imposes a duty or obligation on the company has effect as if it imposed additionally that duty or obligation on each person who was a director of the company at the date of the presentation of the petition in bankruptcy; and that Act must be construed and applied accordingly. Receiving order.
Cap. 303.

359. When a company is adjudged bankrupt under the *Bankruptcy Act*, the court may at any time thereafter make such order in respect of the dissolution of the company as it thinks fit. Company bankruptcy.
Cap. 303.

359A. Subject to subsection (2) of section 356.20, a transfer of assets of a company from a separate account in accordance with the terms of any valid contractual liability of the company is a *bona fide* transaction within the meaning of the *Bankruptcy Act* and any other statute or law relating to bankruptcy or insolvency, and no such transfer shall constitute, nor shall it be deemed to constitute a fraudulent preference or a fraudulent conveyance, nor shall it constitute the transaction of business of the company being carried on with the intent to defraud creditors of the company or creditors of any person or for any fraudulent purposes within the meaning of the *Bankruptcy Act* or any other statute or law relating to bankruptcy or insolvency. Transfer of assets on bankruptcy in relation to segregated accounts.
2001-30.
Cap. 303.

Recognition of separate accounts by trustee in bankruptcy. 2001-30.

359B. (1) Subject to subsection (2) of section 356.20, when a company is adjudged bankrupt, the trustee in bankruptcy appointed by the court shall be bound to recognise the separate nature of each account pursuant to the provisions of this Act and shall not apply property identified as the property of any one separate account to pay the claims of other creditors of the company, or apply property identified as the property of any other separate account or of the general accounts of the company to pay the claims of creditors of that separate account of the company.

(2) The trustee in bankruptcy shall be bound to preserve the assets in the separate account, and deal with such assets in accordance with the terms of the contract that relate to the separate account and the provisions of the articles of the company.

Adapting Bankruptcy Act. Cap. 303.

360. Such other adaptation or modification of the provisions of the *Bankruptcy Act* as is required for the application of that Act to companies pursuant to this Division may be made by regulation under section 429.

DIVISION B

LIQUIDATION FOR OTHER REASONS

Application of Division. Cap. 303.

361. This Division does not apply to a company that is insolvent within the meaning of the *Bankruptcy Act*, or that is bankrupt within the meaning of that Act.

Revival of company.

362. (1) When a company has been dissolved under this Division, any interested person may apply to the Registrar to have the company revived.

(2) If the Registrar approves the application for the revival of a company, articles of revival in the prescribed form may be sent to the Registrar, who must thereupon issue a certificate of revival for the company in accordance with section 404.

(3) A company is revived on the date shown in its certificate of revival; and thereafter the company, subject to such reasonable terms as may be imposed by the Registrar, and to any rights acquired by a person after the dissolution of the company, has all the rights and privileges, and is liable for the obligations, that it would have had if it had not been dissolved.

363. A company that has not issued any shares may be dissolved at any time by resolution of all the directors. Dissolution by resolution.

364. A company that has no property and no liabilities may be dissolved by special resolution of the shareholders, or, if it has issued more than one class of shares, by special resolutions of the holders of each class, whether or not they are otherwise entitled to vote. No property.

365. (1) Articles of dissolution in the prescribed form must be sent to the Registrar in respect of a company described in section 363 or 364. Effect of articles of dissolution.

(2) Upon receipt of articles of dissolution under subsection (1) for a company, the Registrar must issue a certificate of dissolution in accordance with section 404.

(3) The company referred to in subsection (2) ceases to exist on the date shown in its certificate of dissolution.

366. (1) The directors of a company, or, in accordance with section 112, a shareholder who is entitled to vote at an annual meeting of the company, may make a proposal for the voluntary liquidation of the company. Proposing liquidation.

(2) Notice of any meeting of shareholders of a company at which a voluntary liquidation and dissolution of the company is to be proposed must set out the terms of the liquidation and dissolution.

(3) A company may liquidate and dissolve by special resolution of the shareholders, or, if the company has issued more than one class of shares, by special resolution of the holders of each class, whether or not they are otherwise entitled to vote.

367. (1) A statement of intent to dissolve a company must be sent to the Registrar in the prescribed form. Intent to dissolve.

(2) Upon receipt of a statement of intent to dissolve a company, the Registrar must, in accordance with section 404, issue a certificate of intent to dissolve.

(3) When a certificate of intent to dissolve a company is issued by the Registrar, the company shall cease to carry on business except to the extent necessary for its liquidation; but its corporate existence continues until the Registrar issues a certificate of dissolution of the company.

(4) After the issue of a certificate of intent to dissolve it, the company shall

- (a) immediately cause notice of its intent to dissolve to be sent to each known creditor of the company;
- (b) forthwith publish, in the *Gazette* and once in a newspaper published or distributed in Barbados, its intent to dissolve, and take reasonable steps to give notice of its intent in every jurisdiction in which the company is registered or has a place of business at the time it sent the statement of intent to dissolve to the Registrar;
- (c) proceed to collect its property, to dispose of properties that are not to be distributed in kind to its shareholders, to discharge all its obligations, and to do all other acts required to liquidate its business; and
- (d) after giving the notice required under paragraphs (a) and (b) and adequately providing for the payment or discharge of all its

obligations, distribute its remaining property, either in money or in kind, among its shareholders according to their respective rights.

Supervised
liquidation.

368. (1) The Registrar or any interested person may, at any time during the liquidation of a company, apply to the court for an order that the liquidation be continued under the supervision of the court as provided in this Division; and upon the application the court may so order and make any further order it thinks fit.

(2) An applicant under this section, other than the Registrar, must give the Registrar notice of the application; and the Registrar may appear and be heard in person or by an attorney-at-law.

Revocation
of intent.

369. (1) At any time after the issue of a certificate of intent to dissolve a company, and before the issue of a certificate of its dissolution, a certificate of intent to dissolve may be revoked by sending to the Registrar, in the prescribed form, a statement of revocation of intent to dissolve the company, if the revocation is approved in the same manner as the resolution was approved under subsection (3) of section 366.

(2) Upon the receipt of a statement of revocation of an intent to dissolve a company, the Registrar must, in accordance with section 404, issue a certificate of revocation of intent to dissolve the company.

(3) On the date shown in the certificate of revocation of intent to dissolve a company, the revocation is effective and the company may continue to carry on its business.

Right to
dissolve.

370. (1) If a certificate of intent to dissolve a company has not been revoked and the company has complied with subsection (4) of section 367, the company must prepare articles of dissolution.

(2) The articles of dissolution in the prescribed form must be sent to the Registrar.

(3) Upon receipt under this section of the articles of dissolution of a company in the prescribed form, the Registrar must, in accordance with section 404, issue a certificate of dissolution of the company.

(4) The company ceases to exist on the date shown in its certificate of dissolution.

- 371.** (1) Subject to subsections (2) and (3), where a company Registrar's dissolution.
- (a) has not commenced business within 3 years after the date shown in its certificate of incorporation;
 - (b) has not carried on its business for 3 consecutive years; or
 - (c) has not had its name restored to the register within 2 years after the date on which it was struck off under section 412,

the Registrar may dissolve the company by issuing a certificate of dissolution under this section, or he may apply to the court for an order dissolving the company, in which case section 376 applies.

(2) The Registrar must not dissolve a company under this section until he has

- (a) given to the company 120 days' notice of his decision to dissolve the company;
- (b) publish in the *Gazette* notice of his decision to dissolve the company.

(3) Unless cause to the contrary has been shown, or an order has been made by the court under section 376, the Registrar may, after the expiration of the period referred to in subsection (2), issue, in the prescribed form, a certificate of dissolution of the company.

(4) The company ceases to exist on the date shown in its certificate of dissolution.

372. (1) The Registrar or any interested person may apply to the court for an order dissolving a company, if the company Court dissolution.

- (a) has failed for 2 or more consecutive years to comply with the requirements of this Act with respect to the holding of annual meetings of shareholders;
- (b) has contravened section 18 or section 149, 151, 175 or 176; or
- (c) has procured any certificate under this Act by misrepresentation.

(2) An applicant under this section, other than the Registrar, must give the Registrar notice of the application; and the Registrar may appear and be heard in person or by an attorney-at-law.

(3) Upon an application under this section or section 371, the court may order that the company be dissolved, or that the company be liquidated and dissolved under the supervision of the court; and the court may make any other order it thinks fit.

(4) Upon receipt of an order under this section, section 371 or section 373, the Registrar must

- (a) if the order is to dissolve the company, issue in the prescribed form a certificate of its dissolution; or
- (b) if the order is to liquidate and dissolve the company under the supervision of the court, issue, in the prescribed form, a certificate of intent to dissolve the company, and publish a notice of that intent in the *Gazette*.

(5) The company ceases to exist on the date shown in its certificate of dissolution.

Further
grounds.

373. (1) The court may order the liquidation and dissolution of a company or any of its affiliated companies upon the application of a shareholder

- (a) if the court is satisfied that, in respect of a company or any of its affiliates
 - (i) any act or omission of the company or any of its affiliates effects a result,
 - (ii) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner, or
 - (iii) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interest of any shareholder, debenture holder, creditor, director or officer; or

- (b) if the court is satisfied that

- (i) any unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the company after the occurrence of a specified event and that event has occurred; or
- (ii) it is just and equitable that the company be liquidated and dissolved.

(2) Upon an application under this section, the court may make such order under this section or section 228 as it thinks fit.

(3) Sections 229 and 230 apply to an application under this section.

374. (1) An application to the court to supervise a voluntary liquidation and dissolution under section 368 must state the reasons the court should supervise the liquidation and dissolution; and the reasons must be verified by the affidavit of the applicant. Supervision
of court.

(2) If the court makes an order applied for under section 368, the liquidation and dissolution of the company must be continued under the supervision of the court in accordance with this Act.

375. (1) An application to the court under section 373 must state the reasons the company should be liquidated and dissolved; and the reasons must be verified by the affidavit of the applicant. Court
dissolution.

(2) Upon an application under section 373, the court may make an order requiring the company and any person having an interest in the company or claim against it to show cause, at a time and place specified in the order, which must not be less than 4 weeks after the date of the order, why the company should not be liquidated and dissolved.

(3) Upon an application under section 368 to supervise a voluntary liquidation and dissolution of a company, the court may order the directors and officers of the company to furnish to the court all material information known to, or reasonably ascertainable by them, including

- (a) the financial statements of the company;
- (b) the name and address of each shareholder of the company; and
- (c) the name and address of each known creditor or claimant, including any creditor or claimant with unliquidated, future or

contingent claims, and any person with whom the company has a contract.

- (4) A copy of an order made under subsection (2) must
- (a) be published, in a newspaper published or distributed in Barbados, as directed in the order, at least once in each week before the time appointed for the hearing; and
 - (b) be served upon the Registrar and each person named in the order.

(5) Publication and service of an order under this section must be effected by the company or by such other person and in such manner as the court may order.

Court
powers.

376. In connection with the dissolution or the liquidation and dissolution of a company, the court may, if it is satisfied that the company is able to pay or adequately provide for the discharge of all its obligations, make any order it thinks fit, including

- (a) an order to liquidate;
- (b) an order appointing a liquidator, with or without security, fixing his remuneration and replacing a liquidator;
- (c) an order appointing inspectors or referees, specifying their powers, fixing their remuneration and replacing inspectors or referees;
- (d) an order determining the notice to be given to an interested person, or dispensing with notice to any person;
- (e) an order determining the validity of any claim made against the company;
- (f) an order, at any stage of the proceedings, restraining the directors and officers of the company from
 - (i) exercising any of their powers, or
 - (ii) collecting or receiving any debt or other property of the company, and from paying out or transferring any property of the company except as permitted by the court;

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- (g) an order determining and enforcing the duty or liability of any present or former director, officer or shareholder of the company
 - (i) to the company, or
 - (ii) for an obligation of the company;
 - (h) an order approving the payment, satisfaction or compromise of claims against the company and the retention of amounts for such purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the company, whether liquidated, unliquidated, future or contingent;
 - (i) an order disposing of, or destroying the documents and records of the company;
 - (j) upon the application of a creditor, the inspectors or the liquidator, an order giving directions on any matter arising in the liquidation;
 - (k) after notice has been given to all interested parties, an order relieving a liquidator from any omission or default on such terms as the court thinks fit, and confirming any act of the liquidator;
 - (l) subject to section 381, an order approving any proposed interim or final distribution to shareholders in money or in property;
 - (m) an order disposing of any property belonging to creditors or shareholders who cannot be found;
 - (n) upon the application of any director, officer, shareholder or debenture holder, creditor or the liquidator
 - (i) an order staying the liquidation on such terms and conditions as the court thinks fit,
 - (ii) an order continuing or discontinuing the liquidation proceedings, or
 - (iii) an order to the liquidator to restore to the company all its remaining property; and

- (o) after the liquidator has rendered his final accounts to the court, an order dissolving the company.

Cessation of
business.

377. (1) Where a court makes an order for the liquidation of a company, then, from the date stated in the order

- (a) the company shall cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation; and
- (b) the powers of the directors and shareholders cease and are vested in the liquidator, except as specifically authorised by the court.

(2) The liquidator may delegate any of the powers vested in him by paragraph (b) of subsection (1) to the directors or shareholder.

Appoint-
ment of
liquidator.

378. (1) When making an order for the liquidation of a company, or at any time thereafter, the court may appoint any person, including a director, officer or shareholder of the company, as liquidator of the company.

(2) When an order for the liquidation of a company has been made and the office of liquidator is or becomes vacant, the property of the company is under the control of the court until the office of liquidator is filled.

Duties of
liquidator.

379. A liquidator must

- (a) forthwith after his appointment, give notice of his appointment to the Registrar and to each claimant and creditor of the company known to the liquidator;
- (b) forthwith give, by publication in the *Gazette* and by insertion once a week for 2 consecutive weeks in a newspaper published or distributed in Barbados, notice
 - (i) requiring any person indebted to the company to render an account and pay to the liquidator at the time and place specified any amount owing,

- (ii) requiring any person possessing property of the company to deliver it to the liquidator at the time and place specified, and
- (iii) requiring any person having a claim against the company, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than 2 months after the first publication of the notice,

and the liquidator must take reasonable steps to give notice of his appointment in every jurisdiction where the company is registered or has a place of business, and to require persons described in sub-paragraphs (i) to (iii) to take similar action;

- (c) take into his custody and control the property of the company;
- (d) open and maintain a trust account for the moneys of the company received and paid out by him;
- (e) keep accounts of the moneys of the company received and paid out by him;
- (f) maintain separate lists of the shareholders, creditors and other persons having claims against the company;
- (g) if at any time the liquidator determines that the company is unable to pay, or adequately provide for the discharge of its obligations, apply to the court for directions;
- (h) deliver to the court and to the Registrar, at least once in every 12-month period after his appointment, or more often as the court may require, financial statements of the company in the form required by section 147, or in such other form as the liquidator may think proper, or as the court may require; and
- (i) after his final accounts are approved by the court, distribute any remaining property of the company among the shareholders according to their respective rights.

Duties of liquidator in respect of separate accounts. 2001-30.

379A. Subject to subsection (2) of section 356.20, the liquidator of the company shall

- (a) recognise the separate nature of each separate account established pursuant to the provisions of this Act, and shall not apply property identified as the property of any one separate account, to pay the claims of other creditors of the company, or apply property identified as the property of any other separate account or of the general accounts of the company, to pay the claims of creditors of that separate account of the company; and
- (b) preserve the assets in the separate account and deal with such assets in accordance with the terms of the contract that relate to the separate account and the provisions of the articles of the company.

Liquidator bound by terms of contract. 2001-30.

379B. Subject to subsection (2) of section 356.20, unless otherwise provided in the articles, the liquidator shall be bound to observe and shall have no power to cancel or terminate the terms of any deed, contract or agreement between the company and any other person with respect to the separate accounts of the company.

Powers of liquidator.

380. (1) A liquidator may

- (a) retain attorneys-at-law, accountants, engineers, appraisers and other professional advisers;
- (b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the company;
- (c) carry on the business of the company as required for an orderly liquidation;
- (d) sell by public auction or private sale any property of the company;
- (e) do all acts and execute any documents in the name and on behalf of the company;

- (f) borrow money on the security of the property of the company;
 - (g) settle or compromise any claims by or against the company;
 - (h) make financial provision in respect of the custody of the documents and records of the company after its dissolution; and
 - (i) do all other things necessary for the liquidation of the company and the distribution of its property.
- (2) A liquidator incurs no liability as liquidator if he relies in good faith upon
- (a) financial statements of the company represented to him by an officer of the company or in a written report of the auditor of the company to reflect fairly the financial condition of the company; or
 - (b) an opinion, a report or a statement of an attorney-at-law, accountant, an engineer, an appraiser or other professional adviser retained by the liquidator.
- (3) If a liquidator has reason to believe that any person has in his possession or under his control, or has concealed, withheld or misappropriated any property of the company, the liquidator may apply to

the court for an order requiring that person to appear before the court at the time and place designated in the order, and to be examined.

(4) If the examination referred to in subsection (3) discloses that a person has concealed, withheld or mis-appropriated property of the company, the court may order that person to restore the property or pay compensation to the liquidator.

(5) A liquidator must pay the costs of liquidation out of the property of the company and must pay or make adequate provision for all claims against the company.

381. (1) Within 1 year after his appointment, and after paying or making adequate provision for all claims against the company, the liquidator must apply to the court Final accounts.

- (a) for approval of his final accounts and for an order permitting him to distribute in money or in kind the remaining property of the company to its shareholders according to their respective rights; or
- (b) for an extension of time, setting out the reasons therefor.

(2) If a liquidator fails to make the application required by subsection (1), a shareholder of the company may apply to the court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

(3) A liquidator must give to

- (a) the Registrar,
- (b) each inspector appointed under section 376,
- (c) each shareholder, and
- (d) any person who provided a security or fidelity bond for the liquidator,

notice of the liquidator's intention to make application under subsection (1); and he must publish a notice thereof in a newspaper published or distributed in Barbados, or as otherwise directed by the court.

(4) If the court approves the final accounts rendered by a liquidator, the court must make an order

- (a) directing the Registrar to issue a certificate of dissolution;
- (b) directing the custody or disposal of the documents and records of the company; and
- (c) subject to subsection (5), discharging the liquidator.

(5) The liquidator must forthwith send a certified copy of the order referred to in subsection (4) to the Registrar.

(6) Upon receipt of the order referred to in subsection (4), the Registrar must issue a certificate of dissolution in accordance with section 404.

(7) The company ceases to exist on the date shown in its certificate of dissolution.

Money
distribution.

382. (1) If, in the course of liquidation of a company, the shareholders resolve or the liquidator proposes

- (a) to exchange all or substantially all the property of the company for shares or debentures of another body corporate for distribution to the shareholders, or
- (b) to distribute all or part of the property of the company to the shareholders in kind,

a shareholder may apply to the court for an order requiring the distribution of the property of the company to be in money.

- (2) Upon an application under subsection (1), the court may order
 - (a) that all the property of the company be converted into, and distributed in, money, or
 - (b) that the claims of any shareholder applying under this section be satisfied by a distribution in money, in which case section 219 applies.

383. A person who has been granted custody of the documents and records of a dissolved company remains liable to produce those documents and records for 6 years following the date of the company's dissolution, or until the expiry of such other shorter period as may be ordered under subsection (4) of section 381.

Record
custody.

384. (1) In this section, "shareholder" includes the legal representatives of a shareholder.

Continuation
of actions.

(2) Notwithstanding the dissolution of a company under this Act

(a) a civil, criminal or administrative action or proceeding commenced by or against the company before its dissolution may be continued as if the company had not been dissolved;

(b) a civil, criminal or administrative action or proceeding may be brought against the company within 2 years after its dissolution as if the company had not been dissolved; and

(c) any property that would have been available to satisfy any judgment or order if the company had not been dissolved remains available to satisfy the judgment or order.

(3) Service of a document on a company after its dissolution may be effected by serving the document upon a person shown in the last notice filed under section 66 or 74.

(4) Notwithstanding the dissolution of a company, a shareholder to whom any of its property has been distributed is liable to any person claiming under subsection (2) to the extent of the amount received by that shareholder upon the distribution; but an action to enforce that liability may not be brought after 2 years from the date of the dissolution of the company.

(5) A court may order an action referred to in subsection (4) to be brought against the persons who were shareholders as a class, subject to such conditions as the court thinks fit; and, if the plaintiff establishes his claim, the court may refer the proceedings to a referee or other officer of the court, who may

- (a) add as a party to the proceedings before him each person found by the plaintiff to have been a shareholder;
- (b) determine, subject to subsection (4), the amount that each person who was a shareholder should contribute towards satisfaction of the plaintiff's claim; and
- (c) direct payment of the amounts so determined.

Unknown claimants.

385. (1) Upon the dissolution of a company, the portion of the property distributable to a creditor or shareholder who cannot be found must be converted into money and paid into the Consolidated Fund.

(2) A payment under subsection (1) is satisfaction of the debt or claim of the creditor or shareholder.

(3) If, at any time within 6 years after the date on which any money is paid into the Consolidated Fund pursuant to subsection (1), any person establishes his entitlement to the money so paid into the Fund, he is entitled to be paid an equivalent amount out of the Consolidated Fund.

Crown vested with property.

386. (1) Subject to subsection (2) of section 384 and section 385, any property of a company that has not been disposed of at the date of the company's dissolution vests in the Crown.

(2) When a company is revived under section 362, any property (other than money) that was vested in the Crown pursuant to subsection (1) on the dissolution of the company and that has not been disposed of must be returned to the company upon its revival.

(3) The company is entitled to be paid out of the Consolidated Fund

(a) any money received by the Crown pursuant to subsection (1) in respect of the company; and

(b) if property other than money vested in the Crown pursuant to subsection (1) in respect of the company and that property has been disposed of, an amount equal to the lesser of

(i) the value of any such property at the date it vested in the Crown, and

- (ii) the amount realised by the Crown from the disposition of that property.

DIVISION C

LIQUIDATION OF MISCELLANEOUS BODIES

387. In this Division, "unregistered body"

Definitions.

(a) includes

- (i) an external company;
- (ii) any partnership, whether limited or not, or any association consisting of not less than 6 members; or
- (iii) any body corporate not incorporated under this Act or continued under this act and not being a former-Act company; 1984-7.

but

(b) does not include

- (i) any society or association established under any enactment for the time being in force and relating to friendly societies, building societies, or industrial and provident societies, or
- (ii) any society or association established under any such other enactment as may be designated by an order of the Minister published in the *Gazette*.

388. (1) Subject to this Division, a receiving order under the *Bankruptcy Act* may be made against an unregistered body that is unable to pay its debts.

Liquidation of unregistered associations. Cap. 303.

(2) An unregistered body is unable to pay its debts when

- (a) a creditor to whom the body is indebted in a sum exceeding \$100 that is then due has served on the body

- (i) by leaving at its principal place of business in Barbados,
- (ii) by delivering to the secretary or some director, manager or principal officer of the body, or
- (iii) by otherwise serving in such manner as the court approves or directs,

a demand under the creditor's hand requiring the body to pay the sum or to secure or compound for it to the satisfaction of the creditor;

- (b) any action or other proceeding has been instituted against the body or any member of the body for any debt or demand due or claimed to be due from the body or from the member in his character of member, and, notice in writing that the action or proceeding had been instituted having been served on the body
 - (i) by leaving it at its principal place of business in Barbados,
 - (ii) by delivering it to the secretary or some director, manager or principal officer of the body, or
 - (iii) by otherwise serving it in such manner as the court approves or directs,

the body, within 10 days after service of the notice, has not paid, secured or compounded for the debt or demand, or procured the action or proceedings to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceedings and against all costs, damages and expenses to be incurred by him by reason thereof;

- (c) execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the body or any member thereof as a member of the body authorised to be sued as nominal defendant on behalf of the body, is returned unsatisfied; or
- (d) it is otherwise shown to the satisfaction of the court that the body is unable to pay its debts.

389. (1) For the purposes of the *Bankruptcy Act*, "debtor" in subsection (3) of section 3 of that Act includes an unregistered body; and the other provisions of that Act apply accordingly. Application of that Act.

(2) Where the court makes a receiving order against an unregistered body under the *Bankruptcy Act*, any provision of that Act that imposes a duty or obligation on the unregistered body has effect as if it imposed additionally that duty or obligation on each director, manager or principal officer of that body who is resident in Barbados. Cap. 303.

(3) Where an unregistered body is adjudged bankrupt under the *Bankruptcy Act*, the court may, at any time thereafter, make such order in respect of the dissolution of the body as it thinks fit.

390. (1) Subject to this Division, an unregistered body may be liquidated under Division B Other liquidation.

(a) if the body

- (i) is dissolved,
- (ii) has ceased to have a place of business in Barbados,
- (iii) has a place in Barbados only for the purpose of liquidating its affairs, or
- (iv) has ceased to carry on business in Barbados;

or

(b) if the court is of the opinion that it is just and equitable that the body be liquidated.

(2) The Registrar or any interested person may apply to the court for an order under this section in respect of an unregistered body, and the court may make such order with respect to that body's liquidation as the court thinks fit.

(3) An applicant under this section, other than the Registrar, must give the Registrar notice of the application; and the Registrar may be heard in person or by an attorney-at-law.

1984-7. (4) An application under subsection (1) must state the reasons why the unregistered body should be liquidated, and the reasons must be verified by the affidavit of the applicant.

(5) Upon an application under paragraph (b) of subsection (1), the court may make an order requiring the unregistered body, and any person having an interest in the unregistered body or claim against it, to show cause, at a time and place specified in the order, which must be not less than 4 weeks after the date of the order, why the body should not be liquidated.

(6) A copy of an order made under subsection (5)

(a) must be published, in a newspaper published or distributed in Barbados, as directed in the order, at least once in each week before the time appointed for the hearing; and

(b) must be served upon the Registrar and each person named in the order.

(7) Publication and service of an order under this section must be effected by the unregistered body or by such person and in such manner as the court may direct.

Application
of Division.

391. This Division is in addition to, and not in derogation of, any provisions contained elsewhere in this Act with respect to the liquidation of companies, and the provisions of this Division are hereby applied to the extent that they are applicable to the liquidation of unregistered bodies, with any necessary exceptions, modifications and adaptations; and the court or a liquidator may exercise any powers or do any act in the case of unregistered bodies that can be exercised or done by the court or liquidator in the liquidation of companies under any of those other provisions.

Special
provisions
company.

392. (1) Notwithstanding the provisions of this Division, where an unregistered body that had been incorporated or formed in a proclaimed state is dissolved in that state and there remains in Barbados any outstanding property

- (a) that was vested in the body or that it was entitled to, or over which it had a power of disposition at the time it was dissolved, but
- (b) that was not got in, realised or otherwise disposed of, or dealt with, by the body or its liquidator before its dissolution,

the property becomes vested for all the estate and interest, legal or equitable, of the body or its liquidator at the date the body was dissolved, in the person who is entitled to the property according to the law of the place of the incorporation or formation of the body.

(2) Where it appears to the Minister that the laws in force in any Member State of the Community provide a result similar to the provision of this section, the Minister may, by order, declare that State to be a proclaimed State for the purposes of this section.

(3) In this section, "Community" means the Community of States established by the Treaty signed on the 4th July, 1973, at Chaguaramas.

PART V

ADMINISTRATION AND GENERAL

DIVISION A

FUNCTIONS OF THE REGISTRAR

Registrar of Companies

393. (1) The Registrar of Companies is, under the general supervision of the Minister, responsible for the administration of this Act. Responsi-
bility.

(2) A seal may be prescribed by the Minister for use by the Registrar in the performance of his duties.

394. A document may be served upon the Registrar by leaving it at the office of the Registrar or by sending it by telex or by prepaid post or cable addressed to the Registrar at his office. Service
upon the
Registrar.
1984-7.

Register of Companies

Register of
Companies.

395. The Registrar must maintain a Register of Companies in which to keep the name of every body corporate

- (a) that is
 - (i) incorporated under this Act;
 - (ii) continued as a company under this Act;
 - (iii) registered under this Act; or
 - (iv) restored to the register pursuant to this Act,
- and
- (b) that has not been subsequently struck off that register.

Inspection
of register.

396. (1) A person who has paid the prescribed fee is entitled, during normal business hours, to examine, and to make copies of or extracts from, a document required by this Act or the regulations, to be sent to the Registrar, except a report sent to him under subsection (2) of section 421.

(2) The Registrar must, upon request and payment of the prescribed fee, furnish any person with a copy or certified copy of any document received by the Registrar under this Act, except a report received by him pursuant to subsection (2) of section 421.

(3) If the records maintained by the Registrar are prepared and maintained in other than a written form

- (a) the Registrar must furnish any copy required to be furnished under this Act in an intelligible written form; and
- (b) a report reproduced from those records, if it is certified by the Registrar, is admissible in evidence to the same extent as the original written records would be.

Notices and Documents

397. (1) A notice or document required by this Act, the regulations, articles or the by-laws to be sent to a shareholder or director of a company may be sent by telex or by prepaid post or cable, addressed to, or may be delivered personally to

Notice to directors, etc. 1984-7.

- (a) the shareholder at his latest address as shown in the records of the company or its transfer agent; and
- (b) the director at his latest address as shown in the records of the company or in the latest notice filed under section 66 or 74.

(2) A director named in a notice sent by a company to the Registrar under section 66 or 74 and filed by the Registrar is, for the purposes of this Act, a director of the company referred to in the notice.

398. A notice or document sent in accordance with section 397 to a shareholder or director of a company is, for the purpose of this Act, presumed to be received by him at the time it would be delivered in the ordinary course of mail.

Presumption of receipt.

399. If a company sends a notice or document to a shareholder in accordance with section 397 and the notice or document is returned on 3 consecutive occasions because the shareholder cannot be found, the company need not send any further notices or documents to the shareholder until he informs the company in writing of his new address.

Undelivered documents.

400. Where a notice or document is required to be sent pursuant to this Act, the sending of the notice or document may be waived, or the time for the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to the notice or document.

Notice waiver.

401. A certificate issued on behalf of a company stating any fact that is set out in the articles, the by-laws, any unanimous shareholder agreement, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a trust deed or other contract to which the company is a party, may be signed by a director, an officer or a transfer agent of the company.

Certificate by company.

Evidentiary
value.

402. When introduced as evidence in any civil, criminal or administrative action or proceeding

- (a) a fact stated in a certificate referred to in section 401;
- (b) a certified extract from a register of shareholders or debenture holders of a company; or
- (c) a certified copy of minutes or extracts from minutes of a meeting of shareholders, directors or a committee of directors of a company,

is, in the absence of evidence to the contrary, proof of the fact so certified without proof of the signature or official character of the person appearing to have signed the certificate.

Copies.

403. Where a notice or document is required by this Act to be sent to the Registrar, he may accept a photostatic or photographic copy of the notice or document.

Filed
articles.

404. (1) In this section, "statement" means a statement of intent to dissolve referred to in section 367 and a statement of revocation of intent to dissolve referred to in section 369.

(2) Where this Act requires that articles or a statement relating to a company be sent to the Registrar, unless otherwise specifically provided

- (a) two copies, in this section called "duplicate originals", of the articles or the statement must be signed by a director or an officer of the company, or, in the case of articles of incorporation, by the incorporator; and
- (b) upon receiving duplicate originals of any articles or statement that conform to law, and any other required documents and the prescribed fees, the Registrar must

- (i) endorse on each of the duplicate originals the word "registered" and the date of the registration;
- (ii) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the articles or statement;
- (iii) file a copy of the certificate and attached articles or statement;
- (iv) send to the company or its representative the original certificate and attached articles or statement; and
- (v) publish in the *Gazette* notice of the issue of the certificate.

(3) A certificate referred to in subsection (2) and issued by the Registrar may be dated as of the day he receives the articles, statement or court order pursuant to which the certificate is issued, or as of any later day specified by the court or person who signed the articles or statement.

(4) A signature required on a certificate referred to in subsection (2) may be printed or otherwise mechanically reproduced on the certificate.

405. The Registrar may alter a notice or document, other than an affidavit or statutory declaration, if so authorised by the person who sent him the notice or document, or by the representative of that person. Alteration of documents.

406. (1) If a certificate that contains an error is issued to a company by the Registrar, the directors or shareholders of the company must, upon the request of the Registrar, pass the resolutions and send to the Registrar the documents required to comply with this Act, and take such other steps as the Registrar may reasonably require; and the Registrar may demand the surrender of the certificate and issue a corrected certificate. Correction of documents.

(2) A certificate corrected under subsection (1) must bear the date of the certificate it replaces.

(3) If a corrected certificate issued under subsection (1) materially amends the terms of the original certificate, the Registrar must forthwith give notice of the correction in the *Gazette*.

Proof of documents.

407. (1) The Registrar may require that a document or a fact stated in a document required or sent to him pursuant to this Act be verified in accordance with subsection (2).

(2) A document or fact required by this Act or by the Registrar to be verified may be verified by affidavit or affirmation.

(3) The Registrar may require of a body corporate the authentication of a document; and the authentication may be signed by the secretary, or any director or authorised person or by the attorney-at-law for the body corporate.

Retention of documents.

408. The Registrar need not produce any document of a prescribed class after 6 years from the date he received it.

Registrar's certificate.

409. (1) The Registrar may furnish any person with a certificate stating

- (a) that a body corporate has or has not sent to the Registrar a document required to be sent to him pursuant to this Act;
- (b) that a name, whether that of a company or not, is or is not on the register; or
- (c) that a name, whether that of a company or not, was or was not on the register on a stated date.

(2) Where this Act requires or authorises the Registrar to issue a certificate or to certify any fact, the certificate or the certification must be signed by the Registrar or by his deputy.

(3) Except in a proceeding under section 372 to dissolve a company, a certificate or certification mentioned in subsection (2) that is introduced as evidence in any civil, criminal or administrative action or proceeding, is sufficient proof of the facts so certified, without proof of the signature or official character of the person appearing to have signed it.

410. (1) The Registrar may refuse to receive, file or register a document submitted to him, if he is of the opinion that the document Refusal power.

- (a) contains matter contrary to the law;
- (b) by reason of any omission or error in description, has not been duly completed;
- (c) does not comply with the requirements of this Act;
- (d) contains an error, alteration or erasure;
- (e) is not sufficiently legible; or
- (f) is not sufficiently permanent for his records.

(2) The Registrar may request that a document refused under subsection (1) be amended or completed and re-submitted, or that a new document be submitted in its place.

(3) If a document that is submitted to the Registrar is accompanied with a statutory declaration by an attorney-at-law that the document contains no matter contrary to law and has been duly completed in accordance with the requirements of this Act, the Registrar may accept the declaration as sufficient proof of the facts therein declared.

411. Every document sent to the Registrar must be in typed or printed form. Filing form.

Removal from Register

412. (1) The Registrar may strike off the register a company or other body corporate, if Striking off register.

- (a) the company or other body corporate fails to send any return, notice, document or prescribed fee to the Registrar as required pursuant to this Act;
- (b) the company is dissolved;
- (c) the company or other body corporate is amalgamated with one or more other companies or bodies corporate;
- (d) the company does not carry out an undertaking given under subparagraph (i) of paragraph (a) of section 416; or

(e) the registration of the body corporate is revoked pursuant to this Act.

(2) Where the Registrar is of the opinion that a company or other body corporate is in default under paragraph (a) of subsection (1), he must send it a notice advising it of the default and stating that, unless the default is remedied within 30 days after the date of the notice, the company or other body corporate will be struck off the register.

(3) Section 414 applies *mutatis mutandis* to the notice mentioned in subsection (2).

(4) After the expiration of the time mentioned in the notice, the Registrar may strike the company or other body corporate off the register and publish a notice thereof in the *Gazette*.

(5) Where a company or other body corporate is struck off the register, the Registrar may, upon receipt of an application in the prescribed form and upon payment of the prescribed fee, restore it to the register and issue a certificate in a form adapted to the circumstances.

Liability
continues.

413. Where a body corporate is struck off the register, the liability of the body corporate and of every director, officer or shareholder of the body corporate continues and may be enforced as if it had not been struck off the register.

Service

Service on
company.
1984-7.

414. A notice or document may be served on a company

(a) by leaving it at, or sending it by telex or by prepaid post or cable addressed to, the registered office of the company; or

(b) by personally serving any director, officer, receiver, receiver-manager or liquidator of the company.

Company Names

Reservation
of name.

415. The Registrar may, upon request and upon payment of the prescribed fee, reserve for 90 days a name for an intended company or for a company about to change its name.

416. The name of a companyProhibited
name.

- (a) must not be the same as or similar to the name or business name of any other person or of any association, partnership or firm, if the use of that name would be likely to confuse or mislead, unless the person, association, partnership or firm consents in writing to the use of that name in whole or in part, and
- (i) if required by the Registrar in the case of any person, undertakes to dissolve or change his or its name to a dissimilar name within 6 months after the filing of the articles by which the name is acquired, or
- (ii) if required by the Registrar in the case of an association, partnership or firm, undertakes to cease to carry on its business or activities, or undertakes to change its name to a dissimilar name, within 6 months after the filing of the articles by which the name is acquired;
- (b) must not be identical to the name of a body corporate incorporated under the laws of Barbados before 1st January, 1985;
- (c) must not suggest or imply a connection with the Crown, or the Government or of any Ministry, department, branch, bureau, service, agency or activity of the Government, unless consent in writing to the proposed name is duly obtained from the appropriate Minister;
- (d) must not suggest or imply a connection with a political party or a leader of a political party;
- (e) must not suggest or imply a connection with a university or a professional association recognised by the laws of Barbados, unless the university or professional association concerned consents in writing to the use of the proposed name; and
- (f) must not be a name that is prohibited by the regulations.

Refusal of
articles.

417. The Registrar may refuse to accept articles of incorporation or continuation for a company or to register articles amending the name of a company if

- (a) *Repealed by 1995-9;*
- (b) the name is deceptively inaccurate in describing
 - (i) the business, goods or services in association with which it is proposed to be used;
 - (ii) the conditions under which the goods or services will be produced or supplied;
 - (iii) the persons to be employed in the production or supply of those goods or services; or
 - (iv) the place of origin of those goods and services;
- (c) it is likely to be confusing with that of a company that was dissolved;
- (d) it contains the word or words "credit union", "co-operative", or "co-op", when it connotes a co-operative venture; or
- (e) *Repealed by 1995-9.*

Amalgama-
tion
companies.

418. If 2 or more companies amalgamate, the amalgamated company may have

- (a) the name of one of the amalgamating companies;
- (b) a distinctive combination that is not confusing of the names of the amalgamating companies; or
- (c) a distinctive new name that is not confusing.

Revival
name.

419. Where a company has been revived under this Act, if, between the date of its dissolution and the date of its revival, another company has been granted a name that is likely to be confused with the name of the revived company, the Registrar may require as a condition of its revival that the revived company does not carry on business, or, if it seeks to carry on business, that it changes its name immediately after it is revived.

DIVISION B
INVESTIGATIONS OF COMPANIES

Investigation

420. (1) A shareholder or debenture holder of a company, or the Registrar, may apply, *ex parte* or upon such notice as the court may require, to the court for an order directing that an investigation be made of the company and any of its affiliated companies.

Investigation
order.
1984-7.

(2) If, upon an application under subsection (1) in respect of a company, it appears to the court that

- (a) the business of the company or any of its affiliates is or has been carried on with intent to defraud any person;
- (b) the business or affairs of the company or any of its affiliates are or have been carried on in a manner, or the powers of the directors are or have been exercised in a manner, that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interest of a shareholder or debenture holder;
- (c) the company or any of its affiliates was formed for a fraudulent or unlawful purpose, or is to be dissolved for a fraudulent or unlawful purpose; or
- (d) persons concerned with the formation, business or affairs of the company or any of its affiliates have in connection therewith acted fraudulently or dishonestly,

the court may order that an investigation be made of the company and any of its affiliated companies.

(3) If a shareholder or debenture holder makes an application under subsection (1), he must give the Registrar reasonable notice thereof; and the Registrar is entitled to appear and be heard in person or by an attorney-at-law.

(4) An *ex parte* application under this section must be heard in camera.

(5) No person shall publish anything relating to an *ex parte* proceeding except with the authorisation of the court or the written consent of the company that is being, or to be, investigated.

Court
powers.

421. (1) In connection with an investigation under this Division in respect of a company, the court may make any order it thinks fit, including

- (a) an order to investigate;
- (b) an order appointing an inspector, who may be the Registrar, and fixing the remuneration of the inspector and replacing the inspector;
- (c) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (d) an order authorising an 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;
- (e) an order requiring any person to produce documents or records to the inspector;
- (f) an order authorising an inspector to conduct a hearing, administer oaths and examine any person upon oath, and prescribing rules for the conduct of the hearing;
- (g) an order requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath;
- (h) an order giving directions to an inspector or any interested person on any matter arising in the investigation;
- (i) an order requiring an inspector to make an interim or final report to the court;
- (j) an order determining whether a report of an inspector should be published, and, if so, ordering the Registrar to publish the report in whole or in part, or to send copies to any person the court designates;

- (k) an order requiring an inspector to discontinue an investigation; or
- (l) an order requiring the company to pay the costs of the investigation.
- (2) An inspector must send to the Registrar a copy of every report made by the inspector under this Division.

422. (1) An inspector under this Division has the powers set out in the order appointing him. Inspector's powers.

(2) An inspector must upon request produce to an interested person a copy of any order made under subsection (1) of section 421.

423. (1) An interested person may apply to the court for an order that a hearing conducted by an inspector under this Division be heard in camera and for directions on any matter arising in the investigation. In camera hearing.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Division may appear and be heard in person or by an attorney-at-law.

424. No person is excused from attending and giving evidence and producing documents and records to an inspector under this Division by reason only that the evidence tends to incriminate that person or subject him to any proceeding or penalty; but the evidence may not be used or received against him in any proceeding thereafter instituted against him, other than a prosecution for perjury in giving the evidence, or a prosecution under section 4 or 7 of the *Perjury Act* in respect of the evidence. Incriminating evidence. Cap. 142.

425. An oral or written statement or report made by an inspector or any other person in an investigation under this Division has absolute privilege. Privilege absolute.

Inquiries

426. (1) If the Registrar is satisfied that, for the purposes of Division F of Part I or Division E of Part II or for the purpose of enforcing any regulation made under section 199, there is reason to Ownership interest.

inquire into the ownership or control of a share or debenture of a company or any of its affiliates, the Registrar may require any person that he reasonably believes has or has had an interest in the share or debenture, or acts or has acted on behalf of a person with such an interest, to furnish to the Registrar, or to any person the Registrar appoints

(a) information that the person has or can reasonably be expected to obtain as to present and past interests in the share or debenture; and

(b) the names and addresses of the persons so interested and of any person who acts or has acted in relation to the share or debenture on behalf of the persons so interested.

(2) For the purposes of subsection (1), a person has an interest in a share or debenture, if

(a) he has a right to vote or to acquire or dispose of the share or debenture or any interest therein;

(b) his consent is necessary for the exercise of the rights or privileges of any other person interested in the share or debenture; or

(c) any other person interested in the share or debenture can be required, or is accustomed, to exercise rights or privileges attached to the share or debenture in accordance with his instructions.

Client
privileges. **427.** Nothing in this Division affects the privileges that exist in respect of an attorney-at-law and his client.

Inquiries. **428.** The Registrar may make of any person any inquiries that relate to compliance with this Act by any persons.

DIVISION C

REGULATIONS

Regulations. **429.** (1) The Minister may make such regulations as are required for the better administration of this Act, and, in particular, the Minister may make regulations

- (a) prescribing any matter required or authorised by this Act to be prescribed;
 - (b) requiring the payment of a fee in respect of the filing, examination or copying of any documents or in respect of any action that the Registrar is required or authorised to take under this Act, and prescribing the amount thereof;
 - (c) prescribing the format and contents of returns, notices or other documents required to be sent to the Registrar or to be issued by him;
 - (d) prescribing the rules with respect to exemptions permitted by this Act;
 - (e) respecting the names of companies or classes thereof;
 - (f) respecting the authorised capital of companies;
 - (g) respecting the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares or classes or series of shares of companies;
 - (h) respecting the designation of classes of shares; and
 - (i) respecting any other matter required for the efficient administration of this Act.
- (2) Regulations made under this section are subject to negative resolution.

DIVISION D

OFFENCES AND PENALTIES

430. Subject to subsection (2) of section 10, a company that contravenes section 10 is guilty of an offence and liable on summary conviction to a fine of \$5 000. Name offence.

431. Each of the individuals who carry on business under a name part of which is "limited", "incorporated" or "corporation" or the abbreviations "ltd", "inc" or "corp" is guilty of an offence and liable on summary conviction to a fine of \$500. Abuse of corporate status.

Reports. **432.** (1) A person who makes or assists in making a report, return, notice or other document

(a) that is required by this Act or the regulations to be sent to the Registrar or to any other person, and

(b) that

(i) contains an untrue statement of a material fact, or

(ii) omits to state a material fact required in the report, return, notice or other document, or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made,

is guilty of an offence and liable on summary conviction to a fine of \$5 000 or to imprisonment for a term of 6 months, or to both.

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

(3) When an offence under subsection (1) is committed by a body corporate and a director or officer of that body corporate knowingly authorised, permitted or acquiesced in the commission of the offence, the director or officer is also guilty of the offence and liable on summary conviction to a fine of \$5 000 or to imprisonment for a term of 6 months, or to both.

Specific offences. **433.** (1) A person is guilty of an offence and liable on summary conviction to a fine of \$5 000 or to imprisonment for a term of 6 months, or to both

(a) who without reasonable cause contravenes section 174;

(b) who without reasonable cause contravenes section 178;

(c) who wilfully contravenes section 290, 297, 299 or 303;

(d) who without reasonable cause contravenes subsection (5) of section 256;

- (e) who wilfully contravenes section 140 or 141;
- (f) who without reasonable cause fails to comply with a requirement of the Registrar under section 426 to report to the Registrar any information or any names or addresses of persons sought by the Registrar under that section;
- (g) who, being a proxy holder or alternate proxy holder, fails without reasonable cause to comply with the directions of a shareholder under subsection (1) of section 143;
- (h) who, being a registrant within the meaning of this Act, knowingly contravenes section 144;
- (i) who, being an auditor or former auditor of a company, contravenes subsection (1) of section 162 without reasonable cause;
- (j) who, being a director or officer of a company knowingly contravenes section 166; or
- (k) who, being a person described in section 383, fails without reasonable cause to produce any documents or records within any period during which he is liable under that section to produce that document or record.

(2) Where the person who is guilty of an offence under subsection (1) is a body corporate, then, whether the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly authorised, permitted or acquiesced in the act or omission that constituted the offence is also guilty of an offence and liable on summary conviction to a fine of \$5 000 or to imprisonment for a term of 6 months, or to both.

434. (1) A company is guilty of an offence and liable on summary conviction to a fine of \$5 000, if Company offences.

- (a) the company contravenes section 301, 302, 304 or 306;
- (b) the management of the company without reasonable cause fails to comply with subsection (1) of section 139; or

(c) the company without reasonable cause contravenes section 151.

(2) When a company is guilty of an offence under this section, any director or officer of the company who knowingly authorised, acquiesced in or permitted the contravention is also guilty of an offence and liable on summary conviction to a fine of \$5 000, or to imprisonment for a term of 6 months, or to both.

General offence.

435. Every person who, without reasonable cause, contravenes, within the meaning of section 445, a provision of this Act or the regulations is guilty of an offence, and, if no punishment is elsewhere in this Act provided for that offence, is liable on summary conviction to a fine of \$5 000.

Defence re prospectuses.

436. In a prosecution for an offence under this Act arising out of an untrue statement or wilful non-disclosure in a prospectus, it is a defence for the person charged to prove that the statement or non-disclosure was immaterial, or that he had reasonable grounds to believe, and did, up to the time of the issue of the prospectus, believe that the statement was true or non-disclosure was immaterial.

Order to comply.

437. When a person is convicted of an offence under this Act or the regulations, the court, or a court of summary jurisdiction in which proceedings in respect of the offence are taken, may, in addition to any punishment it may impose, order that person to comply with the provision of this Act or the regulations for the contravention of which he has been convicted.

Limitation.

438. A prosecution for an offence under this Act or the regulations may be instituted at any time within 2 years from the time when the subject-matter of the prosecution arose.

Civil remedies unaffected.

439. No civil remedy for any act or omission is affected by reason that the act or omission is an offence under this Act.

DIVISION E
CONSTRUCTION AND INTERPRETATION
OF ACT

Corporate Relationships

440. For the purposes of this Act

Affiliated
corporations.

- (a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and
- (b) if 2 bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.

441. For the purposes of this Act, a body corporate is controlled by a person if any shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are, except by way of security only, held, directly or indirectly, by or on behalf of that person.

"Control" of
corporation.

442. For the purposes of this Act

"Holding"
and
"subsidiary".

- (a) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and
- (b) a body corporate is a subsidiary of another body corporate if it is controlled by that other body corporate.

Public Distribution of Corporate Securities

443. (1) For the purposes of this Act

"Distribu-
tion" to
public.

- (a) a share or debenture of a body corporate is part of a distribution to the public, when, in respect of the share or debenture,
- (i) there has been, under the laws of Barbados or any other jurisdiction, a filing of a prospectus, statement in lieu of prospectus, registration statement, stock exchange take-over bid circular or similar instrument; or

- (ii) the share or debenture is listed for trading on any stock exchange wherever situated; and
 - (b) a share or debenture of a body corporate is deemed to be part of a distribution to the public where the share or debenture has been issued and a filing referred to in subparagraph (i) of paragraph (a) would be required if the share or debenture were being issued currently.
- (2) For the purposes of this Act, the shares or debentures of a company that are issued upon a conversion of other shares or debentures of a company, or in exchange for other shares or debentures, are part of a distribution to the public if any of those others were part of a distribution to the public.
- (3) For the purposes of this Act
- (a) a statement is included in a prospectus or in a statement in lieu of a prospectus if it is included in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith;
 - (b) a statement included in a prospectus or statement in lieu of prospectus is deemed to be untrue if it is misleading in the form and context in which it is included; and
 - (c) a reference to an offer or offering of shares or debentures for subscription or purchase is deemed to include an offer of shares or debentures by way of barter or otherwise.

"Offer" to
the public.

444. (1) Any reference in this Act to offering shares or debentures to the public includes, unless the contrary intention appears, a reference to offering them to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner; and references in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures must, unless the contrary intention appears, be similarly construed.

(2) Subsection (1) does not require that any offer or invitation be treated as being made to the public if the offer or invitation can properly be regarded, in all the circumstances, as not being calculated to result,

directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

(3) A provision in the articles or by-laws of a company that prohibits invitations to the public to subscribe for shares or debentures does not prohibit the making of an invitation to the shareholders, debenture holders or employees of the company. 1984-7.

Legislative Expressions

445. (1) Where the auxiliary "shall" is used in a provision of this Act "Shall", use of.

- (a) to require that a person do or refrain from doing some act, matter or thing; or
- (b) to require that some act, matter or thing be done or not be done by some specific means, or manner, or in some specific form or at or within some specific time,

the provision is imperative, and default in complying with it constitutes a contravention of this Act.

(2) Unless otherwise expressly provided, default in complying with an imperative provision referred to in subsection (1) does not invalidate any act, matter or thing done in contravention of the provision nor prevent the later doing of that act, matter or thing in accordance with the provision.

(3) Compliance with a provision referred to in subsection (1) is enforceable in any court of competent jurisdiction, notwithstanding that the contravention of the provision is punishable or has been punished pursuant to statute.

446. (1) The auxiliary "may" is permissive, empowering and enabling; and when used in the negative form, it negatives any permission, power or capacity to do the act, matter or thing in respect of which the auxiliary is used so that, unless the contrary is expressly provided, the act, matter or thing is to be construed, so far as it can be done without allowing the statute to be made an instrument of fraud, as not being capable of being done in law or in fact. "May", use of.

(2) When the exercise of a power is subject to any qualification or condition, the power is not exercised unless the qualification or condition is met or complied with.

(3) Unless otherwise expressly provided, the doing of any act, matter or thing pursuant to a permission or power is within the sole and absolute discretion of the person to whom the permission or power is given.

"Must",
use of.

447. (1) Where the auxiliary "must" is used in a provision of this Act

- (a) to require that a person do or refrain from doing some act, matter or thing,
- (b) to require that an act, matter or thing be done or not be done by some specific means, or manner, or in some specific form, or at or within some specific time, or
- (c) to prescribe a qualification or condition for some purpose, office or status,

the provision imposes a duty or obligation upon the person required to comply with it.

(2) Default in complying with the duty or obligation referred to in subsection (1) does not constitute an offence under this Act unless the default is made an offence by a provision of this Act expressly mentioning the act, matter or thing or the duty or obligation or the provision imposing the duty or obligation.

(3) Compliance with any duty or obligation is enforceable in any court of competent jurisdiction.

(4) A person aggrieved by a breach of a duty or obligation referred to in subsection (1) may recover, by action in the court, any damages suffered by him as a direct result of the breach; but this subsection does not apply if the breach is an act or omission

- (a) in the performance of a function of a legislative nature or of a judicial nature; or

(b) in the performance in good faith of a ministerial function by a Minister or employee of the Crown in the administration of this Act.

(5) When a provision of this Act that uses the auxiliary "must" to prescribe any qualification or condition for some purpose, office or status, the qualification or condition is mandatory and default in complying with it, unless it is otherwise provided

- (a) frustrates the purpose,
- (b) vitiates the status,
- (c) nullifies the appointment to the office, or
- (d) vacates the tenure in the office,

to which the qualification or condition is attached, but without affecting the operation of subsections (2) to (4).

Corporate and Other Expressions

448. In this Act

Definition of
technical
words.

- (a) "affairs" means, in relation to any company or other body corporate, the relationship among the company or body corporate, its affiliates and the shareholders, directors and officers thereof, but does not include any businesses carried on by the companies or other bodies corporate;
- (b) "affiliate" means an affiliated company or affiliated body corporate within the meaning of section 440;
- (c) "associate" when used to indicate a relationship with any person means
 - (i) a company or body corporate of which that person beneficially owns or controls, directly or indirectly, shares or debentures convertible into shares, that carry more than 20 percent of the voting rights
 - (A) under all circumstances,

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- (B) by reason of the occurrence of an event that has occurred and is continuing, or
 - (C) by reason of a currently exercisable option or right to purchase those shares or those convertible debentures;
 - (ii) a partner of that person acting on behalf of the partnership of which they are partners;
 - (iii) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;
 - (iv) a spouse of that person within the meaning of subsections (3) and (4) of section 2 of the *Succession Act*;
 - (v) a child, step-child or adopted child of that person; and
 - (vi) a relative of that person or of his spouse if that relative has the same residence as that person;
 - (d) "auditor" includes a partnership of auditors;
 - (e) "beneficial interest" or "beneficial ownership" includes ownership through a trustee, legal representative, agent or other intermediary;
 - (f) "body corporate" includes a company within the meaning of subsection (1) of section 2 or other body corporate wherever or however incorporated, other than a corporation sole;
 - (g) "corporate instruments" includes any statute, letters patent, memorandum of association, articles of association, certificate of incorporation, certificate of continuance, by-laws, regulations or other instrument by which a body corporate is incorporated or continued or that governs or regulates the affairs of a body corporate;
 - (h) "debenture" includes debenture stock and any bond or other instrument evidencing an obligation or guarantee, whether secured or not;

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- (i) "director", in relation to a body corporate, means a person occupying therein the position of a director by whatever title he is called, and "directors" and "board of directors" include a single director;
- (j) "external company" means a company as defined in subsection (2) of section 252;
- (k) "incorporator" means, in relation to a company, a person who signs the articles of incorporation of the company;
- (k.1) "legal representative", in relation to a company, shareholder, debenture holder or other person, means a person who stands in place of and represents the company, shareholder, debenture holder or person and, without limiting the generality of the foregoing, includes, as the circumstances require, a trustee, executor, administrator, assignee, or receiver of the company, shareholder, debenture holder or person; 1984-7.
- (l) "liability" includes, in relation to a company, any debt of the company that arises under
- (i) section 49,
 - (ii) subsection (2) of section 221, or
 - (iii) paragraph (f) or (g) or subsection (3) of section 228;
- (m) "ordinary resolution" means a resolution passed by a majority of the votes cast by the shareholders who voted in respect of that resolution;
- (n) "record" includes any register, book or other record that is required to be kept by a company or other body corporate;
- (o) "redeemable share" means a share issued by a company
- (i) that the company can purchase or redeem upon demand of the company, or
 - (ii) that the company is required by its articles to purchase or redeem at a specified time or upon the demand of a shareholder;

- (p) "resident Barbadian" means an individual who is
- (i) a Barbadian citizen ordinarily resident in Barbados;
 - (ii) a Barbadian citizen not ordinarily resident in Barbados who is a member of a prescribed class of persons; or
 - (iii) a permanent resident within the meaning of the *Immigration Act*;
- Cap. 190. (q) "security interest" means a security interest within the meaning of section 94;
- (r) "send" includes deliver;
- (s) "series", in relation to shares, means a division of a class of shares;
- (t) "share" includes stock;
- 1986-11. (u) "shareholder", in relation to a company, includes
- (i) a member of a company described in Division A or Division E of Part III, except where inconsistent with a provision of that Division;
 - (ii) the personal representative of a deceased shareholder;
 - (iii) the trustee in bankruptcy of a bankrupt shareholder; and
 - (iv) a person in whose favour a transfer of shares has been executed but whose name has not been entered in the register of shareholders, or, if 2 or more transfers of those shares have been executed, the person in whose favour the most recent transfer has been made;
- (v) "special resolution" means a resolution
- (i) passed by a majority of not less than two-thirds of the votes cast by the shareholders who voted in respect of the resolution, or
 - (ii) signed by all the shareholders entitled to vote on the resolution.

DIVISION F

INCIDENTAL AND CONSEQUENTIAL MATTERS

449. (1) The former Act is repealed.

Repeal
Cap. 308.
1984-7.

(2) Notwithstanding subsection (1) but subject to this Act, the provisions of the former Act continue to apply so far as is necessary to enable a former-Act company to function until it is continued under this Act or wound up under Division A or Division B or Part IV of this Act.

450. (*Spent*).

451. (1) In this section and section 452

References
to Compa-
nies Act.

(a) "enactment" means an Act or regulation or any provision of an Act or regulations; and

(b) "regulation" includes an order, regulation, order in council, order prescribing regulations, rule, rule of court, form, tariff of costs or fees, letters patent, commission, warrant, and any instrument issued, made or established

(i) in the execution of a power conferred by or under an Act other than the former Act, or

(ii) by or under the authority of the Governor-General.

(2) A reference in an unrepealed enactment to the former Act is, as regards a transaction, matter or things subsequent to 1st January, 1985 to be construed and applied, unless the context otherwise requires, as a reference to the provisions of this Act that relate to the same subject-matter as the provisions of the former Act; but if there are no provisions in this Act that relate to the same subject-matter, the former Act is to be construed and applied unrepealed so far as it is necessary to do so to maintain or give effect to the unrepealed provision.

(3) *Spent*.

452. (1) Where in any enactment the expression "registered under the Companies Act" occurs, the expression, unless the context otherwise requires, refers to incorporation, continuation or registration

Transitional.

under this Act in respect of all transactions, matters or things subsequent to 1st January, 1985.

(2) Where in any other enactment the expression "memorandum of association" or "articles of association" occur, those expressions, unless the context requires, refer respectively to articles of association and by-laws within the meaning of this Act.

(3) Where in any enactment a reference is made to winding-up under, or to the winding-up provisions of, the former Act, then, unless the context otherwise requires, it refers, in respect of all transactions, matters or things subsequent to 1st January, 1985, to liquidation or dissolution under this Act.

(4) *Spent.*

Repeal
effect.

453. (1) Notwithstanding section 449, when on 1st January, 1985 any proceedings under Part V of the former Act are pending in respect of the winding-up of any body under that Act, those proceedings may be continued under that Part in all respects as if this Act had not been enacted.

(2) When, on 1st January, 1985 an amalgamation agreement entered into under the former Act and approved by the court under that Act is in the course of being filed with the Registrar of Companies or is in his hands, the amalgamation may be continued and effected under that Act as if this Act had not been enacted, unless the parties to the amalgamation withdraw the amalgamation agreement by notice in writing.